Ethics and Anti-Corruption Commission

AN EVALUATION OF PROJECT IMPLEMENTATION IN KENYA:
A Case Study of County Revenue Fund and Constituency Development Fund

FEBRUARY, 2018

EACC Research Report No. 5 of February 2018

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ACRONYMS

CDF	-	Constituency Development Fund
CEO	**-**	Chief Executive Officer
CRF	-	County Revenue Fund
CDC	-	Constituency Development Committee
CFC	-	Constituencies Fund Committee
DPC	-	District Projects Committee
KIPPRA	-	Kenya Institute for Public Policy Research and Analysis
LA	-	Local Authority
LATF	-	Local Authority Transfer Fund
MP	-	Member of Parliament
MCA	-	Member of County Assembly
NMC	-	National Management Committee
NMB	-	National Management Board
OAG	-	Office of the Auditor General
PPAD	-	Public Procurement and Asset Disposal Act
PPRA	-	Public Procurement Regulatory Authority
PPRD	-	Public Procurement Review Board

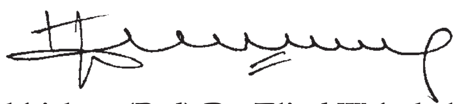
FOREWORD

Chapter eleven of the Constitution of Kenya 2010 gives powers of self-governance to the people and enhances the participation of the people in the exercise of the powers of the state and in making decisions affecting them. Further, the Constitution recognizes the right of communities to manage their own affairs and to further their development. The Constitution thus devolves roles of the Central Government and places them in the hands of people at the County level.

Lack of transparency and accountability in any public institution is the main catalyst of corruption to thrive. Corrupt people do not like being accountable to systems, institutions, or people neither do they engage in corruption in the open for everybody to see. The two factors have been recognized as the key to reducing corruption in public institutions and therefore governments all over the world strive to put systems in place which enhances transparency and accountability.

Allegations of lack of transparency and accountability in both CDF and County governments have continued to cast a dark shadow on the success of decentralized funds. Whereas devolution is meant to bring government services closer to people, the effects of corruption has derailed if not completely hampered service delivery.

This Study has highlighted most of the challenges that continue to bedevil CDF and County governments. I urge all the stakeholders on devolution to keenly look at the issues flagged out in the Report and recommendations therein with the aim to addressing the issues lest the good intentions and successes of devolution are watered down.



Archbishop (Rtd) Dr. Eliud Wabukala, EBS
Chairman
Ethics and Anti-Corruption Commission

PREFACE

Since the coming into being of devolution after the first general election under the new Constitution in 2013, devolution has played a very central role in transforming lives of Kenyans. This has been achieved through numerous development projects initiated by Counties and employment opportunities emanating during the creation of County governments. Despite the good tidings on devolution, it is being observed that corruption is one of the major setback that if not checked may erode or slow down the good work that devolution is creating for Kenyans. The vice is developing deep roots in Counties and the government need, to put in place measures to deal with the vice.

This Study was conceived with the aim of identifying the existing loopholes and procedures prone to corruption in the County Revenue Fund and Constituency Development Fund and consequently propose measures to address the loopholes. The Study shows that in addition to other malpractices, County and Constituency projects are overly overpriced leading to losses of millions of taxpayer's money. This was attributed to collusion amongst contractors and between contractors and public officials. Some of the companies doing business with Counties and constituencies are owned by public officials that includes Governors, Members of Parliament, Members of County Assembly, Procurement officials among others. This companies have an added advantage when it comes to winning public tenders.

The Study proposes opening up of public procurement in Counties to allow more public scrutiny that will discourage underhand dealings; institutionalize prudent fiscal behavior; undertake thorough due diligence on companies tendering for public contracts among other measures. The report further recommend we relook at the legal framework to tighten the noose on corrupt individuals and companies.

I call upon all stakeholders to read the Report and implement the findings with the aim of making Kenya a better nation both for ourselves and future generations.

I recognize and appreciate County Governors and their staff, CDF officials for allowing access to their offices and records to gather the requisite information. In addition, I recognize members of public who voluntarily offered information that provided insights into management of the funds. Lastly, I take this opportunity to thank Nancy Namenge for offering overall supervision of the Study; Daniel Kang'ethe for spearheading the Study; Valuer James Kithinji, Collins Aluda, Naomi Monari, Janet Bett, Idris Shidhe and Edward Oyunga for offering technical support; and several Research Assistants for collecting and processing the data.

Halakhe D. Waqo, CBS, MCIArb
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission

EXECUTIVE SUMMARY

In Kenya, corruption is a serious problem that permeates all sectors of the economy. Decentralized funds are no exception. Numerous reports have provided evidence on this sad state of affairs in the country. The Study looked into CDF and County projects files to gather specific information about CDF and County projects and name of suppliers/contractors to interview. A valuer from the Commission assisted in undertaking valuation of some of the projects sampled. Field data collection was done from 17th May to 11th June 2015 (phase I) and 27th July to 8th August 2015 (phase II) and in Nairobi 14th to 15th May and 12th to 17th August 2015. A summary of the findings are highlighted below.

The overall objective of this Study was to identify the existing loopholes and procedures prone to corruption in the implementation of CDF and county projects and propose measures to seal those loopholes. The specific objectives were:

i) Identify best practices from other countries that have helped manage decentralized funds;
ii) Investigate the factors that affect companies to win public tenders in CDF and County governments;
iii) Examine possible corruption issues during implementation of County/CDF projects; and
iv) Identify main challenges that continue to bedevil CDF and county project implementation in Kenya.

The analyses of the Study data indicated that the probability of winning public tenders in CDF and County governments was affected by many factors, namely: payment of bribe; the public institutions (County government or CDF) the firm is doing business with; the County in which the public tender is floated; the point at which a company gets to know the public institution's estimated cost of a project; if a company has been involved in developing specifications for a project; how a company establish the project cost to use while tendering with the County government/CDF office; media through which companies get to know bidding opportunities in the County Government/CDF; accessibility of procurement records; delay in processing of payments; signing of anti-corruption commitment; and, the type of business a company is engaged in.

The type of public institution a company was doing business with had a statistically significant effect on winning public tenders. Companies doing business with CDF offices had a higher chance of winning public tenders compared to those doing business with Counties only (increased odds of winning by 2.02 times). In other words it was a bit harder to get tenders with County governments than CDF offices.

Those companies that knew the estimated price before submitting their bids had higher chances of winning public tenders compared to those that did not know. Companies that benchmark their price with other suppliers bidding for the same tender had a higher chance of winning tenders compared to those who use the prevailing market prices. The same was deduced for those companies that quoted market prices but factored in big profit margins as their odds of winning a tender was increased by 1.14 times compared to those who quoted market prices. Clearly, collusion among companies bidding for public tenders offers an added advantage in winning the tenders. Overpricing a project was an added advantage to win tenders. Clearly, this shows a collusion between contractors and companies bidding for tenders where projects are overpriced and the company wins the tender and probably the extra money shared.

Those companies that were not involved in the development of project specifications had their chances of winning public tenders reduced to 22 percent compared to those that were involved in the development. Therefore, a company that developed specifications for a project was more likely to win public tenders compared to that that did not.

On the issue of sources of information for bidding opportunities, those companies getting information on bidding opportunities from friends, procurement officers, County and CDF officers and other suppliers led to high chances of winning public tenders compared to those relying on newspapers. The most significant results were obtained by companies that got to know about bidding opportunities through their friends. The odds of winning for these companies were increased by 6.17 times compared to those using newspaper adverts. These friends were not defined and there is a possibility of being public servants with inside information on bidding opportunities especially considering the high chance of winning biddings associated with them. The project that were evaluated in the sampled Counties and CDF offices some were found to be overpriced, for example the installation of solar masts on the Isiolo - Moyale road; other projects had stalled despite having consumed millions of taxpayer's money, for example construction of a kitchen and dining hall in Enkorika Secondary School, Kajiado Central constituency CDF; used wrong procurement methods; variation of project different from the initial contract; payment of contract amount before work begun among other issues.

Some of the main challenges identified by contractors as issues that affect their doing business with County governments and CDF offices include: corruption; delay in processing contractor's payments; favoritism in award of tenders; and lack of awareness of public tenders. Some of the suggested measures to counteract the challenges include increase funding, disqualifying politicians from any involvementn public tenders, proper monitoring and evaluation of project implementation, evaluation of tenders be done by an external person and efficient mechanisms of reporting tender outcomes.

The report recommends the following as some of the measures to help address corruption issues:

Strengthen the legal framework for corruption;

- Institutionalize prudent fiscal behavior;
- Adoption of best practices in project management and developing a comprehensive cost estimating guidelines for projects;
- public officers to have authority, independence and be held solely responsible for the management of projects;
- Disqualify politicians from involvement in tender process;
- Undertake thorough due diligence on private companies;
- Open up public procurement;
- Strengthen monitoring and evaluation of projects; and
- Ensure proper record keeping of projects.

CHAPTER 1: INTRODUCTION

Fiscal decentralization involves the transfer of taxing and spending powers to regional-level Governments. Developing countries are in general more centralized than most developed countries. As a result of much dissatisfaction with the results of centralized economic planning, reformers have turned to decentralization to break the grip of central Governments and induce broader participation in democratic governance. Thus, fiscal decentralization, as one tool of decentralization, has become the hallmark of governance in many developing countries over the past two decades (Ivar & Odd-Helge, 2006). Kenya is no exception to these developments. Fiscal decentralization began way before the Constitution of Kenya was promulgated in 2010. The Roads Maintenance Levy Fund (1993), the Secondary School Education Bursary Fund (1993), Local Authority Transfer Fund (1999), Poverty Eradication Revolving Loan Fund (1999), Water Services Trust Fund (2002), Constituency Development Fund (2003), the Free Primary Education Programme (2003), the Disabled Fund (2003), and Rural Electrification Programme Levy Fund (2006) were funds decentralized before the 2010 Constitution. The Constitution entrenched fiscal, political and administrative decentralization.

In 2003, the Constituency Development Fund (CDF) was established by an Act of Parliament. The Fund was established with the aim of alleviating poverty at the grass-root level by initiating and developing community projects whose long term effects are to improve people's economic well-being. The projects are to be initiated through public participation. This allows more public involvement in decision making at the grass-root level. The Fund is allocated 2.5 per cent of Government revenue and channeled to all the 290 constituencies in the country. Although the Fund receives a small proportion of Government revenue, its impact can be significant if the funds are efficiently utilized. Despite its successes, the Fund has not been without controversies. There have been numerous reports of funds being misappropriated with money wasted on poor quality workmanship, projects abandoned and money unaccounted for.

The 2010 Constitution created a new dispensation of County Governments which came into place after the first general election under the Constitution in 2013. Article 207 of the Constitution establishes a Revenue Fund for each County Government. The Fund shall be the recipient of all money raised or received by or on behalf of the County Government. The County Governments are entitled to not less than 15 per cent of all revenue collected by the National Government. In the 2016/17 financial year, the allocation to Counties stood at 32 percent of all national revenue (National Council for Law Reporting, 2010).

Prior to the 2013 General Election that saw the establishment of Counties, the fate of CDF was unknown. The Fund's aim was to alleviate poverty at the grass-root level and control imbalances in regional development. The CDF continued to exist even after the creation of the Equalization and County Revenue Funds. Governors, on the other hand, are advocating for all monies to be channeled to Counties through the County Revenue Fund[1]. In the Republic of Kenya Vs. the Institute of Social Accountability Petition No. 71 of 2013, the High Court at Nairobi ruled the CDF Act 2013 un-Constitutional and therefore invalid.

1 Daily Nation Newspaper edition of Friday, September 19, 2014

The National Government was given 12 months to remedy the defect during which period the order of invalidity was suspended. This led to the repeal of the CDF Act 2013 by the enactment of the National Government CDF Act, 2015.

This Study concentrates on projects implemented by CDF and County Revenue Fund. We look into the CDF mainly due to two reasons: first, the fund is one of the oldest (since 2003) and the largest (2.5% of Government revenue) devolved funds whose impact, if well managed, will be enormous. Secondly, due to its long history that will enable reliable and accurate data to be found, lessons learnt will be applicable in informing the management of devolved funds, seal corruption loopholes and provide mitigating measures to help fight the vice in the decentralized funds more so in project implementation.

1.1 Problem Statement

In Kenya, corruption is a serious problem that permeates all sectors of the economy. The vice is more pronounced in public sector especially those activities involving substantial cash flow. Chapter eleven of the Constitution of Kenya gives powers of self-governance to the people and enhances the participation of the people in the exercise of the powers of the state and in making decisions affecting them. Further, the Constitution recognizes the right of communities to manage their own affairs and to further their development. The Constitution thus devolves roles of the Central Government and places them in the hands of people at the County level. Whereas this is aimed at increasing efficiency in service delivery and more community participation in decision making, there is a line of thinking that devolution, especially fiscal decentralization, increases corruption at the local Governments while decreasing corruption at the Central Government (Ivar & Odd-Helge, 2006). The devolved County Revenue Fund and CDF revivified development and economic activity in the country, especially rural economies, but with it, came corruption tagging along at the County and constituency levels.

Numerous reports have provided evidence on this deplorable state of affairs in the country. An audit of the CDF by the National Taxpayers Association between 2006 and 2008 of Othaya, Embakasi, Butula, Makueni, Kirinyaga Central and Mbooni constituencies indicated a total of Kshs. 35 million was wasted on badly built projects and Kshs. 45 million was missing and unaccounted for. Kirinyaga Central had the highest proportion of money wasted on badly built projects (Kshs. 9 million; 18% of its total allocation) followed by Othaya (Kshs. 8 million; 11% of its total allocation). Embakasi constituency had Kshs. 22 million missing and unaccounted for (31% of its total allocation) while Butula and Mbooni each lost Kshs. 10 million of its allocated taxpayers money.

Between 2013 and 2017, the Ethics and Anti-Corruption Commission received a total of 984 reports touching on the CDF and 4,281 reports on Counties. The reports site embezzlement/misappropriation of public funds, public procurement irregularities, abuse of office, maladministration, bribery, unethical conduct, fraudulent acquisition and disposal of public property, fraud, conflict of interest, unexplained wealth, bid rigging and tax evasion as the main corruption offences committed in CDF counties. Embezzlement/misappropriation of public funds constituted the largest proportion of these reports with CDF having 57 percent and 32 percent in Counties.

Several studies on the CDF have been undertaken especially polling the general public (demand side) to assess transparency, participation, awareness among other areas of interest. This Study takes a different and more holistic approach. The Study will explore both the demand and supply side but put more emphasis on the supply side during project implementations.

1.2 Objectives of the Study

The overall objective of this Study is to identify the existing loopholes and procedures prone to corruption in the implementation of CDF and county projects and propose measures to seal those loopholes. The specific objectives are:

1) Identify best practices from other countries that have helped manage decentralized funds;
2) Investigate the factors that affect companies to win public tenders in CDF and County governments;
3) Examine possible corruption issues during implementation of County/CDF projects; and
4) Identify main challenges that continue to bedevil CDF and county project implementation in Kenya.

1.3 Justification of the Study

The role of Governments should be to provide a stable political and economic environment. Government policies should aim to promote fiscal responsibility, ensure a Policy and legal framework for property rights and regulatory oversight, and ensure transparency of the law and policies (United Nations). One of the objects of devolution as stipulated in the Constitution of Kenya is to enhance checks and balances and the separation of powers. Further, the Constitution requires that public money be used in a prudent and responsible way. In addition, Vision 2030 proposes an increased use of Devolved Funds as a strategy of addressing poverty and equity issues in the country. The Vision further expects an increase in funding to be matched by more transparent and citizen participatory expenditure, combined with enhanced efficiency in resource utilization (GoK, 2007).

The County Revenue Fund takes not less than 15 per cent of Kenyan taxpayers' money which is entrusted to the County Administrators to deliver services and stir economic growth at the grass root level. The County Administrators are mandated by the Constitution to use the Funds in a prudent and responsible manner. To this end, the Ethics and Anti-Corruption Commission (EACC) is mandated to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion/development of good practices to seal opportunities and loop holes that facilitate corruption. It is therefore imperative for the Commission to be in the forefront in advising the Government, members of public and other stakeholders on preventive measures that will mitigate the spilling over of corrupt practices from the CDF into the County Revenue Fund.

CHAPTER 2: METHODOLOGY

The methodology presented in this chapter includes the research design, sampling techniques, data analysis, scope and challenges encountered in the study.

2.1 Research Design

The County Revenue Fund (CRF) and Constituency Development Fund (CDF) form the basis of this Study. Several studies on the CDF have been undertaken especially polling the general public (demand side) to assess transparency, participation, awareness among other areas of interest. This Study takes a different and more holistic approach. The Study will explore both the demand and supply side but put more emphasis on the supply side. The supply side entails the public officers, suppliers and contractors.

The Study adopts mixed research design, that is, qualitative and quantitative approaches. Quantitative data was obtained by extracting data from projects files using an extraction form; and through face to face interviews with the general public and public officers using a structured questionnaire. Qualitative data was obtained through case Study analysis and key informants interviews.

Specifically, the qualitative data was obtained by employing the following methods:

i) Review literature and case Study analysis; and

ii) Key informant interviews of CDF and CRF staff.

While quantitative data was obtained by:

i) Interview of sampled members of public;

ii) Interview of staff of sampled Counties and constituencies;

iii) Interview of sampled suppliers/contractors of Fund's projects;

iv) Perusal of procurement files to collect data on tenders and suppliers; and

v) Site visits and evaluation of projects.

2.2 Population of the Study and sampling technique

The target population was all County public officers and registered contractors/suppliers.

2.2.1 Sample Constituencies

All the 47 Counties are allocated money by the National Government while CDF is dispersed to the 290 constituencies in the 47 Counties in the country. Thus our sampling unit is the constituency. The Study took a random sample of 15 Counties to visit, including Nairobi, a 32 per cent sample of the 47 Counties. In selecting the Counties, geographical, population and regional development were considered. The actual Counties and constituencies sampled per province were sampled using probability proportionate to size sampling. In this case, the size is the 2009 population census. The logic of using population and probability proportional to size sampling is based on the fact that both the CDF and the CRF is computed based on the population and poverty index. The sampled Counties and constituencies are provided in Table 1.

Table 1: Sampled Counties and constituencies

No.	Sampled Counties	Sampled Constituencies
1.	Nairobi	Embakasi; Langata; Westlands
2.	West Pokot	Kapenguria
3.	Uasin Gishu	Eldoret North
4.	Nakuru	Molo; Rongai
5.	Kajiado	Kajiado North
6.	Mombasa	Kisauni
7.	Kilifi	Bahari; Magarini
8.	Kisumu	Kisumu Town East; Muhoroni
9.	Kisii	Bonchari; Nyaribari; Masaba; Kitutu Chache
10.	Kakamega	Lugari; Malava; Shinyalu; Butere
11.	Kirinyaga	Kerugoya
12.	Murang'a	Kihara; Kandara
13.	Kitui	Kitui Central; Mwingi North
14.	Meru	Igembe; South Imenti
15.	Garissa	Dujis

2.2.2 Data collection tools and methods

From Table 1, 29 Constituencies were visited in the 15 sampled Counties. In each Constituency, questionnaires were administered to members of public, CDF staff, CRF staff, and suppliers/ contractors of CDF and County projects. Members of Parliament in each Constituency or a member of the Constituency Development Committee (CDC) and County Chief Executive Officers (Finance and Planning) were interviewed as Key informants. However, securing interviews with Members of Parliament was not possible.

The Study also looked into CDF and County projects files to gather specific information about CDF and County projects and name of suppliers/contractors to interview. A valuer from the Commission assisted in undertaking valuation of some of the projects sampled. Field data collection was done from 17th May to 11th June 2015 (phase I) and 27th July to 8th August 2015 (phase II) and in Nairobi from 14th to 15th May and 12th to 17th August 2015.

2.3 Data Analysis and Presentation

The following statistical methods were used to analyze and present the devolved funds data:

i) Descriptive statistics;

ii) Chi-square test of independence;

iii) Project valuation;

iv) Binomial Generalized Linear Model (GLM) regression; and

v) Odds ratios.

The data was analyzed using SPSS and R software (R Core Team, 2017).

2.4 Scope

The Evaluation considered management of projects funded by the CDF and CRF. The Study looked into CDF project files for the period 2004 to 2014 and County projects files from 2013 to 2014 and consequently identified and visited projects initiated/undertaken during the same period.

2.5 Challenges

The sampling was done using the 2009 population census data. In 2009, there were 211 Constituencies. The promulgation of the 2010 Constitution saw the creation of more constituencies to add up to the current 290. The sampling is thus based on the old 211 constituencies.

During the course of data collection some of the sampled constituencies had been split to two or three new constituencies. When such a scenario was encountered, the research team concerned visited the old CDF office where records of the old constituencies were kept.

CHAPTER 3: LITERATURE REVIEW

The Musgrave model of public sector responsibility for stabilization, distribution, and allocation in fiscal decentralization provides direction for sharing fiscal functions among different levels of Government. The primary responsibility for the fiscal stabilization function has conventionally been assigned to the Central Government. Stabilization as primarily a Central Government function in developing countries is more applicable because of severe macroeconomic fluctuations in agricultural economies; the small contribution of Local Governments to the national economy; and their dependence on taxes of unstable economic activities. On fiscal distribution, the responsibility rests with Central Government mainly due to its ability to redistribute resources from wealthier to poorer jurisdictions. On fiscal allocation, decentralized levels of Government have a substantial role. This is based on the fact that residents in different jurisdictions could choose the mix of public goods and taxes that best conforms to their preferences (Smoke, 2001)

What are the benefits and negative effects of fiscal decentralization? The common propositions about the desirability of fiscal decentralization include that it: retards economic development and has undesirable macroeconomic effects; negatively impacts distribution; improves local service delivery; and enhances Government accountability to local citizens. On whether fiscal decentralization retards economic development, questions have been raised on the key independent variable in empirical evidence that have indicated a negative effect of fiscal decentralization on growth. Thus until more sophisticated analyses that can control for critically important contextual variations across countries, definitive generalizations that fiscal decentralization retards growth cannot be made. The other negative impacts of fiscal decentralization have not been fully explored in literature, especially in developing countries, and most are generalizations that may contradict in specific countries. Most of the evidence is anecdotal, relevant only under particular uncommon circumstances or focused on correctable rather than inherent problems (Smoke, 2001).

The empirical evidence on the relationship between fiscal decentralization and economic growth is mixed. Whereas theory suggests that fiscal decentralization would promote or has a positive relationship with economic development, the empirical evidence is inconclusive (Limi, 2005). Some studies have indicated positive relationship between fiscal decentralization and economic growth {(Limi, 2005); (Nobuo & Masayo, 2002); (Yifu & Liu, 2000); (Mohammad, 2011); (Feltenstein & Iwata, 2005)} while other studies have indicated some inconclusive results {(Crucq & Hemminga, 2007); (Hammond & Tosun, 2006); (Hammond & Tosun, 2009); (Bodman, Heaton, & Hodge, 2009)}. Furthermore, (Lai & Cheng, 2011) showed that there was an "inverted U-shape" relationship between fiscal decentralization and economic growth. As the degree of fiscal decentralization increases from zero to one, the long-run growth rate increases at first, arrives at a maximum value and then it decreases eventually. The implications are that a lower degree of fiscal decentralization constrains the power of local-level Government, while a greater degree of fiscal decentralization increases the externality costs of public goods provided by each local-level Government.

One question of importance to democratic governance is to what extent fiscally decentralized systems may promote corruption to a greater scale relative to more centralized systems. If fiscal decentralization results in increased corruption, the advantages of decentralization will be diminished or even neutralized. On the other hand, fiscal decentralization may effectively control the overall level of corruption in a country. There has been no systematic empirical Study of the extent of corruption at different levels of Government in decentralized systems, or of centralized versus decentralized systems (Martinez-Vazquez & Robert, 1997). However, we can insinuate that more corruption is expected at grass-root level with devolved Funds. Most of the devolved Funds, especially CDF and Local Authority Transfer Fund (LATF), are development oriented and thus investment projects together with procurement spending have been identified as one of the factors that contribute to corruption directly (Tanzi, 1998). A 2006 KIPPRA's baseline survey on decentralized Funds in Kenya showed that 70 per cent of households surveyed were unaware of the existence of the LATF while 36 per cent were unaware of CDF, only four per cent of households surveyed were involved in decision making on matters relating to LATF and five per cent on CDF, and lastly, only 15 per cent indicated CDF as being accountable and of good performance while eight and nine per cent of households gave LATF good accountability and performance respectively (KIPPRA, 2006).

In summary, from the aforementioned literature, the evidence of the positive relationship between fiscal decentralization and economic growth alluded to in theory is inconclusive. Despite this, fiscal decentralization remains one of the recent governance revolutions undertaken by most developing countries (Ivar & Odd-Helge, 2006). In addition, while currently there are no good scientific studies exploring empirically the link between fiscal decentralization and corruption; devolved Funds in Kenya have shown an inclination of corruption developing firm roots in them. The Constitution of Kenya has ushered in a new era of political decentralization in form of Counties and redefined the existing fiscal decentralization in the form of County Revenue Fund. This Study seeks to investigate the factors that affect efficient and effective utilization of devolved funds in public projects and further examines corruption issues during implementation of County and CDF projects.

CHAPTER 4: A COMPARATIVE ANALYSIS OF MANAGEMENT OF DECENTRALIZED FUNDS: *The Case of Kenya and Canada*

Decentralized funds, if well managed, are vital to bringing equitable development in all the regions of a country. This chapter compares how Kenya and Canada manage these funds and thus draw lessons from them. Corruption is the greatest impediment to good management of these funds and it therefore follows that the Study puts a little bit of focus on the vice and how the selected countries tackle the vice.

4.1 Overview of the Management of Decentralized Funds in Kenya

4.1.1 Corruption in the devolved funds

A look at the audit reports for various Counties by the Office of the Auditor General for the financial year 2014/15 paints a very grim picture at the state of affairs in the Counties. Nairobi County has Kshs. 500 million that could not be accounted for. The money involved payment of goods and services, bursaries and legal fees (Office of the Auditor General, 2016). Nyeri County had Kshs. 2.3 billion of unsupported payments in relation to use of goods and services, transfer to other government entities, government pension and retirement benefits and acquisition of assets. In addition, the County funded agriculture projects in excess of Kshs. 18.5 million of what was budgeted for. The source of the extra funding was not explained (Office of the Auditor General, 2016). These among other reports indicate the sad state of affairs in decentralized funds in Kenya.

4.1.2 Legal Framework

Kenya boosts of numerous decentralized funds that were established to serve different purposes or category of people. One of the main reasons behind establishing these funds was to reduce bureaucracy involved in releasing funds from the National Treasury to various programmes/projects. The funds include:

i) Constituency Development Fund (CDF);

ii) Community Initiative Account (HIV/AIDS Fund);

iii) Constituency Bursary Fund (CBF);

iv) Poverty Eradication Loan Revolving Fund (PELRF);

v) Community Development Trust Fund (CDTF);

vi) Water Services Trust Fund (WSTF);

vii) Free Primary Education Fund (FPEF);

viii) Secondary School Education Bursary Fund (SEBF);

ix) Rural Electrification Programme Levy Fund (REPLV);

x) Poverty Eradication Revolving Loan Fund (PERLB);

xi) Disabled Fund;

xii) Youth Enterprise Development Fund (Youth Fund);

xiii) Women Enterprise Fund;

xiv) Uwezo Fund; and,

xv) Road Maintenance Levy Fund (RMLF).

Most of the listed decentralized funds are established by an Act of Parliament and have institutions mandated to manage the funds. This Study focuses on the CDF and County Revenue Fund (CRF).

i. The Constitution of Kenya

Chapter Six of the Constitution of Kenya on leadership and integrity provides a strong anchor for the fight against corruption. The Chapter explicitly outlines the responsibilities of leadership, conduct of state officers, financial probity of state officers and restriction on activities of state officers. Further, the Constitution requires that public money be used in a prudent and responsible way.

The promulgation of the Constitution of Kenya in 2010 saw the coming to an end of LATF and the creation of the County Revenue Fund. The Constitution also brought on board the Equalization Fund that seeks to bring the previously neglected regions at par with the rest of the country on development scorecard. The County Revenue Fund is enshrined in the Constitution in Article 207. The Constituency Development Fund is established by an Act of Parliament, the National Government CDF Act of 2015.

In addition, the Country has several legislations against corruption and economic crimes. They include: Anti-Corruption and Economic Crimes Act; Leadership and Integrity Act; Public Officers Ethics Act; Public Procurement and Assets Disposal Act; Proceeds of Crime and Anti-Money Laundering Act and Prevention of Crime Act.

ii. Public Finance Management Act, 2012

The County Revenue Fund is established in Article 207 of the Constitution of Kenya and Article 109 of the Public Finance Management Act, 2012. This is the Fund through which all money raised or received by or on behalf of the County Government, except money excluded by an Act of Parliament, is channeled. The Fund became operational in 2013 after the creation of County governments. Each County government is responsible for the day to day management of its respective Fund. However, just like any other government fund, the County Revenue Fund is subject to stringent monitoring and control by various government organizations and to a small extent, the members of public. The office of the Controller of Budgets is empowered by Article 207 (3) of the Constitution to authorize withdrawals from the County Revenue Funds. The Office of the Auditor General is responsible for carrying out expenditure audits on the Fund while the Senate offers oversight role on the management of the Fund.

iii. National Government Constituencies Development Fund Act, 2015

The Constituency Development Fund (CDF) was established in 2003 by an Act of Parliament (CDF Act of 2003). The Fund is allocated 2.5 per cent of Government revenue and channeled to all the 290 constituencies in the country. The Act gave the area Member of Parliament (MP) responsibility in the management of the Fund. The Constitution of Kenya created County governments and County revenue fund. This led to the CDF being excoriated on its legality on the premise of separation of powers between the executive and the legislature. This was based on the fact that the MPs were meant to legislate and monitor the executive but the CDF Act 2003 made the MPs play both roles. The court declared the CDF unconstitutional and Parliament was given one year within which to rectify the abnormality, hence the enactment of the National Government Constituencies Development Fund Act of 2015.

The National Government CDF Act 2015 established the National Government CDF Board which is entrusted with administering the Fund at the national level. At the constituency level, the Act establishes the National Government CDF Committee for every constituency in the country. The Act is not explicitly clear on the functions of the committee. At the National Assembly, there is established a Select Committee on National Government CDF whose function is to oversee the implementation of the Act and, where necessary, recommend amendments. Worth noting is the Constituency Oversight Committee for projects which comprises the area MP and four other members appointed by the MP in consultation with other stakeholders. The Oversight Committee should convene public forums for members of public to express their views on the implementation of the fund. A member of the Oversight Committee may attend meetings of the Constituency Committee or its sub-committees to ensure fair distribution of the fund in the constituency. Lastly, projects under the Act are to be *implemented* by the Project Management Committee (PMC).

4.1.3 Institutional Framework for fighting Corruption

Decentralized funds have received their fair share of mismanagement and corruption issues. This is despite several controls and institutions tasked with ensuring proper management of the funds. Some of the measures in place include:

i. The Ethics and Anti-Corruption Commission

The Ethics and Anti-Corruption Commission is established by an Act of Parliament in pursuant to Article 79 of the Constitution. The Commission is mandated to combat corruption and economic crime through law enforcement, prevention, public education and promotion of ethical standards and practices. In the execution of its mandate, the Commission investigates mismanagement and corruption allegations involving County Revenue Fund and Constituency Development Fund.

ii. Senate

The Kenyan Senate came into existence after the first General Elections under the new Constitution in March 2013. The Senate represents the Counties, and serves to protect the interests of the Counties and their governments. The Senate determines the allocation of national revenue among Counties and exercises oversight over national revenue allocated to the County governments. The Senate has power to summon any person to appear before it for the purpose of giving evidence or providing information. (National Council for Law Reporting, 2010). This has been evidenced by Senate summoning County Governors to appear before it to explain or account for money allocated to the County in question.

iii. The Office of the Auditor General

The Office of the Auditor General carries out financial audits on the accounts of all County governments and the Constituency Development Funds at the end of every financial year as stipulated in Article 229 (4) of the Constitution. The Audit reports are then submitted to Parliament to take appropriate action. The Audits reports tries to ensure accountability and transparency in the management of CRF and CDF by reporting cases of abuse of the funds.

4.1.4 Operational Framework

The Integrated Financial Management System (IFMIS) is an automated financial system that enhances efficiency in planning budgeting, procurement, expenditure management and reporting in the National and County Governments in Kenya. The system is meant to enhance transparency and accountability in the management of public funds. The system attempts to achieve this by enhancing reporting capabilities to support budget planning; automates the procurement process; facilitates auto-reconciliation of revenue and payment with automatic file generation; facilitates automated revenue collection and provides accurate and up to date information on the government's financial position.

IFMIS system was first introduced in Kenya in 2003 with few modules and was later re-engineered in 2012 to a full cycle end-to-end integrated approach. The system is meant to curtail wasteful spending and corruption.

4.2 Overview of the Management of Decentralized Funds in Canada

Canada is divided into ten provinces and three territories with a federal parliamentary democracy and a constitutional monarchy. It has a three tier-level government- federal, provincial and municipal governments.

4.2.1 Corruption in the decentralized funds

Canada is considered one of the least corrupt countries in the world. It was ranked 9th least corrupt country by Transparency International Corruption Perception Index 2016 (Transparency International, 2017). However, the country has recorded a number of corrupt acts especially in the building and construction industry and public procurement. Nevertheless, the country has well-functioning mechanisms in place to investigate and punish corruption and abuse of office. The Canadian laws have extended jurisdiction that permits Canadian courts to prosecute corruption committed by companies and individuals abroad. Canada's anti-corruption legislation is vigorously enforced, and companies and officials guilty of violating Canadian law are being effectively investigated, prosecuted and convicted. (Gan Integrity, 2017).

The Charbonneau Commission, a public inquiry into corruption in the construction industry, resulted in the arrest of several persons including mayors (Freedom House, 2017). Several people have since been convicted on corruption charges (Montreal Gazette, 2017). The inquiry report revealed that corruption, organized crime, collusion and influence peddling are widespread in the province of Quebec's multi-billion public construction industry (The Global and Mail, 2015).

4.2.2 Legal framework in place to fight corruption

i. Foreign Public Officials Act (CFPOA)

Canada has a comprehensive and well enforced legal anti-corruption framework in place. The Criminal Code of Canada criminalizes active and passive bribery, facilitation payments, influence peddling, extortion and abuse of office. Bribery of foreign public officials is addressed by the Corruption of Foreign Public Officials Act (CFPOA).

The maximum criminal penalty for corruption crimes committed in Canada is five years imprisonment, while foreign bribery is punishable by a maximum jail term of 14 years. Heavier sanctions exist in case of bribery involving judges and law enforcement officers. However, no limit is imposed on financial penalties for corruption. Civil resolution for bribery such as a non-prosecution agreement is not possible under Canadian law.

ii. Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)

Money laundering is criminalized under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). The Conflict of Interest and Post-Employment Code for Public Office Holders requires public officials to disclose their financial assets and regulates conflict of interest.

iii. The Federal Accountability Act

The Federal Accountability Act provides for accountability and transparency in the government and addresses conflicts of interest, electoral financing and lobbying. Companies convicted of corruption face a ten year ban from bidding on public contracts in Canada; which may be reduced to five years if the company can show that the causes of corruption have been addressed. Companies charged with corruption face an eighteen month suspension (Gan Integrity, 2017).

iv. Public Servants Disclosure Protection (PSDP) Act, 2007

Public sector employees reporting on corruption or other misconduct are protected by the Public Servants Disclosure Protection (PSDP) Act. The PSDP Act provides a confidential process for employees within Canada's federal government to come forward and report possible wrong doings in the federal government and state corporations. The Act further requires head of departments and state corporations to come up with mechanisms to protect and deal with disclosures of wrongdoings within their institutions.

Any public servant who reports a wrongdoing or who cooperates in an investigation conducted under the PSDPA is protected from reprisals. This protection is fundamental to the effectiveness of the legislation. A "reprisal" includes any measure that adversely affects the employment or working conditions of the public servant. Public servants may disclose information about possible wrongdoing internally within their organization or directly to the Public Sector Integrity Commissioner. The Commissioner can also refer cases to the Public Servants Disclosure Protection Tribunal, which is composed of federal judges who adjudicate reprisal complaints and have the authority to order remedial measures for the victims and order disciplinary sanctions against public servants who engaged in acts of reprisal. (Unknown, 2017).

4.2.3 Institutional Framework

i. Public Sector Integrity Commissioner

The Public Sector Integrity Commissioner (Commissioner) was established as an independent body reporting directly to the Parliament of Canada, with the authority to investigate disclosures of wrongdoing made by public servants or members of the public about possible wrongdoing in the federal public sector. The Commissioner is the only organization of its kind in the world with a mandate covering both the disclosure of wrongdoing and the exclusive protection of individuals who disclose it.

The Commissioner has the power to subpoena witnesses, the power to determine whether an allegation is well founded and the power to make recommendations to Chief Executives. When appropriate, the Commissioner may refer matters to law enforcement agencies. The Commissioner may also follow up with organizations to ensure the appropriate action has been taken. (Office of the Public Sector Integrity Commissioner, 2008).

ii. Municipal governments

Whereas the federal-province fiscal relations are largely unconstrained, the reverse holds true for provincial-municipal fiscal relations. Municipal government's financial behavior is strictly controlled. Borrowing requires prior provincial approval and is limited, both local revenue and expenditure decisions are tightly controlled and the important transfers received by local governments from the provinces are generally highly conditional. (Bird & Tassonyi, 2003).

iii. Office of the Procurement Ombudsman (OPO)

More than 100 Canadian federal organizations spend about $18 billion annually in public procurement. With that and in addition to the vast set of rules that govern public procurement in Canada, issues are bound to arise. This is where OPO comes in. The office was created to promote fairness, openness and transparency in federal procurement. The office reviews complaints with respect to the award of contracts; reviews complaints with respect to administration of contracts; reviews procurement practices of departments and ensures an alternative dispute resolution process is provided for if requested by parties.

The office deals with procurement issues through education, facilitation and investigation. Facilitation entails first encouraging aggrieved supplier to provide opportunity to the federal organization in question to resolve the issue. (Office of the Procurement Ombudsman, 2016).

4.2.4 Operational Environment

Canada is one of the most decentralized countries in the world. Canadian provinces are responsible for most major social expenditures such as health, welfare, education and have a virtually free hand in levying taxes. All provinces receive large unconditional transfers from the federal government. If the provinces wish to borrow, they may do so and from whom they wish with no central review or control (Bird & Tassonyi, 2003). These large unconditional federal-provincial fiscal transfers include:

- Equalization – meant to address the fiscal disparities among the ten provinces;
- Canada Health Transfer – supports health care in the provinces;
- Canada Social Transfer – a block transfer in support of post-secondary education, social programs and programs for children;
- Territorial Formula Financing – mean to address the special needs of the three territories.

Canada lacks any formal representation of provincial interests at the federal level and although a "Senate" exists, it has virtually no legislative power and its members are appointed by the federal government. There is also no formal arrangement to manage federal-provincial fiscal relations. The First Ministers meetings comprising of the Prime Minister and the ten Provincial Premiers has no formal structure or schedule and is convened on major issues affecting provinces such as health care. The Finance Ministers meetings are regular discussions of economic and fiscal issues. It is also a consultation forum on federal budgets (Vats, 2010).

Prudent fiscal behavior is an institutionalized norm in Canada. Despite large unconditional federal-provincial fiscal transfers and revenue equalization systems, Canada experiences few corruption incidences. Municipalities take pride in good management of their funds and seldom borrow despite an allowance to do so. Provinces do not expect to be bailed out by federal government in case of bankruptcy and have to manage their funds prudently.

Credit markets exert effective discipline on Canadian public sector borrowers. This is due to the fact that Canadian provinces borrow from foreign markets in foreign currencies. Their debt costs are thus sensitive not only to interest rates but also fluctuations in exchange rates. Interest rates and exchange rates are on the other hand under the control of federal government. It then follows that provincial fiscal difficulties may in turn affect exchange rates and hence federal budgets. Profligate behavior by provincial decision-makers will, it seems, be brought to the attention of federal bureaucrats quickly enough by the capital market and reinforced by subsequent voter reaction; thus reinforcing prudent fiscal behavior.

In addition, the fiscal discipline in Canada is as a result of cultural change in the country that followed high levels of indebtedness of early 90's. The dependence on foreign markets for borrowing led to international pressure and domestic public expectations that allowed for major budgetary re-balancing. (Bird & Tassonyi, 2003).

CHAPTER 5: RESULTS AND DISCUSSION

This chapter presents the findings and discussions of the Study. The findings are aligned to the study objectives.

5.1 Descriptive Statistics

Table 2: Sampled Counties and distribution of number of people interviewed and files perused

No.	County	No. of Contractors interviewed		No. of Public Officers interviewed		No. of Procurement files perused	
		County Government	CDF	County Government	CDF	County Government	CDF
1.	**Murang'a**	1	29	0	6	0	20
2.	**Nakuru**	13	1	5	4	3	20
3.	**Kakamega**	10	56	5	14	6	39
4.	**Kirinyaga**	8	10	3	2	6	10
5.	**Kisumu**	15	23	4	3	6	18
6.	**Nairobi**	0	25	0	5	0	28
7.	**Kilifi**	12	23	4	6	6	20
8.	**Kitui**	9	14	4	4	6	10
9.	**Mombasa**	10	12	4	2	6	12
10.	**West Pokot**	10	0	4	1	7	10
11.	**Trans Nzoia**	17	1	3	9	9	19
12.	**Kisii**	10	14	3	3	6	10
13.	**Kajiado**	9	14	4	1	7	9
14.	**Tharaka Nithi**	9	11	4	5	6	19
15.	**Isiolo**	10	12	4	3	5	10
	Total	**143**	**245**	**51**	**68**	**79**	**254**
		388		**119**		**333**	

Table 2 lists the Counties that were sampled for the Study and the number of public officers working in County governments and CDF offices that were interviewed. The Table also lists the number of procurement files that were examined in order to get project information for both County government and CDF. We were not successful in securing interviews with County employees of Nairobi and Murang'a Counties. From the Table, generally, more people were interviewed in CDF offices than County government because of the fact that in each County, between one and three CDF offices were visited.

About half of the contractors interviewed were the owners of the businesses and 45 percent were senior managers, including CEOs, in the companies. About 81 percent of the companies interviewed during the survey were engaged in building and construction.

All the 388 contractors interviewed had been invited to quote/tender in the County governments or CDF offices sampled between 2013 and 2015. This ensured the information gathered was from credible sources. About 36 percent of the contractors interviewed had done business with County governments, 57 percent with CDF offices while seven percent transacted with both County government and CDF.

5.1.1 Corruption perception

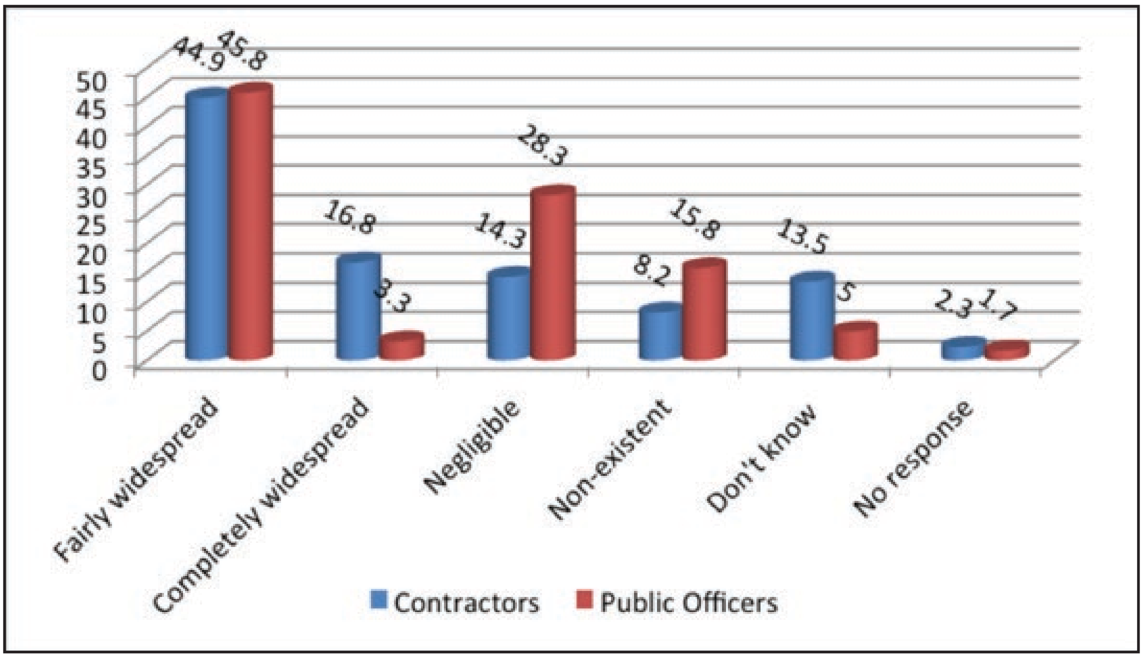


Figure 1: Perceptions on spread of corruption in County governments/CDF

The Study sought to find out the perceived level of corruption in the County governments and CDF. Both contractors and public officers were in agreement that corruption is prevalent in both County governments and CDF. However, 15 and eight percent of public officers and contractors believed corruption does not exist in County governments and CDF (Figure 1).

The perceived high level of corruption is corroborated by some of the officers interviewed as illustrated below:

> *"…corruption exists. The main area is the inherited municipal council that engaged members on casual basis without any qualifications. The money collected on the streets and ticketing is hardly accounted for because they use manual receipts. Officers collude with the public to avoid payment of taxes and the few that are paid are hardly received in the office…."* Excerpt 30, Trans Nzoia.

> *"Corruption is everywhere starting from the National Government, trickling down to the Counties and to the ordinary citizens. Especially in the County government, it is extremely widespread…."* Excerpt 15, Mombasa.

> *"Corruption is like a culture and in the CDF it is deeply rooted…."* Excerpt 13, Magarini.

5.2 Determinants for Successful Bidding of Public Tenders

Allegations of bribe payments, companies owned by public officers among other issues have been attributed as major factors that influence the probability of winning or not winning public tenders. In this section, we examine the factors that may or may not affect the probability of winning public tenders in CDF and County governments.

5.2.1 The data

The data used in this section was collected from 388 companies that had done business with either CDF offices or County governments sampled or both. The variables of interest in this analyses are listed in Table 3.

Table 3: List of variables used in the analysis

	Variable	Type	Levels
	Binomial dependent variable		
1.	Number of bids a company participate in CDF or County or both from 2013 to 2015	Numerical	i. Number of bids that were successful ii. Number of bids that were unsuccessful
	Independent variables		
2.	Corruption experience - If firm has paid bribe during course of tendering	Factor	i. Yes ii. No
3.	Public institution doing business with the firm	Factor	i. County Government ii. CDF iii. Both County Government and CDF
4.	County	Factor	The 15 sampled Counties as listed in Table 1
5.	Conflict- if aware of company doing business with County/CDF and owned by public officers directly or through proxy	Factor	i. Yes ii. No
6.	How firms establish project cost	Factor	i. Quote the prevailing market price ii. Benchmark our price with those of other suppliers bidding for the tender iii. Benchmark our price with the estimated price of a procuring entity iv. Use the prevailing market price but factor in facilitation money v. Consider the prevailing market price but factor in bigger profit margins vi. We simply guess the price vii. Any other method.
7.	Has firm terminated contract with CDF/ County?	Factor	i. Yes ii. No iii. Do not know
8.	If procurement decision was influenced by external actors?	Factor	i. Yes ii. No iii. Do not know
9.	At what point do firm get to know public institution's estimated price	Factor	i. Before we submit our bid ii. During the course of submitting our bid iii. After we have submitted our bid iv. We never get to know the public institution's estimated price

	Variable	Type	Levels	
10.	Has the firm been involved in developing specifications of a County/CDF project?	Factor	i. Yes ii. No iii. Do not know	
11.	Did the firm participate in a tender for which it had developed specifications?	Factor	i. Yes ii. No iii. Do not know	
12.	How does the firm get to know bidding opportunities in the County/CDF?	Factor	i. Newspaper adverts ii. Notice board at the County/CDF office iii. Notice board at various places in the County/Constituency iv. County website	v. Procurement Officers vi. County/CDF Officers vii. Other Suppliers viii. Others
13.	Are procurement records in County/CDF open for scrutiny?	Factor	i. Yes ii. No iii. Do not know	
14.	Number of times processing of payments to firm was delayed	Factor	i. None ii. 1-5 times iii. 6-10 times	iv. More than 10 times v. Do not know
15.	If firm was aggrieved by County/CDF in the course of doing business?	Factor	i. Yes ii. No iii. Do not know	
16.	If firm is aware of any anti-corruption measures in place in the County/CDF	Factor	i. Yes ii. No iii. Do not know	
17.	If firm is asked to sign an anti-corruption commitment prior to contract	Factor	i. Yes ii. No iii. Do not know	
18.	Company age in years?	Factor	i. One year and below ii. 1-5 years iii. 6-10 years iv. 11-15 years	v. 16-20 years vi. Above 20 years vii. Do not know
19.	Type of business firm engaged in	Factor	i. Trade ii. Building & construction iii. Electricity, energy & water iv. ICT	v. Others vi. General supplies vii. Service industry

The independent variable of *"corruption experience"* was created based on whether the contractor had paid a bribe or not to the County government or CDF officials in the course of seeking a public tender. Firms were also asked if they are aware of a company doing business with County government/CDF office but owned by public officers or their relatives or he (the public officer) has controlling shares in the company. In addition, the firm were also asked if they knew of such companies doing business with public institutions but associated by proxy to a public officer. From these two questions, a new variable was created called *"conflict"* (Table 3) with two levels: *"yes"* and *"no"*. It was marked as a *"yes"* if a firm responded in the affirmative in either of the two questions asked and *"no"* if response in both questions was negative.

5.2.2 The analysis and discussions

Each of the 388 contractors doing business with the County governments or CDF offices was asked the total number of bids he submitted to the public entity, how many were successful and how many were not successful between 2013 and 2015. The results form our main dependent variable for this analysis table 3. The variable follows a binomial distribution. In order to investigate what affects the probability of a company winning a public bid, we fitted binomial generalized linear model (GLM), popularly known as logistic model. The initial model was fitted using the variables listed in Table 3 excluding the variable "*did the company participated in a tender for a project for which it had developed specifications*" due to the higher number of missing values.

The initial model was then followed by manual model selection[2] to get the best fit. The final model results are presented in Table 4. Modelling was done using R statistical software (R Core Team, 2017).

Table 4: Factors that affect successful bidding of public tenders in CDF and County governments

Variable	Levels	Estimate	Standard Error	P value	Odds ratio (95% C.I)
Corruption experience	No	0.5007	0.1609	<0.01*	**1.65**(1.20-2.26)
Is there any one instance you are aware of where a procurement decision in the County Government/ CDF office was influenced by external actors?	No	0.4248	0.1894	0.02*	**1.53**(1.06-2.22)
	Do not know	0.5377	0.2526	0.03*	**1.71**(1.04-2.81)
Public institution doing business with the firm	CDF	0.7058	0.1917	<0.01*	**2.02**(1.39-2.95)
	Both County & CDF	0.9603	0.2224	<0.01*	**2.61**(1.69-4.04)
County	Nakuru	0.7411	0.5082	0.14	**2.10**(0.77-5.69)
	Kakamega	0.2306	0.2943	0.43	**1.26**(0.71-2.25)
	Kirinyaga	-0.4462	0.3781	0.24	**0.64**(0.30-1.34)
	Kisumu	-0.4468	0.3205	0.16	**0.64**(0.34-1.20)
	Nairobi	-0.6751	0.4500	0.13	**0.51**(0.21-1.22)
	Kilifi	-0.8854	0.3463	0.01*	**0.41**(0.21-0.81)
	Kitui	-1.3022	0.4456	<0.01*	**0.27**(0.11-0.64)
	Mombasa	-0.6398	0.4575	0.16	**0.53**(0.21-1.28)
	West Pokot	-0.6094	0.4187	0.14	**0.54**(0.24-1.22)
	Trans Nzoia	-0.9349	0.4002	0.02*	**0.39**(0.18-0.86)
	Kisii	0.7541	0.3553	0.03*	**2.12**(1.06-4.28)
	Kajiado	0.6630	0.3657	0.07	**1.94**(0.95-3.99)
	Tharaka Nithi	0.0966	0.4234	0.82	**1.10**(0.48-2.52)
	Isiolo	-0.5692	0.5372	0.2893	**0.56**(0.19-1.59)

2 Model selection implemented using Akaike Information Criterion (AIC) defined as
AIC = -2 maximum log likelihood + 2p, where *p* is the number of parameters.

Variable	Levels	Estimate	Standard Error	P value	Odds ratio (95% C.I)
At what point do firm get to know public institution's estimated price?	During the course of submitting our bid	-1.1857	0.2882	<0.01*	**0.30**(0.17-0.53)
	After we have submitted our bid	-0.5264	0.1824	<0.01*	**0.59**(0.41-0.84)
	We never get to know the public institution's estimated price	-0.6243	0.1913	<0.01*	**0.53**(0.37-0.78)
Has your firm been involved in the development of specifications of a County/CDF project?	No	-1.5103	0.3801	<0.01*	**0.22**(0.10-0.46)
	Do not know	0.1913	1.1267	0.86	**1.21**(0.12-12.40)
How does your firm establish the project cost to use while tendering with the County government/CDF office?	Benchmark our price with those of other suppliers bidding for the tender	0.0326	0.5390	0.95	**1.03**(0.35-2.91)
	Benchmark our price with the estimated price of a procuring entity	-0.8389	0.1684	<0.01*	**0.43**(0.31-0.60)
	Use the prevailing market price but factor in bribe	-1.2676	0.3244	<0.01*	**0.28**(0.15-0.53)
	Consider the prevailing market price but factor in bigger profit margins	0.1358	0.2926	0.64	**1.14**(0.64-2.02)
	We simply guess the price	-2.1584	0.5129	<0.01*	**0.11**(0.04-0.30)
	Any other method	-0.8074	0.2342	<0.01*	**0.45**(0.28-0.70)
	Do our own estimates factoring engineer's estimate	-0.4913	0.3484	0.16	**0.61**(0.30-1.20)
How do you get to know about bidding opportunities in the County Government/ CDF?	Notice board at the County/ CDF office	0.2599	0.1740	0.14	**1.30**(0.92-1.82)
	Notice board at various places in the County/Constituency	1.0195	0.2494	<0.01*	**2.77**(1.70-4.53)
	County website	-0.3058	0.3947	0.44	**0.74**(0.33-1.57)
	Procurement Officers	0.0687	0.4611	0.88	**1.07**(0.43-2.67)
	County/CDF Officers	0.2075	0.4517	0.64	**1.23**(0.49-2.93)
	Other Suppliers	0.8065	0.9684	0.40	**2.24**(0.26-13.54)
	Others	2.6822	0.8628	<0.01*	**14.62**(3.11-106.89)
	Through friends	1.8195	0.6904	<0.01*	**6.17**(1.78-28.98)
Are the procurement records in County Government/CDF open for you to scrutinize?	No	-0.3930	0.1661	0.02*	**0.67**(0.49-0.93)
	Do not know	-0.3618	0.1731	0.04*	**0.70**(0.49-0.98)

Variable	Levels	Estimate	Standard Error	P value	Odds ratio (95% C.I)
How many times in the last three years was processing of payment to your firm delayed?	1-5 times	0.2272	0.1387	0.10	**1.25**(0.96-1.65)
	6-10 times	1.7234	0.3084	<0.01*	**5.60**(3.07-10.30)
	More than 10 times	0.3208	0.4094	0.43	**1.38**(0.61-3.06)
	Do not know	3.1903	0.7965	<0.01*	**24.29**(5.59-135.73)
Is your firm asked to sign an anti-corruption commitment prior to entering business contract with the County Government/CDF Office?	No	0.4021	0.1417	<0.01*	**1.49**(1.13-1.98)
	Do not know	-0.3484	0.3844	0.36	**0.70**(0.32-1.46)
How many years has your company been in existence?	1-5 years	-1.7575	1.0148	0.08	**0.17**(0.02-1.23)
	6-10 years	-1.5005	1.0167	0.14	**0.22**(0.02-1.59)
	11-15 years	-1.4968	1.0303	0.15	**0.22**(0.02-1.64)
	16-20 years	-1.5356	1.0546	0.14	**0.21**(0.02-1.65)
	Above 20 years	-0.6597	1.0588	0.53	**0.52**(0.05-4.02)
What type of business is your company involved in?	Building and construction	-0.6966	0.3274	0.03*	**0.50**(0.26-0.94)
	Electricity, energy, water	-0.4145	0.5005	0.41	**0.66**(0.25-1.76)
	ICT	3.0411	1.0607	<0.01*	**20.93**(2.75-202.39)
	Others	0.1549	0.5365	0.77	**1.17**(0.40-3.31)
	General supplies	-0.1661	0.4782	0.73	**0.85**(0.33-2.14)
	Service industry	-0.8401	0.6102	0.17	**0.43**(0.12-1.35)

Source: *Binomial GLM regression results from the 2015 EACC field survey data on project implementation and generated using R software (R Core Team, 2017). C.I – Confidence Interval. *A variable is significant at five percent significant level.*

The logistic regression analyses indicate what affects a company's chances of winning public tenders. These include payment of bribe; the public institutions (County government or CDF) the firm is doing business with; the County; the point at which a company gets to know the public institution's estimated cost of a project; if a company has been involved in developing specifications for a project; how a company establish the project cost to use while tendering with the County government/CDF office; media through which companies get to know bidding opportunities in the County Government/CDF; accessibility of procurement records; delay in processing of payments; signing of anti-corruption commitment; and the type of business a company is engaged in (Table 4). The relationship between these variables and winning of public bids is indicated by odds ratio with 95 percent confidence intervals (C.I).

The effect of paying bribes on winning public tenders is statistically significant at five percent level of significance (Table 4). The odds ratio for a company winning public tenders was increased by 1.65 times for those companies that did not pay bribes compared to those that paid bribes. In other words, those firms that did not pay bribes had a higher probability of winning public tenders compared to those that paid. These results are rather interesting and contrary to popular belief that bribes increase a company's chance of winning tenders. The most likely explanation to these results is probably the fact that most firms are unwilling to disclose if they pay bribes for fear of victimization.

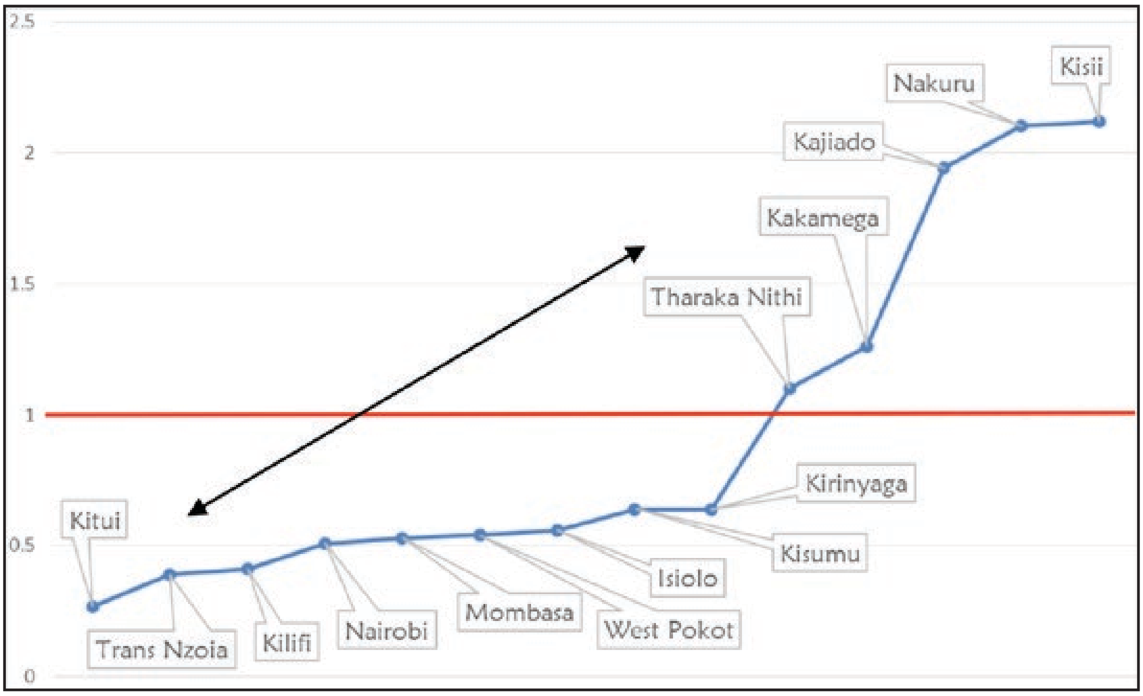


Figure 2: Ease of winning public tenders amongst different Counties in comparison to Murang'a County. Counties above one (red line) were easier to win public tenders compared to Murang'a while those below the red line were harder to win public tenders. Thus, Kitui was the hardest and Kisii the easiest.

The type of public institution a company was doing business with had a statistically significant effect on winning public tenders. Companies doing business with CDF offices had a higher chance of winning public tenders compared to those dealing with Counties only (Odds of winning increased by 2.02 times; Table 4). In other words it was a bit harder to get tenders with County governments than CDF offices. Further, it was a bit harder to win tenders in some Counties compared to others. Figure 4 illustrate this. It was much easier to win tenders in Kisii, Nakuru, Kajiado, Kakamega and Tharaka Nithi Counties compared to Murang'a County with Kisii being the easiest (odds of winning increased by 2.12 times). On the other hand, Kitui County was the hardest to win public tenders (odds of winning reduced to 27%) compared to Murang'a County. This was followed by Trans Nzoia, Kilifi, Nairobi, Mombasa, West Pokot, Isiolo, Kisumu, and lastly Kirinyanga in that order (Figure 2).

Access to County/CDF procurement records by companies was statistically significant in affecting the chances of winning public tenders. Companies that did not have access to public procurement records had their odds of winning public tenders reduced to 67 percent compared to those that had access. Therefore, it was easier to win if a company had access to procurement records. Further, it was established that companies that were not asked to sign an anti-corruption commitment prior to entering into contract with the County/CDF office had their odds of winning increased by 1.49 times compared to those that signed.

5.2.2.1 *Determining project cost*

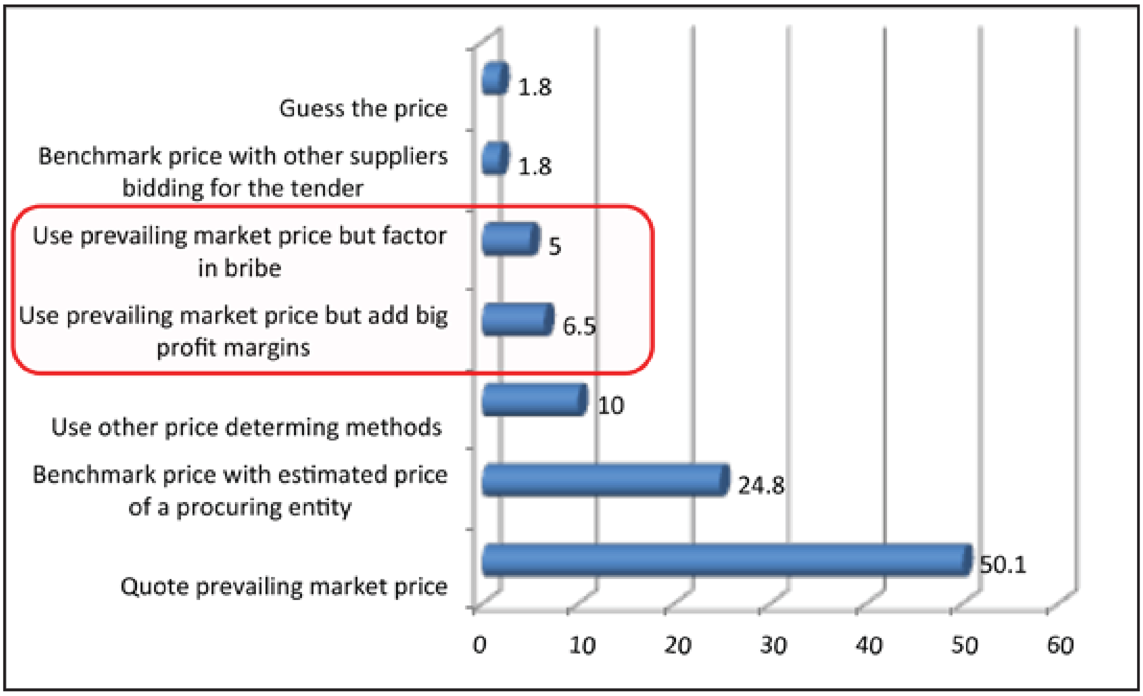


Figure 3: Methods companies employ to determine the project cost to use in public tenders

Corruption sometimes occurs when companies and or government agencies set exorbitant price on goods, services or works. The difference in price is then shared out among the corrupt individuals that include public officials and the company representatives. Whereas half of the companies interviewed in this Study indicated use of prevailing market price while quoting for public tenders in CDF and County governments, a combined 13 percent of the companies interviewed said they benchmark the price to quote with other suppliers bidding for the same tender, use prevailing market prices but factor in bribes that they will have to pay to win the tender or use the prevailing market price but add big profit margins (Figure 3).

This was confirmed by the regression results in Table 4. The analyses indicate that how a company determines the cost to quote affects the probability of it winning a public bid. Companies that benchmark their price with other suppliers bidding for the same tender had a higher chance of winning tenders compared to those who use the prevailing market prices. The same was deduced for those companies that quoted market prices but factored in big profit margins as their odds of winning a tender was increased by 1.14 times compared to those who quoted market prices. However, for those companies that simply guessed the price to quote, their odds of winning were reduced by 0.11 times of those that quoted market price (Table 4). The Table illustrates that collusion among companies bidding for public tenders offers an added advantage in winning the tenders. Overpricing a project was an added advantage to win tenders.

Figure 4 is an example of an overpriced project in Isiolo county

Figure 4: Installation of solar powered electrical lighting masts, 2 Kms Isiolo-Moyale Highway. Contractor paid Kshs. 16,333,000. Project over-priced by more than Kshs. 13 M. Valued at Kshs. 3,000,000.

On the other hand, County governments and CDF offices mostly use Ministry of Works estimated cost for projects (Figure 5). This shows how important it is for the Ministry of Works estimated project cost to be as accurate and cost effective as possible. The other methods that companies use to determine the project cost to quote in public tenders include: doing their own estimation while considering engineers estimates; get estimates from Quantity Surveyor; use consultancy services and lastly use company estimates. County governments and CDF offices also determine the reserve cost of projects by undertaking cost-benefit analysis; consult other CDF offices and consider environment factors.

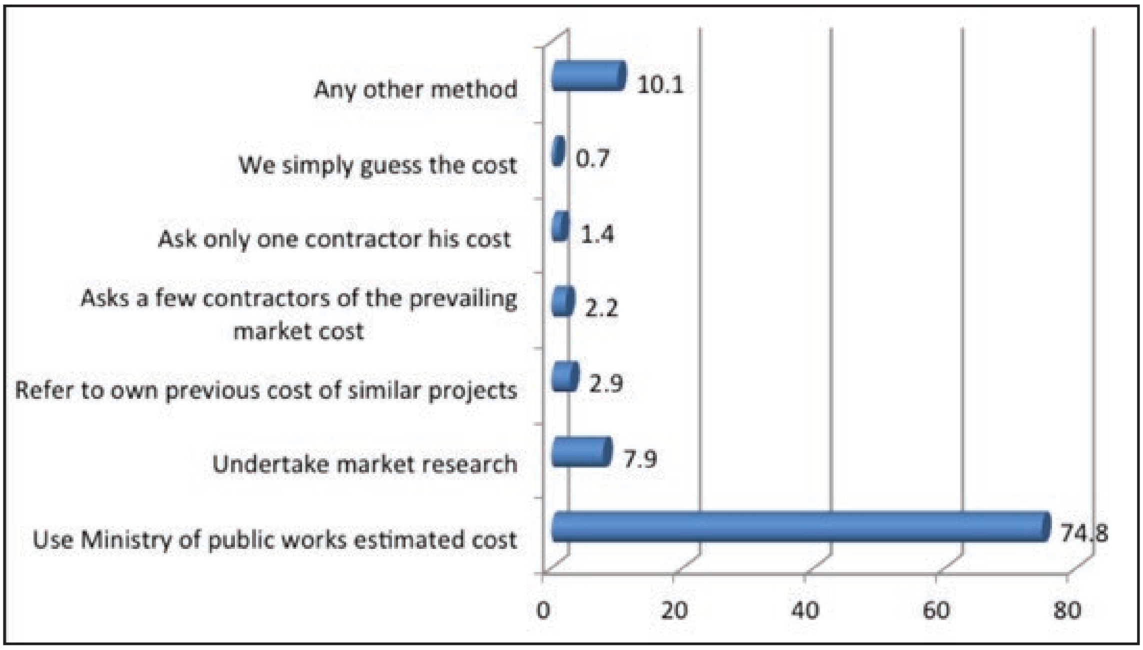


Figure 5: How County Government and CDF offices determine the reserve cost of projects

The Study further sought to find out at what point contractors get to know the reserve cost of a project by CDF and/or County government. Only 18 percent of respondents admitted to get to know about the estimated reserve cost of a project before they submit their bids, 39 percent after they had submitted their bids while 35 percent claimed they never get to know the estimated cost (Figure 6).

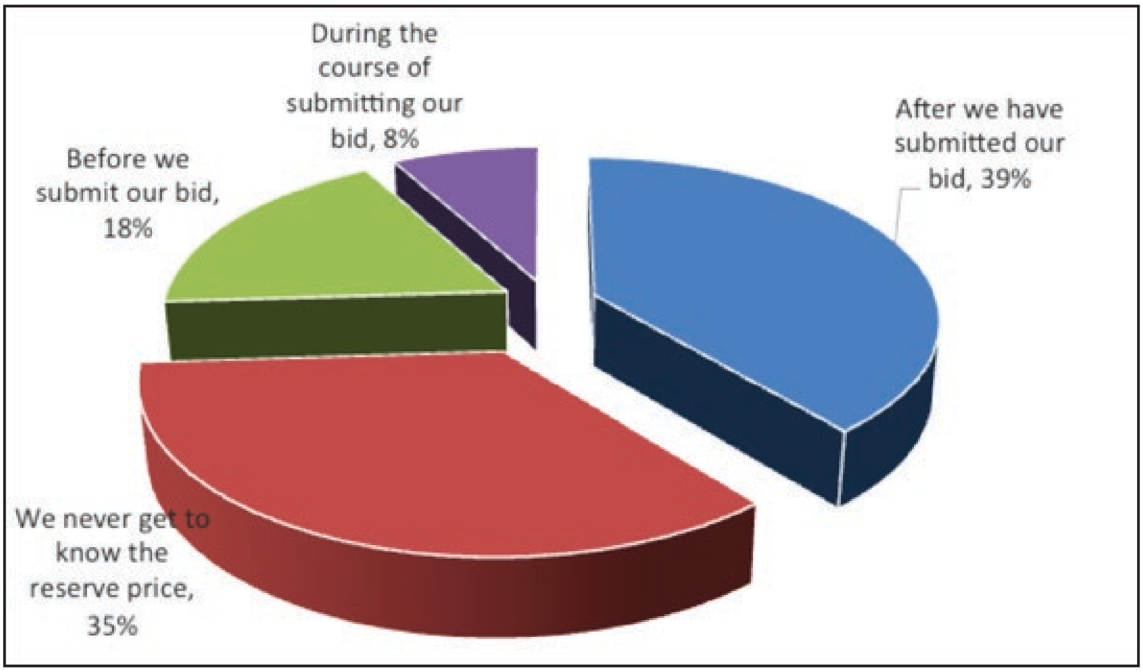


Figure 6: Point at which contractors get to know the reserve price of a project

The regression results in Table 4 shows that the point at which companies get to know the estimated price of County/CDF projects had a statistically significant effect on the probability of winning public tenders in Counties and CDF offices. The odds of winning public tenders were reduced to 30 percent for those companies that got to know the public institution's estimate price of projects during the course of submitting their bids; odds reduced to 53 percent for those that never get to know the estimated price and the odds reduced to 59 percent for those companies that knew the estimated price after they had submitted their bids compared to those companies that knew the estimated price before they submitted their bids (Table 4). In other words, those companies that knew the estimated price before they submitted their bids had higher chances of winning public tenders compared to those that got to know after they had submitted their bids or during bid submission or never got to know the estimates.

Kakamega County contributed the largest percentage (26%) of contractors who get to know reserve price before they submit the bids followed by Kilifi and Kitui both with 12.5 percent and Kisumu with 11 percent. The contractors also indicated the source of this information (Figure 7). Majority get the information from public institution's procurement officers and management. About 27.6 percent of the "others" constituted contractors who got their price from newspaper adverts. Counties whose procurement officials were more likely to give out estimated price to contractors included: Tharaka Nithi (18.5%); Kakamega (12%); Kilifi (11%); and Trans Nzoia (9%). In addition, Kakamega constituted 31 percent of cases reported by contractors as having received estimated cost of projects from management of public institutions.

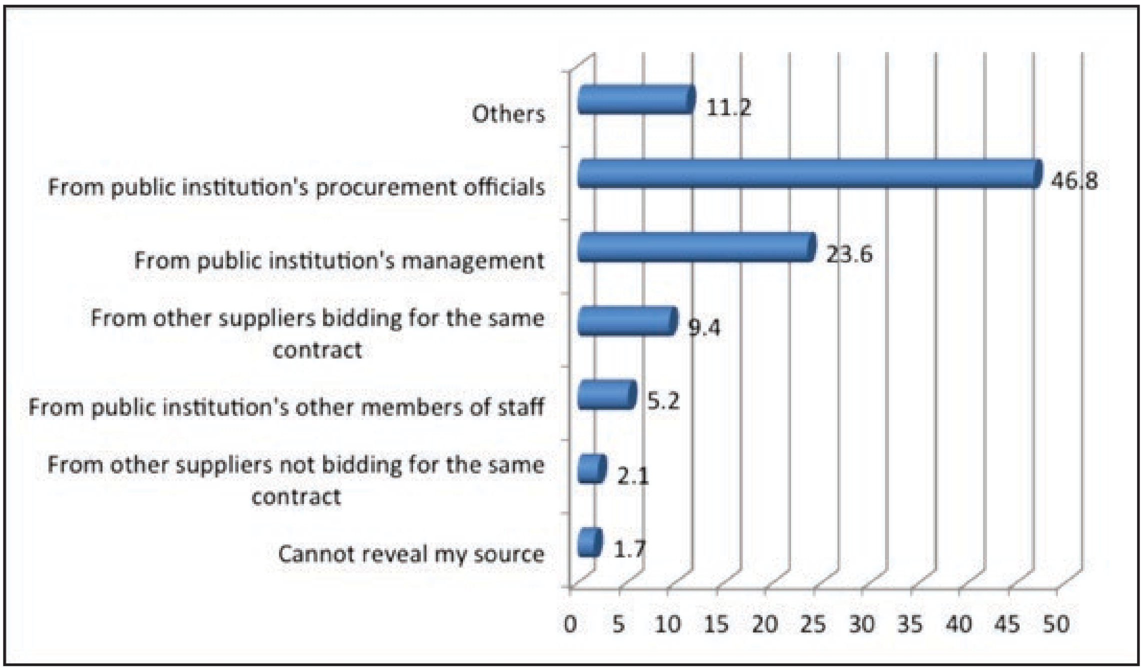


Figure 7: Sources of estimated price

The President of Kenya in a statement against corruption on 23rd November 2015 directed that no public goods and supplies will be procured at prices above the prevailing market price by any public agency at the national and county level. Further, the Public Procurement and Asset Disposal Act (PPAD) of 2015 section 54 states that standard goods, services and works with known market prices shall be procured at the prevailing market prices and Public Procurement Regulatory Authority (PPRA) to issue quarterly market prices index to guide accounting officers make informed decisions. The Act further states that public officers whose action results to loss of public money by procuring standard goods, services and works at inflated prices be required to pay for the loss.

5.2.2.2 *Processing of payment*

Whenever payments to contractors are delayed, the contractors become desperate to get their money. A situation usually exploited by public officers to extract money from them in the pretense of facilitating the speedy processing of the payments. This was well put by a key informant. "… *Delayed payments sometimes force contractors to pay a bribe so that the payments can be hastened.*" excerpt 9, Kitui. The PPAD 2015 section 53 (8) demands accounting officers of public entities to only commence procurement when satisfied that sufficient funds are available to meet the obligations of the resultant contract. This is meant to minimize incidences of contractor's payment being delayed unnecessarily. However, the Act does not explicitly address the thorny issue of delay in processing of payments.

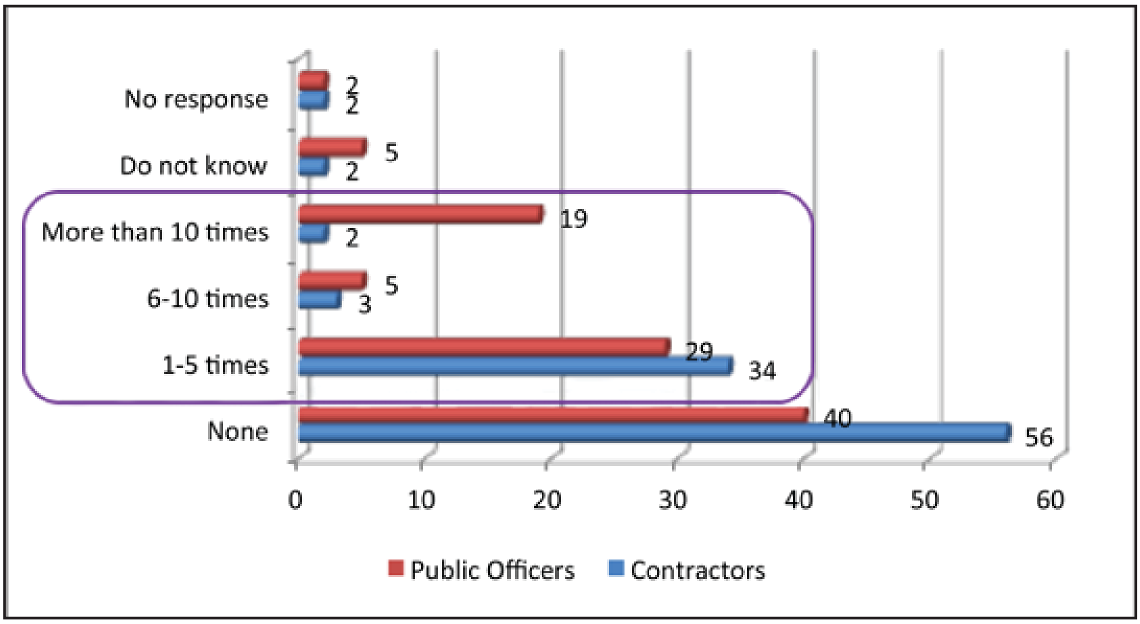


Figure 8: Proportion of contractors and public officers who indicated processing of payments was delayed between 2013 and 2015

The Study sought to find out if there were delays in processing of payments between 2013 and 2015 for contractors. Whereas majority of both public officers and contractors indicated there were no such delays, quite a number of these people interviewed indicated there were delays. Interestingly, more public officers (19%) indicated delays of more than ten times in the three years under consideration compared to only two percent of contractors (Figure 8).

The regression results in Table 4 reveal that delay in processing of payments is statistically significant in affecting the probability of winning public tenders. For companies that over the three years (2013 - 2015) had their payments delayed for between six to ten times, their odds of winning public tenders was increased by 5.6 times compared to those firms that did not get any delays. For those that their payments were delayed between one and five times in the three years, their odds of winning were increased by 1.25 times while those with more than 10 delays had odds of winning increased by 1.38 times compared to those whose payments were not delayed. The high probabilities of winning tenders for companies whose payments were being delayed beg the question if the delays were an avenue to solicit for bribes by public officials.

Contractors identified Kisumu, Nakuru and Kilifi as the Counties where they experienced delays of between six and more than ten times in processing of their payments. The reasons given by contractors why their payments were delayed are given in Figure 9. Interestingly, only eight percent of contractors identified bribe demands by public officers as the reason why their payments were delayed with majority listing delay of funds by National Government as the cause. This was corroborated by 81 percent of public officers who indicated delay by National Treasury to release funds as the main reason why processing of payment to contractors was delayed.

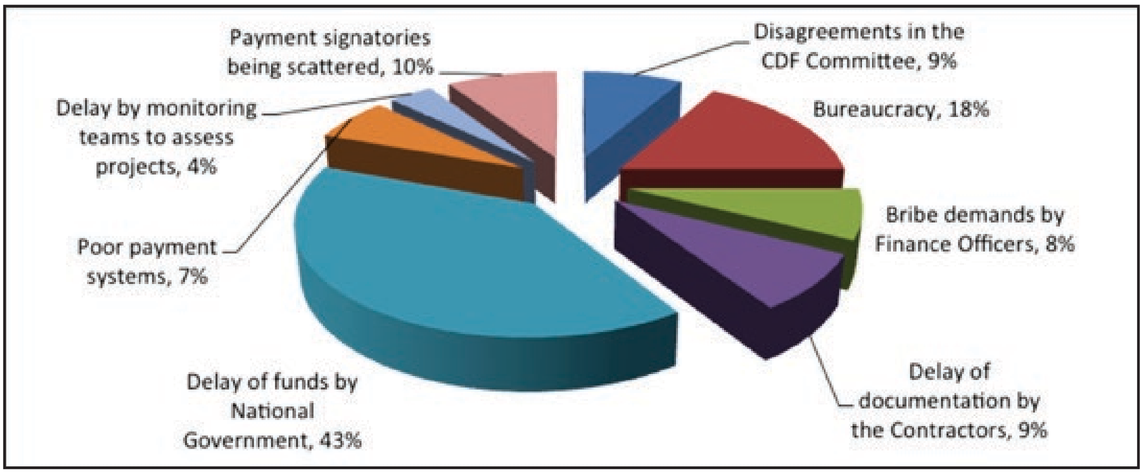


Figure 9: Reasons for delays in processing of payments as given by Contractors

5.2.2.3 *Development of project specifications*

Eleven firms confirmed to have participated in developing specifications of County/CDF projects. Out of the eleven firms, six further indicated to have participated in the tender to undertake the same projects they had developed specifications for. The projects are listed in Table 5. In Murang'a County, one company that developed specifications for three different projects, later participated in the tendering and then proceeded to win the three tenders for implementing the projects.

Table 5: Projects where a company developed specifications and later involved in its tender

County	Project name	Project activity	Year	Total tender value	Type of Procurement	If bribe is part of tender value	Outcome
Murang'a***	Gikandu water project	Supply of HDPE pipes	2014	246,773	Quotation	No	Successful
Mombasa	Hassan Joho Secondary School	Landscaping	-	-	-	-	Successful
	Kware Primary School						
Kakamega	Maturu Polytechnic	Electricity wiring	2014	190,000	Open	-	Unsuccessful
Isiolo	Serena Bridge	Construction	2013	-	Open	-	Successful
	Tseikuru sub County						
Murang'a***	Kiangage Water Project	Supply of labour	2013	300,000	Quotation	No	Successful
Murang'a***	Kigutuini Water Project	Supply of HDPE pipes	2014	205,151	Quotation	No	Successful

Projects marked with asterisks (***) done by the same company

The modelling results in Table 4 of section 5.2.2 confirmed this whereby, a company involved in the development of a project specifications before the rolling out of the project was found to be statistically significant in affecting the probability of winning public tenders or not. Those companies that were not involved in the development of project specifications had their chances of winning public tenders reduced to 22 percent compared to those that were involved in the development. In other words, a company that developed specifications for a project was more likely to win public tenders compared to that that did not.

The Public Procurement and Asset Disposal Act of 2015 section 130 states that a person who enters into a contract resulting from procurement by request for proposals shall not enter into any other subsequent contract for the procurement of goods, service or works related to that original contract.

5.2.2.4 *Publicizing bidding opportunities*

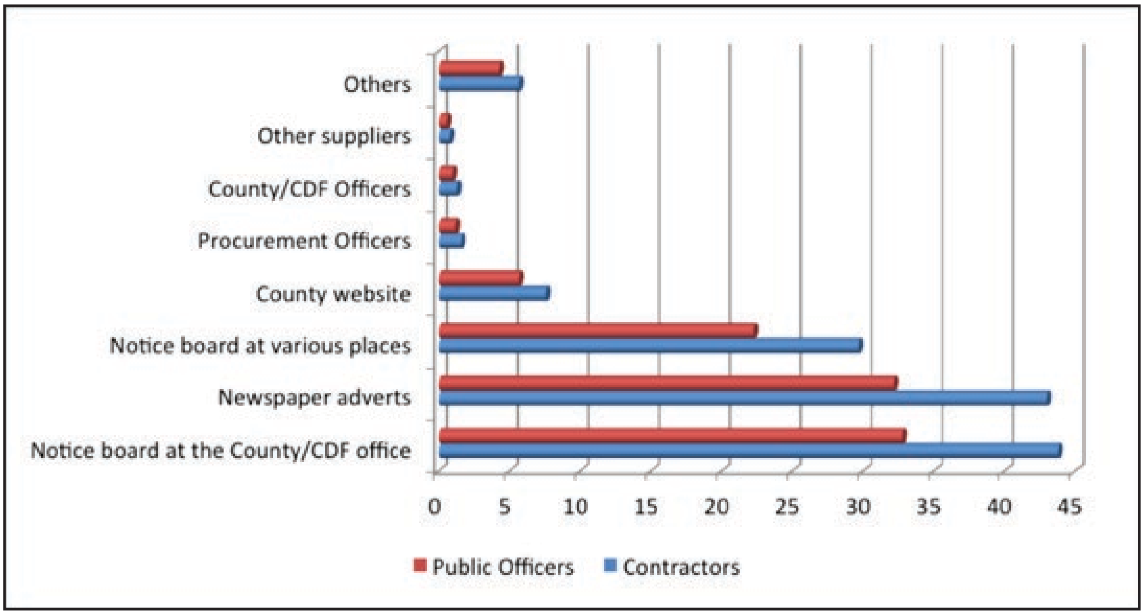


Figure 10: Media used to publicize bidding opportunities in Counties/CDF and means through which contractors obtained the information

Publicizing bidding opportunities is a key component of ensuring transparency and accountability in public procurement. The PPAD Act requires public entity to make necessary steps to bring the invitation to tender to the attention of those who may wish to submit bids. There are various methods that can be used to achieve this. Figure 10 lists some of the identified methods as indicated by public officers and contractors interviewed. The other media used to publicize bidding opportunities in Counties and CDF offices were by use of telephone contacts/email and by word of mouth.

Newspaper adverts were popular in Mombasa, Kisumu, Kilifi, Trans Nzoia, Isiolo and Tharaka Nithi. Notice board adverts were least popular across all the Counties visited but were mostly posted at the County/CDF offices. In fact, in Isiolo, Tharaka Nithi, Mombasa, Nakuru, Kilifi, West Pokot, and Trans Nzoia the adverts were largely spotted in the County/CDF offices and not anywhere else. The use of County websites to get to know bidding opportunities by contractors was minimal at 5.7 percent (Figure 10).

The regression modelling whose results are presented in Table 4 indicated that how companies get to know about bidding opportunities in Counties and CDF offices is statistically significant in affecting probability of a company winning public tenders. For those companies that were getting bidding opportunities in the County websites, their odds of winning public tenders were reduced to 74 percent of those relying on newspaper adverts. This could be as a result of Counties not putting up most/all the available bidding opportunities in the respective County websites. The most significant results were for those companies that got to know about bidding opportunities through their friends. The odds of winning for these companies was increased by 6.17 times compared to those using newspaper adverts. These friends were not defined and there is a possibility of them being public servants with inside information on bidding opportunities especially considering the high chance of winning bids associated with them.

Notice boards at various places in the County/constituency had increased odds of winning by 2.77 times compared to newspapers, an indication of high use of notice boards. Information from other suppliers was also very credible leading to odds of winning being increased by 2.24 times of those relying on newspapers. Procurement officers and other County and CDF officers were also providing information on bidding opportunities to companies whose odds of winning the tenders were increased by 1.07 times and 1.23 times to those relying on newspaper adverts (Table 4). In summary, these results indicate that for those companies getting information on bidding opportunities in the Counties/CDF offices from friends, procurement officers, County and CDF officers and other suppliers led to high chances of winning public tenders compared to those relying on newspapers. This casts aspersions on the level of transparency in public procurement in Counties and CDF offices.

5.2.2.5 *External influence*

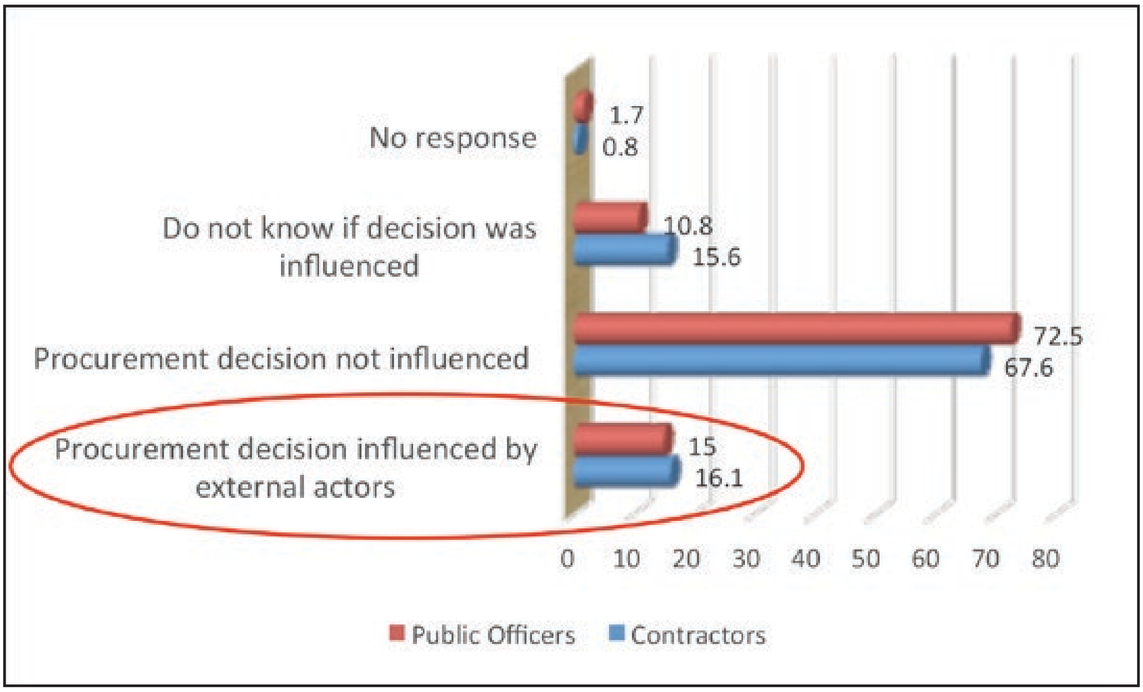


Figure 11: Influence of external actors on procurement decisions in County government and CDF offices

External influence referes to situations where a procurement process to award or not to award a public contract is influenced by unauthorized people. The Study sought to find out if there is any such intereference. Whereas majority of both Public Officers and contractors indicated that procurement decisions are not influenced by unauthorized persons, we note 15 percent of public officers and 16 percent of contractors who indicated that procurement decisions are influenced by external actors (Figure 11). The external actors who were identified as people influencing procurement decisions were Governors, area MPs, MCAs, County Government Employess, CDF employees and especially CDF managers and suppliers (Figure 12). A key informant vividly expressed this concern. *"… contractors … have relationship with the MP. The problem is rampant and affects delivery of projects. It has a higher level of influencing the awarding of tenders, approximately 70 percent of corruption occurs mainly from the Political Influence,"* excerpt 25, Nairobi.

Governors influencing public procurement decisions were identified in Kilifi, Kakamega, Kisii and Isiolo Counties. Area MPs were inditified from Kisumu, Kilifi, Kitui, Murang'a, Kakamega, Mombasa, and Isiolo Counties while MCAs were from Kisumu, Kilifi, Kitui, Kisii and Isiolo Counties.

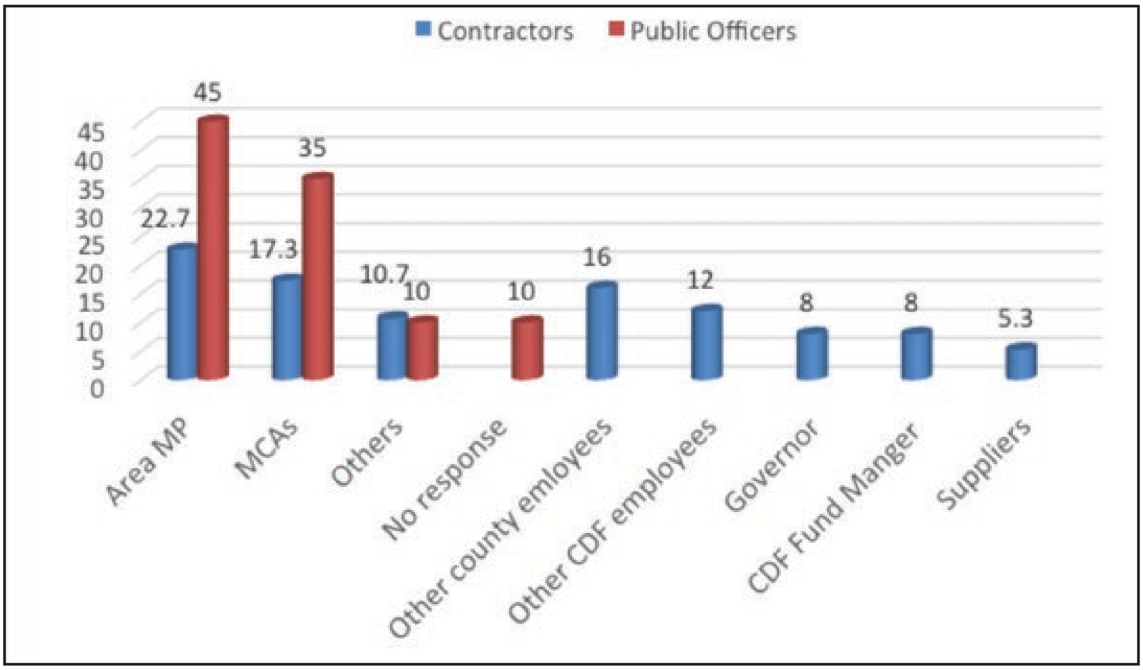


Figure 12: External actors who influenced procurement decisions as identified by contractors and public officers

The Study further sought to find out how the identified external actors influence procurement decisions. The following were the results as idicated by contractors: MPs and MCAs influenced award of tenders to their friends/cronies (27.9%); external actors influenced tenders to be awarded to those that did not qualify (11.5%); tenders are awarded after a 10 percent bribe is offered (18%); contracts awarded to contractors from a specific area (8.2%); the process of awarding tenders not followed (6.6%); registering companies in other people's names and influencing the tender process to favor them (4.9%); sabotaging projects by MCAs and management (4.9%); suppliers forming cartels (3.3%).

Public officers identified awarding of tenders to specific companies (42.1%); and conflict of interest (31.6%) as the ways through which external actors influenced procurement decisions. The regression results in Table 4 ilustrates the effect of external influence on probabilty of winning public tenders. Whereas the effect was statistically significant, the results indicated that companies that indicated lack of external influence in procurement decisions were more likely (1.56 times) to win public tenders compared to those that did.

Mexico allows social witnesses who are usually a representative of the civil society, to participate in select public procurement processes as external observers. The social witnesses can have wide responsibility from review of draft tender documents, to participation in the opening of bids and evaluation meetings, to on-site visits. The social witnesses are then required to publicly avail a report on the procurement and alert authorities if they detect any irregularity. This has proven to have a positive impact on transparency and competitiveness in public procurement in Mexico (UNODC, 2013).

The Public Procurement and Asset Disposal Act 2015 section 59 (2) states that a public officer shall not award or influence the award of a contract to himself, his spouse or child, business associate or agent or company in which he has a substantial or controlling interest. Further, section 65 (b) states that a person shall not attempt, in any way, to influence the evaluation and comparison of tenders. In addition, the Public Procurement Code of Ethics for Procuring Entities states that no public institution employee shall unduly influence or exert pressure on any member of a committee or any other member of a procuring entity to take a particular action which favors or tends to favor a particular bidder and that staff of the procurement unit shall not allow their activities to be unfairly influenced by unauthorized persons from any quarter.

5.3 Other Issues Affecting CDF and CRF

5.3.1 Contract termination

Only 4 percent of contractors interviewed indicated they had terminated a contract with the County government or CDF office between the years 2013 and 2015. The main reason for contract termination was delay in payment (27.8%), insufficient funds (11.1%), and tender value being low thus could not achieve exact specification (11.1%). When public officers were asked if they terminated contracts with contractors, 20 percent of them indicated that they had terminated between one to five times in 2014 and 2015 while only two percent indicated to have terminated contracts for more than ten times during the two years. The reasons given by public officers for the termination are presented in Figure 13.

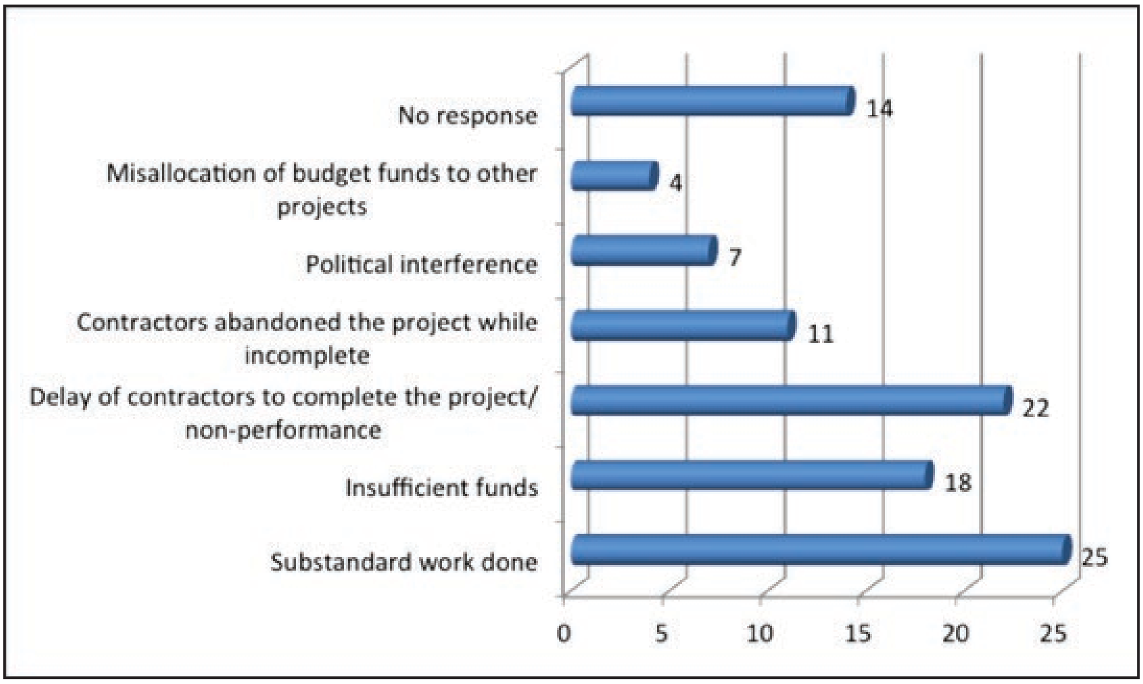


Figure 13: Reasons given by public officers why contracts were terminated in 2014 and 2015.

In agreement with contractors, CDF and County public officers indicated the lack of sufficient funds as one of the reasons that led to contracts being terminated. The PPAD Act of 2015 section 53 (8) states that an Accounting Officer shall not commence any procurement proceedings until he is satisfied that sufficient funds to meet the obligations of the contract are reflected in the public entities' approved budget. Subsection 9 criminalizes the commencement of procurement process before ascertaining if the goods, service or works is budgeted for. In addition, contractors were blamed for poor workmanship, abandoning projects while incomplete and delay in completing the projects as some of the reasons that led to contracts being terminated (Figure 13). There is a likelihood that contractors abandoned projects before they were complete due to the delay in receiving payments for work done.

5.3.2 Criteria of selecting projects

The National Government CDF Act of 2015 sections 24 (b) and 27 indicate that projects should be community based and that the Constituency Oversight Committee should convene open forum public meetings to deliberate on development matters in the constituencies. The Act does not explicitly states that projects should only emanate from these meetings except that the community can initiate projects and elect a committee to represent its interest during and after the implementation of the project (Section 41). When asked how projects are determined for implementation in any particular constituency/County, majority (76%) of both County government and CDF officials indicated that the community is usually consulted on priority projects to implement (Figure 16). Where community is consulted, it is largely done through public barazas (73.3%) and a few cases (as reported by 4.2% of public officers) involve meetings of leaders and stakeholders where they give their views and priority projects to be considered.

Few cases were reported where the area MP, MCA, County executive committee members and CDF committee members identify the projects to develop (Figure 14). Kakamega and Kajiado Counties were mentioned as where some area MPs decide projects to be undertaken, while in Kakamega, West Pokot and Kisii Counties the area MCA decides the projects to implement. In Murang'a, Kakamega, Kilifi and Isiolo Counties some CDF Committees or staff determine the project to implement.

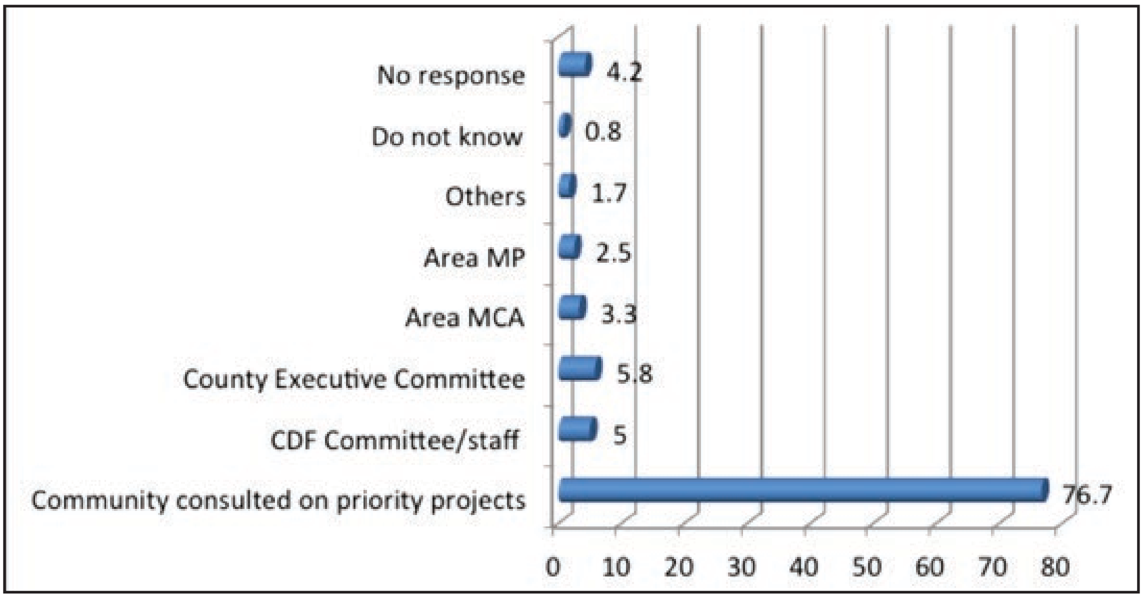


Figure 14: Who determines which projects to undertake in a particular area?

5.3.3 Conflict of Interest

The Public Procurement and Assets Disposal Act of 2015 section 66 (8) defines conflict of interest with respect to procurement as to a situation where a person or his relative seeks a contract for the procurement or owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interests of the person conflicting with his duties with respect to the procurement. A relative refers to a spouse, child, parent, brother or sister; a child, parent, brother or sister of a spouse or any other prescribed persons. Conflict of interest is one of the major issues that breed corruption in project implementation. When a person involved in procurement is also running a private company, directly or indirectly, that trades with his public entity, it gives him and his company undue advantage over other competitors. When both contractor's and public officers were asked if they knew of companies owned by public officers either directly or indirectly but doing business with County and or CDF offices, 22 percent of contractors and 27 percent of public officers said they know of such companies (Figure 15).

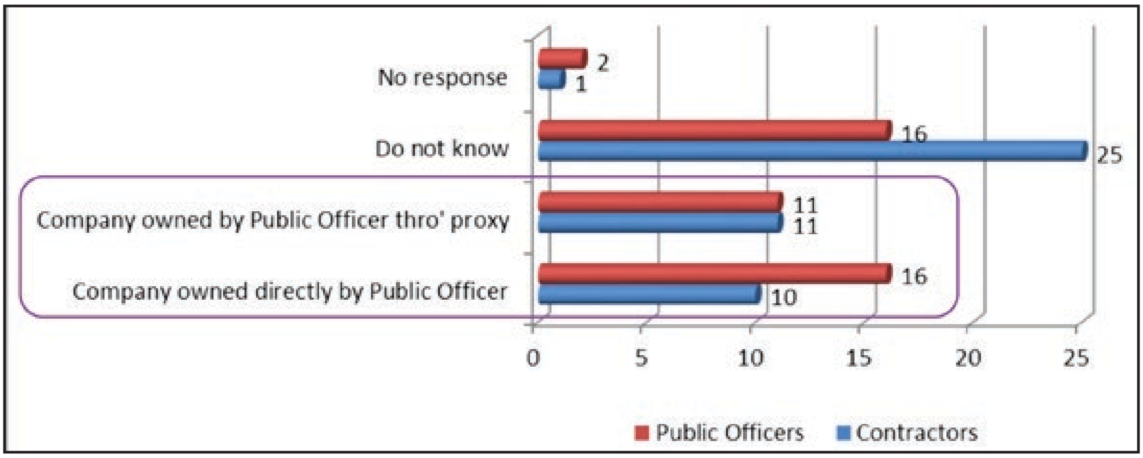


Figure 15: Companies doing business with County government and CDF offices but owned either directly or by proxy by public officers

The area MCAs were widely identified as owning these companies (Figure 16). The other public officers identified were Governors, area MPs, CDF managers and committee members and County government employees. The Counties of the identified public officers are listed in Table 6. When contractors were asked if they were aware of any action that was taken by the County Government or CDF office on a company with conflict of interest, 60 percent of those who responded indicated that nothing was done to these companies and they continued to trade with the public institutions. An additional 21 percent indicated not to be aware of any action taken against such companies.

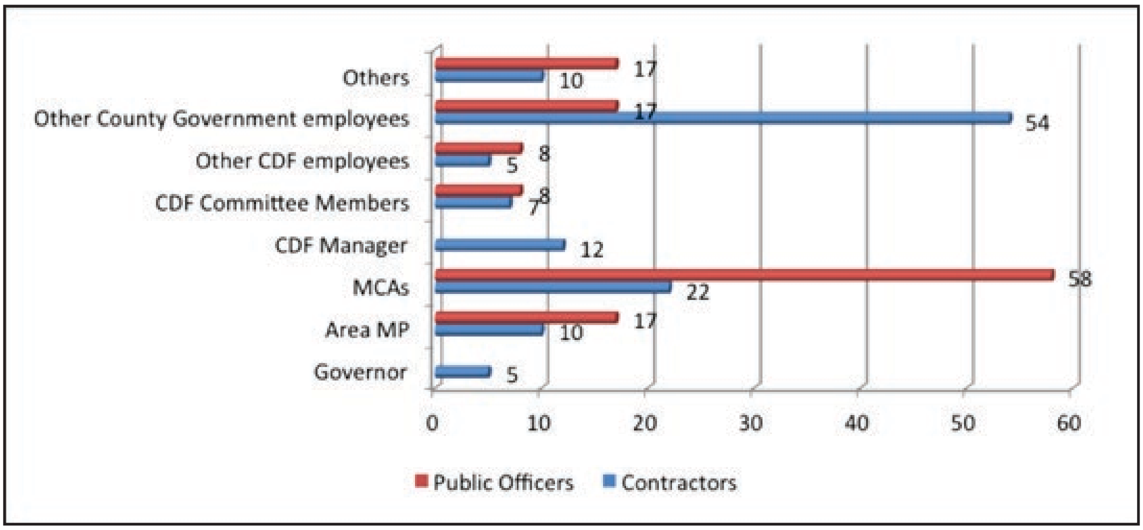


Figure 16: Position of Public Officers owning, directly or by proxy, companies doing business with County government or CDF offices

Table 6: Identified Public Officers owning companies, either directly or by proxy, doing business with County government and or CDF offices

Identified Public Officers	County								
Governor	Kisumu	Kisii							
Area MP	Kisumu	Kilifi	Kitui	Isiolo	Nakuru				
MCAs	Kisumu	Kilifi	Kitui	Isiolo	Kakamega	Kisii	Trans Nzoia	Nakuru	Kirinyaga
CDF Manager	Kilifi		Mombasa	Kakamega					
CDF Committee Members	Murang'a	Kilifi	Nakuru						
Other CDF employees	Murang'a	Kilifi							
Other County Government employees	Kisumu	Kilifi	Kitui	Isiolo	Kakamega	Kisii	Tharaka Nithi	West Pokot	Kirinyaga
Other Public Officers	Murang'a	Kakamega	Isiolo						

5.3.4 Integrity of contractors

About eleven percent of contractors interviewed indicated to know contractors doing business with County governments and/or CDF whose integrity is questionable. The integrity issues revolved around offering bribes to public officials, the companies being owned by public officials either directly or through proxy, supplying sub-standard goods and one supplier getting public tenders over and over again (Figure 17). Most of these complaints touching on contractor's level of integrity emanated from Kilifi County where 40 percent of complaints of contractors offering bribes to public officials in order for them to win contracts came from. In addition, 60 percent of contractors from Kilifi indicated to know other contractors who supply sub-standard goods to public institutions. Kisumu County had the highest number of complaints (36%) about companies doing business with the County government and/or CDF but owned by public officers directly or through proxies.

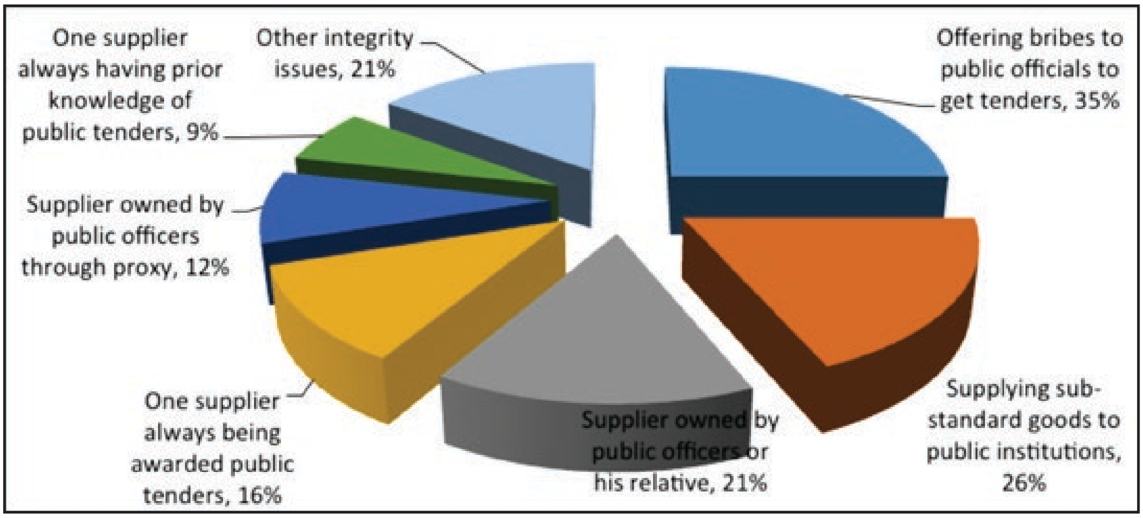


Figure 17: Integrity issues affecting contractors involved in decentralized funds in Kenya

Majority of public officers (74%) interviewed indicated their Counties or CDF offices have put in place measures to try and flag out integrity issues among contractors. The measures include:

- Proof of statutory documents (Tax compliance, Registration certificate, etc.);
- Pre-tender visits by the Inspection and Acceptance Committee;
- Prequalification a must and checking contractor's financial background;
- Vetting of contractors by tender committee who are trained by National Construction Authority;
- Previous work records; and
- Checking if registered by National Construction Authority.

While majority of public officers indicated the contractors found wanting were blacklisted, the contractors noted that nothing was done to such companies and trading continued normally (Figure 18).

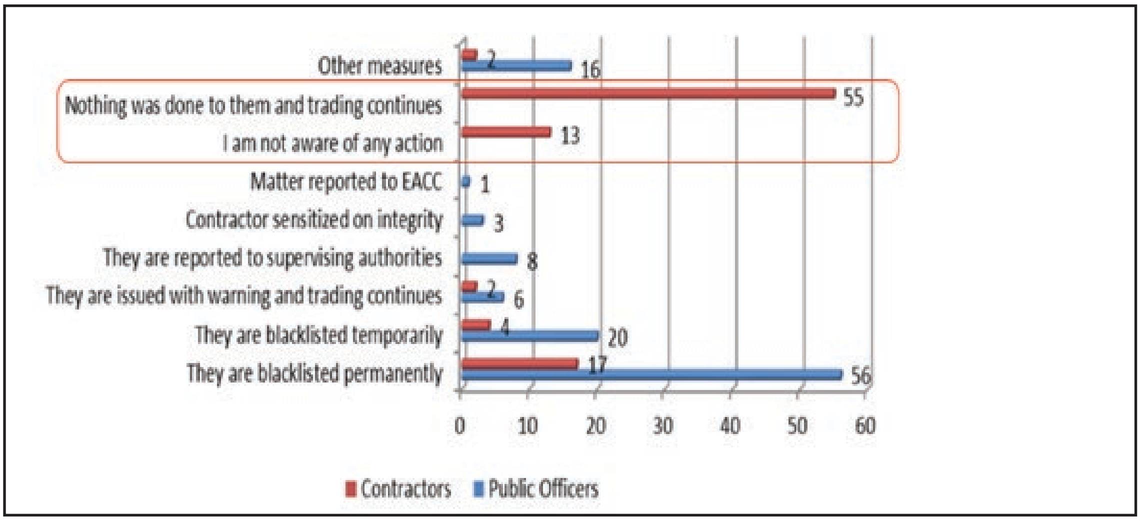


Figure 18: Action taken on contractors whose integrity was found wanting

A look at other countries shows more stern action taken on companies involved in corruption. Hong Kong, one of the countries with low levels of corruption in the world, punishment for bribery ranges from three years to ten years but the fines range from USD 13,000 to USD 130,000. In addition, anyone convicted may be prohibited for a period not exceeding seven years from taking up or continuing employment as a professional or as a director or manager of a corporation, public body or firm. In Germany, companies may be fined up to USD 10 million and business owners and directors, up to USD 1 million. In South Africa, one is liable up to life imprisonment which is similar to China with an addition possibility of death penalty. France goes an extra mile of not only debarring companies from public procurement to actual closure of the company's establishment used to commit the offense for a maximum of five years. In Canada, companies charged with corruption face an eighteen month suspension while if convicted, the company face a ten year ban from public procurement. There is no limit imposed on financial penalties for corruption.

5.4 An Evaluation of Status of Project Implementation

The Study looked at a number of projects that have been implemented by different Counties and CDF offices between 2013 and 2015. The following are a compilation of some of the projects where there were some issues. The issues range from stalled projects, abnormal prize variation, wrong choice of procurement method and excess payments to contractors among other issues.

Project: Construction of three classrooms	
Financial: Kakamega County Government	
Amount budgeted for: Kshs. 2,876,220	
BQ estimated price: Kshs. 844,606	
Contract value: Kshs. 2,876,220	**% price variation:** 70.6%
Contract date: February 2015	**Payment date:** April 2015
Amount paid: Kshs. 844, 606	
Balance in payments: 2,031,614	
Project status (in files): Ongoing	
Project status (on the ground): Stalled	
% project completion: 65%	
Red flags: Abnormal prize variation; amount budget for similar to contract amount; big difference between contract amount and actual money paid; project stalled.	

Figure 19: Construction of three classrooms, Mwiyala Primary School, Lurambi Constituency, Kakamega County

Project: Construction of a health Centre
Financial: Kajiado County Government
Amount budgeted for: Kshs. 14,900,000
BQ estimated price: Kshs. 14,898,140
Contract value: Kshs. 14,898,140
Amount paid: 12,978,898.95
Type of procurement: Restricted
No. of contractors who submitted bids: One
Project status (in files): Ongoing
Project status (on the ground): Abandoned
% project completion: 90%
Red flags: Restricted procurement; 90 percent of budgeted funds had been paid up yet the project was not completed with only five months to go, up to the time of site visit, no work had been recorded. Only one contractor submitted bid for the works despite advert carried in newspapers

Figure 20: Construction of Olekasasi Health Centre, Kajiado North constituency, Kajiado County

Project: Construction of a kitchen and dining hall	
Financial: Kajiado Central CDF	
Amount budgeted for: Kshs. 7,553,247.20	
BQ estimated price: Kshs. 7,553,247.20	
Total value of contract: Kshs. 7,553,247.20	
Month and year contract entered: June 2014	
Amount paid so far: Kshs. 1,000,000	**Month and year of payment:** September 2014
Balance due: Kshs. 6,553,247.20	**Project status:** Stalled
% project completion: 5%	
Red flags: Since June 2014 to June 2015, the project has not taken off despite having been fully budgeted for. Only few materials have been brought to site.	

Figure 21: Construction of a kitchen and dining hall, Enkorika Secondary School, Idalalekutuk Ward, Kajiado Central constituency, Kajiado County

Project: Completion of dining hall (Walls, roofs, floor, painting)
Financial: Kiharu CDF
Amount budgeted for: Kshs. 1,000,400
BQ estimated price: Kshs. 1,582,150
Contract value: Kshs. 1,000,000
% price variation: 58.2
Month and year contract entered: May 2013
Month and year payment done: July 2013
Amount paid: Kshs. 582,000

Figure 22: Completion of dining hall, Gathinja Secondary School, Kiharu Constituency, Murang'a County

Project: Completion of two classrooms	**Financial:** Kandara CDF
Amount budgeted for: Kshs. 800,000	**BQ reserve price:** Kshs. 799,070
Contract value: Kshs. 800,000	**Amount paid:** Kshs. 800,000
Contract date: April 2014	**Payment date:** June 2014
Red flag: The renovation involved an additional four other classrooms, installation of electricity, construction of a kitchen.	

Figure 23: Completion of two classrooms, Muiri-ini Primary School, Muiri-ini Location, Kandara Constituency, Murang'a County

	
Project: Construction of tuition block	**Financial:** Kakamega County Government
Amount budgeted for: Kshs. 20,000,000	**Contract amount:** Kshs. 20,000,000
Mode of advertisement: Newspapers and website	**No. of contractors who submitted bids:** One
Contract date: March 2015	**Amount paid so far:** Kshs. 4,000,747.20
Payment date: May 2015	**Type of procurement:** Quotation
Issues: The description in the procurement file is construction of tuition block while the actual works involve administration offices, laboratory, computer lab and library; The tender attracted only one bid despite being advertised in the newspaper and internet; the project looks overpriced. The County government requested for quotation despite procurement threshold being way above that allowed for quotations.	

Figure 24: Construction of tuition block, Sivilie Girls Secondary School, Lurambi Constituency, Kakamega County

Project: Construction of a modern market	**Financial:** Kakamega County Government
Amount budget for: Kshs. 31,019,425	**BQ reserve price:** Kshs. 28,319,425
Contract value: Kshs. 35,982,533	**Price variation:** 21%
Amount paid so far: Kshs. 23,791,944	
Issues: a 21 percent (Over Kshs. 7 million) price difference to the reserve price.	

Figure 25: Construction of a modern market, Kakamega County

Project: Completion of an administration block	**Financial:** Butere Constituency CDF
Amount budget for: Kshs. 2,500,000	**BQ reserve price:** Kshs. 1,487,180
Contract value: Kshs. 1,487,180	**Contract date:** July, 2014
Total amount paid out: Kshs. 2,205,750	**Payment date:** May, 2015
Issue: Amount budgeted for almost double the reserve price; paid almost Kshs. 1 million in excess of contract amount; project complete but not yet put in use	

Figure 26: Completion of an administration block, Emarenyo School, Butere Constituency, Kakamega County

Project: Extension of dining hall	**Financial:** Kakamega County Government
Amount budgeted for: Kshs. 4,272,665	**BQ reserved price:** Kshs. 3,372,665
Contract value: Kshs. 4,956,291	**Contract date:** 25th February 2015
Amount paid out: Kshs. 2,426,000	**Payment date:** 15th April 2015
Type of procurement: Request for proposals	**Price variation:** 32%
Red flags: Big price variation compared to reserve price; half of the contract value paid out in first two months of contract; did not use open tender	

Figure 27: Extension of dining hall, Kakamega High School, Lurambi Constituency, Kakamega County

Project: Provision of water infrastructure, sentry, gate and incinerator	**Financial:** Lugari Constituency CDF
Amount budgeted for: Kshs. 900,000	**BQ reserve price:** Kshs. 900,000

Contract value: Kshs. 1,700,000	**Contract date:** February, 2014
Amount paid out: Kshs. 1,700,000	**Payment date:** March, 2014
Price variation: 47%	**Project status:** Complete
Red flags: The contract price was almost double the BQ reserve price and what was budgeted for. The whole amount was paid to the contractor.	

Figure 28: Provision of water infrastructure and incinerator, Seregaya Dispensary, Lugari, Kakamega

Project: Construction of gate & sentry, borehole, water tank and fencing	**Financial:** Lugari Constituency CDF
Amount budgeted for: Kshs. 900,000	**BQ reserve price:** Kshs. 900,000
Contract value: Kshs. 833,500	**Contract date:** December 2013
Amount paid out: Kshs. 898,000	**Payment date:** February 2014
Project completion date: December 2014	Project not yet in use
Issues: Contractor paid out all his money despite project not being fully complete (about 80% complete); amount paid out in excess of Kshs. 64,500 to what was in the contract. Due to incompleteness, project not yet fully in use.	

Figure 29: Construction of borehole, water tank, fencing gate and sentry house, Sango Dispensary, Lugari Constituency, Kakamega County

Project on file: completion works for dispensary A block, chain link security fence	**Financial:** Tharaka Nithi County Government
Project on site: one block of male and female pit latrines, and main gate are done	**Amount budgeted for:** Kshs. 1,000,000
Contract value: Kshs. 1,171,242.72	**BQ Reserve price:** Kshs. 1,077,411
Amount paid so far: Kshs. 376,167.20	**Contract entered:** June 2014
Valuation: Kshs. 150,000	**Payment done:** June 2015
Issues: Project overpriced by more than Kshs. 1,000,000; project on ground differs description on the file	

Figure 30: Completion work for dispensary block, Kiangondu Dispensary, Nthigiriri, Tharaka Nithi County

Project on file: construction of ablution block, security gate and chain link	**Financial:** Tharaka Nithi County Government
Project on site: Ablution block	**Amount budgeted for:** Kshs. 500,000
Contract value: Kshs. 495,871	**Contract date:** June 2014
Amount paid so far: Kshs. 264,188.94	**Payment done:** April 2015
Valuation: Kshs. 200,000	**Project status:** Stalled
% project complete: 25%	**Project use:** Not in use
Issues: Project overpriced by more than Kshs. 200,000; project on site different from project description on file; project stalled and not in use	

Figure 31: Construction of ablution block, security gate and chain link, Kathigiriri Dispensary, Nthigiriri, Tharaka Nithi County

Project: Supply and installation of 100 KVA standby generator	**Financial:** Isiolo County Government
Amount budget for: Kshs. 7,000,000	**Contract value:** Kshs. 6,897,060
Contract date: March 2014	**Completion:** May 2014
Amount paid: Kshs. 6,897,060	**Valuation:** Kshs. 3,000,000
Issues: project overpriced by over Kshs. 3,000,000	

Figure 32: Supply and installation of 100KVA standby generator, Isiolo County Government offices

Project: Construction of waste storage and incineration unit	**Financial:** Isiolo County Government
Amount budgeted for: Kshs. 4,000,000	**Contract value:** Kshs. 4,071,542
Contract date: March 2014	**Amount paid so far:** Kshs. 3,200,000
Payment date: May 2015	**Valuation:** Kshs. 1,400,000
Issues: project overpriced by about Kshs. 2,600,000	

Figure 33: Construction of waste storage and incineration unit, Isiolo District Hospital, Isiolo County



Project: Construction of 19 market sheds, latrines and two gates		**Amount budgeted:** Kshs. 5,000,000
Financial: Tharaka Nithi County Government		**Contract value:** Kshs. 4,400,448
Contract date: December 2014	Project status: Not in use	**Valuation:** Kshs. 1,500,000
Issues: Project overpriced by about Kshs. 3,000,000; project not in use		

Figure 34: Construction of market sheds, latrines and gates, Marimanti Market, Tharaka Nithi


Project: Construction of about 990 meter perimeter Wall, gate and sentry	**Financial:** Isiolo County Revenue Fund
Amount budgeted: Kshs. 23,000,000	**Contract amount:** Kshs. 21,610,034
Contract date: March 2014	**Amount paid so far:** Kshs. 13,100,034
Payment date: January 2015	**Valuation:** Kshs. 10,000,000
Project status: Not in use	
Issues: Project overpriced by more than Kshs. 10,000,000; project not in use	

Figure 35: Construction of a perimeter wall, Isiolo County Stadium, Isiolo County

Project: Construction of classroom	**Financial:** Isiolo County Government
Amount budget: Kshs. 2,000,000	**Contract amount:** Kshs. 2,093,550
Contract date: June 2014	**Amount paid:** Kshs. 1,900,000
Valuation: Kshs. 1,000,000	**Payment date:** May 2015
Issues: project overpriced by over Kshs. 1,000,000	

Figure 36: Construction of a classroom, ECD Waso Primary School, Isiolo County

Project: Construction of boy's dormitory	**Financial:** Isiolo South CDF
Amount budget: Kshs. 2,500,000	**Contract value:** Kshs. 2,500,000
Contract year: 2014	**Amount paid:** Kshs. 2,500,000
Project status: ongoing	**% complete:** 90%
Valuation: Kshs. 1,500,000	
Issues: Project overpriced by Kshs. 1,000,000; contractor paid in full before project completion	

Figure 37: Construction of boy's dormitory, Kina Secondary School, Isiolo South Constituency, Isiolo County

Project: Construction of a milk cooling plant	**Financial:** Chuka Igambang'ombe CDF
Amount budget: Kshs. 1,800,000	**Contract value:** 1,755,481
Contract date: October, 2014	**Amount paid:** Kshs. 1,625,037
Payment date: March, 2015	**Project status:** Not in use
Valuation: Kshs. 500,000	
Issues: Overpriced by over Kshs. 1,000,000	

Figure 38: Construction of Ndagani milk cooling plant, Chuka Igambang'ombe, Tharaka Nithi County

5.5 Anti – Corruption Measures

The Study sought to find out the kind of anti-corruption measures in place in County governments and CDF offices visited. About 19 percent of contractors indicated to be aware about anti-corruption measures in place in the County governments and CDF offices. Table 7 lists the anti-corruption measures identified to be in place by both public officers and contractors.

Table 7: Anti-corruption measures in place as identified by both public officers and contractors

Anti-Corruption measures in place	Suggested improvements
• Transparency in tender opening • Suggestion boxes • Disciplinary measures against corruption are harsh • Sensitization on corruption • Project Management Committee (PMC) to ensure no single sourcing • Notice boards with "Corruption free zones" messages • Professionalism of staff • Auditing of finances • Monitoring and evaluation project team • Strict procurement rules and regulations	• Disqualify those engaged in corruption • EACC to frequent their scrutiny efforts across CDF and County offices • Involve all stakeholders in decision making • Proper supervision, monitoring and evaluation of projects before any payments is done • Training of CDF staff • Capacity building of Project Management Committees (PMCs) to understand the procurement process • Ensure recruitment of experienced personnel • Ensure public participation in the management of CDF • All transaction to be reflected in the system for easy tracking • Encourage reporting of corruption to relevant bodies

The issue of having Project Management Committees (PMCs) as the main implementers of CDF projects may need to be relooked as encapsulated by the following key informants:

> *"There is a 20 percent level of corruption reason being the Project Management Committees are semi-literate hence not understanding the law in matters corruption…."* Excerpt 18, Kajiado.

> *"Project Management Committees they credit some cash into their personal accounts … beyond the control of the CDF…"* Excerpt 31, West Pokot.

The key informants interviewed also gave some good suggestions on how to improve the fight against corruption.

> *"EACC is effective: There are many officials under investigations but corruption cases take long. EACC need to be empowered to give it authority to prosecute and carry out its activities autonomously. Parliament needs to create laws that protect EACC from political influence."* Excerpt 28, Nyeri.

> *"The salary and allowance of CDF staff be reviewed in order to reduce the ability of them being tempted to delve into corruption. Review the committee allowance …. Educating the community through civic education on the relevance of CDF."* Excerpt 17, Nakuru.

5.6 Challenges encountered in project implementation

In any human endeavor, challenges are bound to be encountered. In this section, the challenges that contractors face while doing business with County governments and CDF offices across the country are highlighted. Focus is given to corruption and unethical conduct that were separated from the other general challenges.

5.6.1 Corruption and unethical conduct allegations

There were about 16 percent of public officers who indicated that there were between one and five allegations of corruption or unethical conduct involving procurement in the County government or CDF offices between 2013 and 2015. These allegations were mostly recorded in Kakamega and Kilifi Counties and a number in Trans Nzoia, Kisii, Tharaka Nithi, Isiolo, Nakuru, Kisumu and Mombasa. Most of the allegations involved County government. Table 8 lists the allegations which range from bribery to misuse of CDF funds to non-adherence to procurement procedures and mainly revolved around construction of schools and roads.

From the contractors' point of view, delay in processing their payments was the most prevalent unethical conduct they encountered while doing business with various County governments and CDF offices. Corruption was also encountered in most Counties. Most of these allegations went unreported for fear of the contractors reporting the people who facilitate their doing business with government. Moreover, even after reports are made to the relevant authorities, no action is taken up and business continues as usual or the investigations take long to conclude (Table 9).

Table 8: Corruption and unethical conduct allegations in the management of county funds and CDF as reported by public officers

Allegations	County	Project Name	Year	Value of Procurement (Kshs)	Action Taken	Current Status
Bribery	Mombasa	Revenue collection	2013		Reported to police	
Non-adherence to Procurement procedures	Isiolo	Building of primary school	2013	31,000,000	Reported to EACC	Still waiting for action
	Isiolo	Building health center/ hospital	2014	13,000,000	Reported to EACC	Still waiting for action
	Isiolo	Building of primary school	2014	33,000,000	Reported to EACC	Still waiting for action
	Trans Nzoia	Road construction	2014	19,000,000	Reported to EACC	In court
Misuse of CDF funds	Kakamega	Building of primary school	2014	50,000	Reported to EACC	Still waiting for action
	Trans Nzoia	Road construction	2014	30,000,000	Reported to EACC	In court

Allegations	County	Project Name	Year	Value of Procurement (Kshs)	Action Taken	Current Status
Non-payment of contractor after work is done	Nakuru	Building of primary school	2012	600,000	Not reported	
	Kakamega	Road construction	2014			
Substandard work done	Kisumu	Building health center/ hospital	2008	50,000,000	Blacklisted	Permanent Blacklisting
	Kakamega	Building of primary school	2015	7,000,000	Reported to EACC	No response or action taken yet
Lack of transparency in tendering process	Kakamega	Building health center/ hospital	-	2,800,000	Reported	Still in courts

Table 9: Corruption and unethical conduct allegations in the management of County funds and CDF as reported by contractors

County	Allegation	No. of Allegations	% of Cases Not Reported	Reason for not Reporting	Action/Outcome of Reporting
Kilifi	**Delayed payments**	**12**	50	Fear of reporting outcome No specific person to report to Usually no action is taken after reporting	A number of cases of delayed payments processed In other cases nothing has changed/ solved
	Contract termination	4	100		
	Corruption	**3**	33		
	Tender awarding influenced by external actors	2	50		
Kisumu	**Delayed payments**	**8**	50	Fear of reporting outcome Usually no action is taken after reporting	The reported cases are yet to be solved
	Contract termination	5	60		
	Long chain of inspections	2	100		
	Tender documents not found after buying a tender	1	0		
	Absenteeism	1	0		

County	Allegation	No. of Allegations	% of Cases Not Reported	Reason for not Reporting	Action/Outcome of Reporting
Nairobi	**Delayed payments**	**6**	83	Fear of reporting outcome Usually no action taken after reporting	No response
	Corruption	**3**	67		
Kakamega	Contract termination	7	57	No specific person to report to	A number of payments processed Other cases are yet to be solved
	Delayed payments	**6**	67		
	Tender awarding influenced by external actors	3	0		
	Corruption	**2**	50		
Mombasa	**Delayed payments**	**6**	67	Usually no action taken after reporting	No response
	Corruption	**2**	100		
	Long chain of inspection	1	100		
Murang'a	**Delayed payments**	**4**	75	Fear of reporting outcome	No response
	Contract termination	2	50		
	Corruption	**1**	100		
Kitui	**Delayed payments**	4	50	Fear of reporting outcome Usually no action taken after reporting Contracts awarded to the same person	Few payments processed Nothing has changed and business continues as normal
	Tender awarding influenced by external actors	1	100		
	Corruption	**1**	0		
Tharaka Nithi	**Delayed payments**	**3**	100	Usually no action taken after reporting	
Nakuru	**Delayed payments**	2	0	No response	
Kirinyaga	**Delayed payments**	2	50	Fear of reporting outcome	No response
	Long chain of inspections	1	100		
	Corruption	**1**	100		

County	Allegation	No. of Allegations	% of Cases Not Reported	Reason for not Reporting	Action/Outcome of Reporting
West Pokot	**Delayed payments**	**2**	0	No response	Nothing has changed/solved
	Tender awarding influenced by external actors	2	0		
	Long chain of inspection	1	0		
Trans Nzoia	**Delayed payments**	**2**	50	Fear of reporting outcome	
Kisii	**Delayed payments**	2	0	Fear of reporting outcome	Cases reported not yet solved
	Tender awarding influenced by external actors	2	0		
Kajiado	**Delayed payments**	2	50	Time consuming	Changes are being made
Isiolo	Tender awarding influenced by external actors	5	80	Fear of reporting outcome Usually no action taken after reporting	Nothing has changed/solved and business continues as usual
	Corruption	3	100		
	Delayed payments	**2**	100		
	Community interference	1	100		

5.6.2 Challenges

Some of the general challenges that contractors and public officers faced in the course of implementing devolved projects included underfunding that lead to delay payments, favoritism in award of tenders, lack of awareness of public tenders, managing unrealistic public expectations among others. Some of the suggested measures to counteract the challenges include increase funding, disallowing politicians to be involved in public tenders, proper monitoring and evaluation of project implementation, evaluation of tenders be done by an external person and efficient mechanisms of reporting tender outcomes (Table 10).

Lack of transparency was reported mostly by contractors who had worked with Kisumu County Government and CDF offices in Kakamega, Kilifi and Kitui. Mismanagement of funds was reported by contractors working with Kakamega CDF offices. Soliciting for bribes was reported by contractors working with Isiolo, and Kisii County Governments. Favoritism in awarding tenders was reported in Kakamega CDF, Kisumu CDF and Kilifi CDF offices and Kisumu County Government. External influence was mostly reported in Kakamega, Kisumu and Kitui CDF offices.

Table 10: General challenges encountered in the course of project implementation

Challenges	% of respondents who identified the challenge		Suggested measures to put in place
	County Government (%)	CDF Office (%)	
Underfunding	24	76	Increase budget allocation Ensure sufficient funds before tendering
Poor planning	26	74	The 70-30 rule in the CDF should be upheld
Delayed payments	68	32	A percentage payment be paid upfront Funds be disbursed early
Delayed service delivery	62	38	
Lack of transparency	51	49	Evaluation of tenders to be done by an external person/institution Effective feedback mechanisms to report on tender outcomes Public should be involved in project implementation
Favoritism in awarding tenders	45	55	
External influence	15	85	Disallow politicians in the tender process Procurement Departments to be independent Increase public officers authority over political authority
Lack of trained personnel like engineers	25	75	Engage/employ qualified officers for example Engineers should be consulted to give correct estimates of a project
Poor infrastructure (roads) for accessing some project sites	30	70	Ensure good infrastructure at the project site
Poor monitoring and evaluation of projects	67	33	Proper monitoring and evaluation of projects
Poor project coordination	46	54	
Lack of awareness of bidding opportunities among the public	71	29	
Mismanagement of funds	17	83	Take legal action on those officers found to be corrupt
Bid rigging	33	67	
Soliciting for bribes	75	25	
Conflict of interest	44	56	Public officers should not be allowed to be contractors
Bureaucracy	40	60	Reduce bureaucratic procedures involved in payments
Managing unrealistic public expectations	30	70	Civic education and sensitization

CHAPTER 6: CONCLUSION

Since 2013 when devolved governments came into existence, good work has been witnessed in all corners of the country. Despite the good work, corruption has tagged along devolution and unless checked, it may soon undo the benefits of devolution. This Study focused on development projects undertaken by a select few County governments over their three year of existence and those undertaken by CDF in various constituencies.

The Study found out that there were allegations of corruption and unethical conduct in the management of the CDF and CRF funds in the Country. In addition, issues of conflict of interest; delay in disbursement of funds to pay contractors; poor workmanship in project implementation; Governors, MPs, MCAs and County employees interfering with procurement decisions; stalled projects and overpriced cost of project implementation were some of the issues that continue to bedevil devolved funds in the country. Therefore, there is need to address these issues to realize the benefits of devolution.

6.1 Policy Recommendations

The following policy recommendations are derived from the results of this Study. The recommendations seek to help change the course the devolved funds are taking due to the negative effects of corruption and unethical conduct.

6.1.1 Strengthen and enforce the legal framework for corruption

Kenya has several Acts of Parliaments that seek to tame corruption menace in the country. Despite these Acts, corruption has continued unabated. The various Acts on corruption mete out lenient punishment to those found culpable of corrupt acts.

Therefore, there is need to enforce the Public Finance Management Act and other anti-corruption laws. There is need to enhance the fines and prison terms for corrupt acts in order to act as a deterrent. Corruption should be made as unattractive as possible.

6.1.2 Institutionalize prudent fiscal behavior

Adopt a financial and institutional system that integrates accountability and transparency at policy and operational levels with the aim of entrenching prudence, efficiency and value for money.

6.1.3 Develop comprehensive cost estimating guidelines for projects

The Study clearly highlighted that projects are overly overpriced leading to loss of millions of taxpayer's money. Companies bidding for public contracts collude amongst themselves and between them and public officers to inflate project prices. This happens despite cost estimates by the Ministry of Public Works. The Study further found out that knowledge of the estimated cost of a project before bidding increases the odds of winning public tenders compared to those who do not get to know these estimates.

There is need to develop a comprehensive cost estimating guidelines for projects in order to avoid ambiguity, collusion, and disclosure of project price. In addition to enforcement of PPAD of 2015 Section 54 (4) that state that public officers to pay the resulting loss for procurement of goods, services and works at unreasonably inflated prices, failure to follow the guidelines should result to criminal proceeding and costly financial implications to those concerned. Examples of such guidelines include Washington State Department of Transportation Cost Estimating Manual for Projects and Seattle Public Utilities Cost Estimating Guide.

6.1.4 Increase public officers authority over political authority

Procurement decisions are frequently influenced by external people. The external persons try to influence the decisions to favor their interests. PPAD of 2015 sections 65 and 176 criminalizes inappropriate influence of tender evaluations. However, this continues to be a big challenge in promotion of transparency and accountability in public procurement.

There is need to put in place measures that insulate procurement officials from bowing to political pressure meant to influence their decisions. In addition, the government should ensure hiring and promotion of procurement officers of the highest standards of integrity that can be able to brook no political interference. The same is required of members of tender committees. Further, a company which is being lobbied for by unauthorized persons including politicians in order to get public tenders should be debarred from participating in public tenders for a period of time not exceeding five years. Currently, PPAD section 65 talks of the tenderer being disqualified from the particular tender only if he is the one who seeks to influence a procurement decision.

6.1.5 Undertake thorough due diligence on private companies

Companies owned by public officers either directly or through proxy and doing business with public institutions remain one of the greatest impediments to transparency in public procurement. This Study identified Governors, area MPS, MCAs, CDF managers, CDF committee members and other CDF employees and County government employees as public officers who own companies that do business with County governments and CDF offices. It is therefore imperative that the government put measures in place to ensure due diligence on private companies before they are contracted to do business with the government. This should include provision of conflict of interests in the anti-corruption declaration form; permanent ban on companies owned by public officers; mandatory declaration of any interest in any public tender by public officers involved in the public procurement; and search of companies in registrar of companies database. The sanctions need to be legalized by an Act of Parliament as envisaged in Article 227 (1)(c) of the Constitution of Kenya.

6.1.6 Open up public procurement

Corruption thrives in secrecy. There were numerous corruption allegations in the implementation of projects for both CDF and County governments. The demands for bribes would in most cases results in works being procured at higher price than what's on offer in the market to cater for the extra cost incurred by the bribes. This loss of taxpayer's money needs to be avoided. One of the ways to do this is to open up public procurement to greater public and civil society scrutiny.

The current setting of Kenyan public procurement is one full of secrecy. From the advertisement of tender opportunities to award of the tenders, access to actual goings on is limited to a few. This state of affairs creates an avenue where only a few well connected companies win public tenders sometimes over and over again. In other times the tenders are awarded to briefcase companies. The general public finds public procurement process complicated and full of secrecy. They thus prefer to watch from the fence. These public needs to be sensitized on the procurement process in order to effectively participate and monitor the goings on, the so called citizen monitoring. So long as public procurement is a reserve of the few, corruption will continue unabated resulting to loss of millions of taxpayer's money.

6.1.7 Strengthen monitoring and evaluation of projects

The Study unearthed numerous complaints involving implementation of projects for both CDF and CRF. There were issues revolving around delay by contractors to complete projects; projects being abandoned before they were complete; and poor quality of work. Most of these complaints arose due to poor or lack of strong monitoring of project implementation by both the contractors and public institutions. The recently launched government initiative Electronic Projects Monitoring System (e-ProMIS) is laudable. The system is meant to improve efficiency and transparency of government and donor funded development programs and projects. There is need to improve financial management of projects by undertaking timely audits and evaluations.

However, the problem lays with the step by step monitoring of project progress at the grass root. This monitoring is supposed to be undertaken by monitoring teams comprising of CDF committee members or County government staff in conjunction with Ministry of Public works. This raises possibility of collusion between the interested parties. There is need to consider having external persons or bodies undertake monitoring of projects in order to minimize waste and ensure projects are completed on time. Further, procurement audits as espoused in section 43 of the PPAD, 2015 need to be mandatory in all County procurements.

6.1.8 Prescribe offences for improper record keeping

In almost all the CDF and County government offices visited, a general trend was observed where proper documentation was lacking. The procurement files were in most cases in skeletal form lacking various documents like newspaper advert, evaluation reports, bill of quantities and payment details. The lack of these documents raises suspicion about the level of transparency and accountability of the procurement process. Poor record keeping makes project evaluation difficult. For example, A project to install street lights lacks clear specifications of how many exact street lights are to be installed or the distance to be covered thus making evaluation/inspection on the ground difficult since even installing five poles will be considered as work done/complete. PPAD Act of 2015 Section 44 (2) (d) states that an accounting officer shall ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act. Further Section 68 (6) states that an Accounting Officer of a procuring entity shall maintain a proper filing system with clear links between procurement and expenditure files that facilitate an audit trail. Without proper documentation, accountability and proper monitoring of project implementation is compromised. There is need to prescribe a criminal offence for failure to maintain proper records regarding a procurement. This will ensure seriousness and accountability in the use of public funds.

6.1.9 Further Research

This Study has highlighted some of the issues affecting County Revenue Fund and Constituency Development Fund. However, there is need to undertake more detailed research on how corruption cartels have managed to entrench themselves in the Counties and their *modus operandi*. This will enable law enforcement agencies deal with corruption in the Counties that is becoming a serious threat to devolution.

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