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## **Assessment of Procurement System of Municipalities in Gaza Strip**

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بسم الله الرحمن الرحيم

"إن خير من استأجرت القوي الأمين"

صدق الله العظيم

## DEDICATION

**To my parents, wife and children, for their unlimited and generous support**

**Sofian Abu Samra**

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## ABSTRACT

The one investigating the Municipalities' status and the level of performance of their sections and departments, through the services delivery levels, will obviously and beyond doubt observe that those municipalities are not enjoying any kind of integrated administrative nor legal systems necessary to support its service delivery nor its mission. Furthermore, it is noticed that any changes to the municipal higher administrative team will severely impact the municipality impeding its performance in its mission and service delivery for a significantly long period time.

Therefore, the researcher outlined a conception for an important tool of project management in the municipalities which is the Procurement and Contracts Department. Comprehensive conception was proposed detailing the procurement legislations and separating it from the guidelines or other systems organizing the municipalities' departments and sections work.

During this research, all the available procurement legislations used within the municipalities, which were emanated as part of the municipal law and the Ministry of Local Government, were studied, considering that projects development and procurement issues are not only important parts of the mission and duties given to the municipalities but also an additional reason of its creation. The used procedures and guidelines which clarify and make the laws applicable and practicable by the municipal employees were also studied in the research.

The research, also clarified and highlighted the fundamentals necessary for establishing and developing sound and proper procurement laws.

Also the research brought up a method of measuring the legal and administrative shortcoming and gaps, in the Municipalities, through developing questionnaires to collect data from the municipality employees regarding procurement issues. The questionnaire comprised of seven parts; each part dealing with one fundamental of the procurement law. Statistical software was used to compile and statistically analyze the data collected through the questionnaires. A number of statistical tests were applied to test the correlation of the data in order to discover the extent to which the municipality's employees understand the used legislation and guidelines regarding procurement issues. The research has proven that many of the procurement fundamentals are not applied in the municipalities. This shortcoming is attributed to the lack of a sound procurement system that satisfies the needs of Clients, suppliers and Contractors. Another reason for this shortcoming is the absence of an integrated administrative system with defined duties to enable the concerned persons to develop and update the applied procurement system based on the past experience and the market needs. On the other hand, the research has proven that procurement laws and bylaws do exist and are used by municipality's employees but these laws and bylaws are scattered, incomplete and not enough for sound and proper procurement practices.

One of the most important recommendations of the researcher is the necessity to develop a comprehensive procurement law, emanating out of it a number of acts or guidelines satisfying the needs of the contracting authorities, contractors, consultants and suppliers. The establishment and

development of an administrative system, able and capable of applying, developing and updating these procurement laws, guidelines and specifications in order to maintain proper applications and accommodate for any future developments in procurement, project management and related businesses and industries, is also a necessity.

## الخلاصة

ان المتفحص لأحوال البلديات ومستوى اداء اقسامها وذلك من خلال مستوى الخدمة المقدمة، ليظهر له بما لا يدع مجالاً للشك ان هذه البلديات لا تتمتع بوجود أي من النظم الادارية او القانونية المتكاملة التي تدعم عملها بشكل يساعد على أداء مهامها، بل إن أي تغيير في أي من المستويات الادارية العليا يترك اثراً بالغاً يعبر عن مقدار عجزها عن أداء مهامها لفترة غير قصيرة.

لهذا ذهب البحث الى وضع تصور لأداة من أدوات ادارة المشاريع وهي ادارة العطاءات والعقود في البلديات ، حيث تم وضع تصور شامل يُفصّل ويُفصّل بين قانون العطاءات والنظم التي ترتب عمل الدوائر والأقسام في البلديات.

حيث قام البحث بدراسة جميع القوانين المتعلقة بنظم الشراء المعمول بها في البلديات، والتي انبثقت كجزء لا يتجزأ عن قانون انشاء البلديات أو وزارة الحكم المحلي ،على اعتبار أن المشاريع والتوريدات جزء مهم من المهام التي تم اسنادها الى البلدية وهدف من اهداف انشائها، وكذلك النظم المعمول بها او اللوائح التي تفسر هذه القوانين وتسهل لموظفي البلديات تطبيقها. ثم بعد ذلك ذهب البحث لتوضيح الاسس والقواعد التي يُبنى عليها قانون العطاءات والذي لا يمكن تحقيقه أو تطويره إلا من خلالها.

كما تطرق البحث الى طريقة قياس الخلل والفراغ القانوني والاداري الموجود في البلديات عن طريق انشاء استبيان يتكون من سبعة فصول ، وكل فصل يبين قاعدة مهمة من قواعد ارتكاز قانون العطاءات. ومن ثم تم استخدام برنامج احصائي لادخال البيانات ومعالجتها احصائياً وكذلك تم استخدام اختبارات احصائية لاختبار مدى الترابط بين الاجابات بما يساهم في التعرف على توجهات المشاركين ومدى ادراكهم للقوانين والنظم المعمول بها. حيث أثبت البحث ان هناك كثيراً من قواعد ارتكاز نظم الشراء غير مطبقة في البلديات، إما نتيجة لعدم وجود نظام متطور يلبي حاجات الملاك والموردين والمقاولين على حد سواء، أو نتيجة عدم وجود نظام اداري متكامل ذو مهام محددة يمكن نوي الاختصاص من تطوير نظم الشراء بالاستفادة من التجارب السابقة ، وعلى الجانب الاخر فان البحث اثبت ان هناك قوانين ونظم مكملة لكنها مبعثرة وغير كافية والتي يعتمد عليها العاملين في البلديات لاكمال اجراءاتهم.

وقد كان من اهم توصيات هذه الدراسة هي ضرورة ايجاد قانون متكامل، تنبثق عنه مجموعة من النظم التي تلبي متطلبات المالكين وطموحات المقاولين والاستشاريين والموردين.



وكذلك ايجاد نظام اداري قادر على تطبيق هذه القوانين وتحقيق القدر اللازم من العوامل التي تؤدي أو تساعد على تطورها ومواكبة التقدم في مجالات انشاء المشاريع او المواد والاعمال المرتبطة بها.

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## **CHAPTER - 1**

### **INTRODUCTION**

The procurement laws in Gaza strip demonstrate the picture of the administrative governmental system. The procurement instructions or guidelines were according to the command of the Egyptian Military Governor of Gaza Strip before 1967. These guidelines or instructions were as general, simple and uncomplicated instructions.

After the Israeli Military occupation of Gaza Strip in 1967, the procurement guidelines and instructions has become restricting. These restricting instructions constrained the legal advisors of Local Government Units (LGU's) as well as the Mayors and Municipal and Village Councils. As the used guidelines and instructions were very general, Local Government Units (LGU's) had to refer to the Israeli Interior Administration or Military Advisor whenever purchasing departments were stumbled by any simple problem during conducting procurement system for further instructions. These instructions by the Israeli Advisors were always in a way to serve the Israeli occupation in Gaza. This justifies why there was no assessment or development to the procurement system done during the 27 years of the Israeli occupation to Gaza.

As procurement has a huge influence on the financial, economical and industrial fields in the countries, the researcher has observed that the financing of implementation of projects has been conducted by several international institutions or by national and domestic ones. That means; these institutions employ or apply own procurement Laws or Guidelines. This has led to the emergence of numerous procurement systems, depending on the financing agency. These numerous procurement systems have great impact on the financial and economical situations in Gaza and produce an effect on the techniques of conducting implementation of projects or programs. Despite that, the variant procurement systems and experiences have an effect on improving the conducted programs and the development of Project Management Departments and building its capacities, it did not help in building on one strong procurement system, which has led to scatter the efforts aiming to having an efficient strong economy.



Since 1992 the donors have started to implement infrastructure projects in Palestine through nominated implementing agencies from these donors' countries using the proper procurement system which has created a diversity of systems in Palestine and become an important obstacle in developing the eco-infrastructure of the local market.

On the basis of unifying the bids procedures in Gaza and West bank, the Palestinian National Authority (PNA) through the Ministry of Finance has developed and prepared the Law of Logistics which has been approved by the Legislative Council and the Palestinian National Authority (PNA) President. Also, the Ministry of Finance has established the executive instructions for the Law of Public Materials which defined the limits of finance and the level of responsibilities for each person.

In 1999 the Ministry of Housing and Public Works has established the Law of Procurement of Works, and the guidelines of procurement of Local Government Units which for works and supply. This law was approved by the Legislative Council and the Palestinian National Authority (PNA) President. The Ministry of Local Government has established the executive instructions for this Law that includes the financial and technical instructions.

This law does not distinguish between the Bylaws for works and those for material supply. Also, the approved law does not mention how consulting services could be employed by the local government units.

This law has mentioned the urgent need of forming a Central Bids Committee in Palestine, which means centralization of decisions and concentration of the authority in one side.

Whereas this committee would be given the authorities' centralization, this will slow the procedures and lead to bureaucracy.

As mentioned above, the absence of a unique, clear and integral law has pushed the different institutions and Ministries to move toward resolving this complex problem on an individual basis. Thus this had a negative impact on unifying and preparing an integral system.

Due to the emergence of many procurement procedures for the different Palestinian Institutions and Ministries, the donors requested to use their respective procurement

guidelines. This has resulted in the existence of more than one procurement procedure in each Palestinian Institution or Ministry.

## **1.1 Particular Laws of Procurement**

### **1.1.1 Law of Adjudication**

The law of Adjudication was approved by the Legislative Council and the Palestinian National Authority (PNA) President in 2000 that was supposed to support the procurement staff in each institution but unfortunately the absence of the instructions have delayed the application of this law to date.

### **1.1.2 Law of Complaints**

The law does not include any clause that gives the contractor the right to present any complaint to protect him from any transgresses by the owner.

### **1.1.3 Law of Contractor Classification**

Depending on the Law of the Housing and Public Works and according to the By-Laws of Contractors' Union, the Local Government Minister formed the National Classification Committee to classify the contracting companies according to their experience, financial abilities, and staff.

Generally, the Law of Contractor Classification is a good but it has many deficiencies and many institutions do not approve the National Classification Committee's decisions, thus they have their own classification guidelines and procedures. Also, this law permits the accumulation and transfer of experience from a generation to another without taking into consideration the actual capacities of the company.

The law also does not encourage the unifying of the small companies in one big competent company.

Therefore, it is necessary to define and adopt an integral law which combines all the procedures of bids for works, supply of material or any kind of consultancy services. This

law shall include a concept for the administrative structure that realizes the accountability, integrity and transparency of the bidding and awarding procedures.

So, before preparing an integral system we have to evaluate the existing systems and get all the advantages to improve and incorporate them in the future integral system. The evaluation shall include all the inconvenient and advantage of the existing systems and their performance and what kind of improvements shall be considered.

## **1.2 Objectives of the Procurement Assessment**

The procurement policy aims to minimize cost and corruption without sacrificing quality. In addition, it promotes industrial development, technology transfer, support small firms, state enterprises and national security by domestic sourcing. In order to realize good level of performance of procurement and to secure continuous improvement with monitoring and satisfied evaluation, packed by best practice benchmarking, a periodical assessment should be conducted to provide the necessary tools to contribute in realizing the following (according to the procurement assessment report of the World Bank (CPAR,1998)):

- Provide a comprehensive analysis of the procurement system, including the existing legal framework, organizational responsibilities and control and oversight capabilities, present procedures and practices, and how well these work in practice.
- A clear and specific system shall be imposed to assure an accurate knowledge of the bids performance which will be useful in determining any mistakes or oversteps of authority.
- Undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices that are not acceptable for sound procurement practices.
- Develop a prioritized action plan to bring about institutional improvements.

- Assess the competitiveness and performance of local private industry with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

The World Bank at the Bank-Financed procurement manual (2001) mentioned that the principal hallmarks of proficient public procurement must include all influenced factors of economy, efficiency, fairness, reliability, transparency and accountability and ethical standards. A brief description of each follows:

**a) Economy:** Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price.

**b) Efficiency:** The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

**c) Fairness:** Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete.

**d) Transparency:** Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous.

**e) Accountability and Ethical Standards:** Good procurement holds its practitioners responsible for enforcing and obeying the rules.

The sound procurement system combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified suppliers or contractors.

### 1.3 Objectives of the research

The main objective of the research study is to assess the bidding policies in the municipalities in Gaza Strip. In particular, the research study will focus on:

- Reviewing the procurement law/s to assess suitability which includes a study of the particular clauses of the elderly laws which have been changed since 1965.
- Compare the current practical national procurement policies characteristics (transparency, accountability, decision-making and responsibility) with the World Bank and the European Union policies and define points of conformity and deficiency.
- Conduct an assessment of local procurement process and define range of compliance versus the standard international processes.
- Prepare proposals to improve the national procurement policies and processes based on the results obtained of the assessment of local law/s.

## **CHAPTER - 2**

### **PROCUREMENT**

#### **2.1 Definitions**

Borough Council for Procurement and Contract Management (2001) had mentioned that the procurement aims to obtain maximum supplier contribution to securing better services with an economical value for money. On the other hand, it is central to delivery of high quality public services, works or goods as well as simply securing value for money.

The Commonwealth Procurement Code (1999) Identified the procurement as "buying, purchasing, renting, leasing, licensing or otherwise acquiring any supplies, services or construction. The term also includes all functions that pertain to obtain any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration".

The Office of Procurement in Hawaii (2002) identifies procurement as the "buying, purchasing, renting, leasing, or otherwise supplying of goods, services, or construction including all functions that pertain to the obtaining of goods, services, or construction such as description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration".

The Department of Transportation and Public Works in Canada (2001) mentioned that the procurement means the acquisition by any means, including by purchase, rental, lease of conditional sale, of goods, services, construction or facilities, but does not include any form of assistance such as grants, loans, equity infusion, guarantees, or fiscal incentives, or provision of goods and services to persons or other organizations.

All procurement activities must be subject to a high standard of ethical behavior, consistent with the Procurement Departments Conduct. It must be fair and subject to normal commercial confidentiality, open procurement practices, policies and processes,

including this strategy, will be subject to continuous improvement with monitoring and evaluation backed by best practice benchmarking.

## **2.2 Procurement Policies**

At the World-Bank - Procurement Manual (2001) the agreements which have been signed with the beneficiaries countries give the Bank a responsibility to ensure that the proceeds of its loans are used only for specified purposes, with due attention to economy and efficiency and without regard to political and other non-economic influences and considerations. So the Bank has established the procedures and regulations to define the rules for supervising or monitoring the execution of projects. To ensure that these rules realize the policies of procurement, they must comply with the considerations to ensuring economy and efficiency in projects implementation including the procurement of goods, works and services, giving eligible bidders from member countries a fair opportunity to compete in procurement, encouraging the development of domestic industries and consulting services - in borrowing countries, and providing for transparency in the procurement process.

The procurement policy which was established by the Board of Commissioners of the Housing Authority of San-Francisco could for providing for the fair and equal opportunities for all persons or firms involved in purchasing; and to assure that supplies, works and services are procured efficiently, effectively, and at the most favorable prices; promote competition in contracting; provide preserve by maintaining a centralized procurement system of quality and integrity; and to ensure that the institution purchasing actions are in full compliance with applicable governmental standards. The statement of Procurement Policy complies with HUD's Procurement Handbook for Public Housing Agencies (1998), and the procurement standards of 24 CFR 85.36 (1998). The purpose of Procurement Policy is to provide a procurement system of quality and integrity; and assure that the purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and state and local laws. Procurement Policy (Statement) applies to all contracts for the procurement of supplies, services, and construction.

The Department of Transportation and Public Works in Nova Scotia government in Canada (2001) committed through the policy of procurement to:

- ensuring that the government's requirements for goods, works, services and facilities are met through an open and fair process which provides the high degree of competition and economic value price.
- ensuring that all bidders have reasonable notice and opportunity to tender.
- fostering economic development by giving every tenderer the opportunity to execute his commitment.
- encouraging the works to be competitive and to sustain quality product development.
- demonstrate clear position to national and international trade agreements, which create economic opportunities for developing the socioeconomic situation.
- treating out the bidders in the same manner.
- being accountable to the public for procurement decisions.

Therefore, the procurement policies could be concentrated in the following factors:

- Eligibility and legal frame work
- Basis of transparency and anti corruption factors
- Basis of accountability
- Organization capacity and staff responsibility
- Handling procurement complaint
- Responsibility and decision making

The following sections illustrate these factors in detail.



### 2.2.1 Eligibility and legal frame work

Government institutions and municipalities' funds shall be disbursed only on account of expenditures for goods, works or services provided by, for, from or through eligible system. The eligibility shall be granted after the following are considered:

- The procurement system
- The bidders
- The source of goods
- The works, goods or services themselves

**The procurement system:** It is essential to verify that the used or implemented procurement system is eligible, in the sense of the endorsement of this system by a recognized legislative body.

**The bidders:** The bidders shall be eligible in the sense of nationality and legal, financial and technical status. The World Bank within the Bank – Financed Procurement Manual 2001" has identified the eligibility of the bidders as follows:

- Eligible bidders must be registered in eligible source country and personnel providing services must be nationals of eligible source countries.
- Eligible bidders shall be commercially oriented and legally autonomous from the government of the executing agency. This is required to prevent conflict of interest and encourage competition.

The legal status has to be verified as whether the bidder has the required legal documents as business registration, permit, tax identification number and other appropriate licenses that may be required. The financial status has to be verified through the bidder's submission of audited financial statements, bank statements or any other financial documents deemed to be necessary. The technical status has to be verified through the bidders submission of his record of similar projects implemented by him and the qualified

staff that would be running the project and any other required documentation of equipments and other matters.

**The source of goods:** The source of goods has to be eligible in the sense of legitimacy, i.e. from a known source that has commercial relations with the client's country. The world Bank requires that any offered goods has to be from a member country.

The Works, Goods or Services have to be of legitimate nature and used for legitimate means and procured after obtaining the required permits or licenses from the concerned authorities.

### **2.2.2 Basis of Transparency and Anti Corruption Factors**

The European Commission has identified the transparency in his publication at February 1999 "Ensuring that transparency in procurement policies and practices is achieved". It means ensuring that information on procurement rules, practices and opportunities are made widely available in an easily usable form to all interested parties (and particularly potential suppliers), as well as ensuring the right of access to that information. Furthermore, procurement policies and practices should be seen to be transparent and information provided should be respected. In addition, transparency can be a useful tool to encourage open and competitive procurement regimes, thereby helping both purchasers and suppliers to achieve economic benefits.

The following points have been raised to date as requiring consideration in relation to:

- Choice of procurement method
- Providing information on national legislation and procedures
- Publication of procurement opportunities and procedural requirements
- Transparency of decision-making
- Domestic review
- Language of documents
- Use of information technology

On the other hand, the study of International Trade Center (1999) specified the degree of transparency helps to determine the effectiveness of the public procurement system. Transparency, in the context of public procurement, refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. Transparency is a central characteristic of a sound and efficient public procurement system and is characterized by (1999):

- Well-defined regulations and procedures open to public scrutiny
- Clear, standardized tender documents
- Bidding and tender documents containing complete information

- Equal opportunity for all in the bidding process

In other words, transparency means the same rules apply to all bidders and that these rules are publicized as the basis for procurement decisions prior to their actual use. It is an effective means to identify and correct improper, wasteful and even corrupt-practices.

The Transparency International Canada Inc (2000). indicated in his publication to the importance of transparency and the effectiveness of it on economic growth and procurement environmental sectors:

- **Transparency is fundamental to public confidence:** Transparency in public sector procurement results in public sector accountability by demonstrating that government officials are spending public funds responsibly.
- **Transparency promotes sustainable economic growth:** An open and transparent procurement process gives new entrant's confidence to compete for public contracts. This creates fair and healthy competition, leading to higher quality levels and reduced costs this efficiency, in turn, supports rational economic growth.
- By contrast, non-transparent procurement costs countries and companies needlessly, and is incompatible with the realities of today's global source.

Transparency shall ensure that there is a fair competition in the tender process and the government purchases best value for money. However, according to the World Bank Procurement Guidelines (1999), transparency involves the following key elements:

- Notification and advertising
- Pre-disclosure of relevant information
- Public bid opening
- Accessibility of applicable laws and regulations
- Use of standard bidding and contract documents

- Appeal mechanisms
- Debriefing
- Publication of awards

Therefore, that on important exception, where the funds from the Multilateral or Bilateral Development Banks are tapped in order to finance the project, in that case, the borrowing country commits itself in the Loan Agreement with the development bank to the principles Transparency and Efficiency in procurement and is required by the Banks to follow their specific Procurement Guidelines and purchase the construction works through International Competitive Bidding. So that the Transparency in public procurement should be provided through:

- **Adequate Notice:** Timely notice of opportunities to allow bidders to properly evaluate projects and prepare bids. Invitations should be published and should establish a minimum term of 30 - 60 days (according to size of project) from publication for proposal submission.
- **Neutral Standards:** The broadest possible scope should be applied to technical specifications to insure that all qualified bidders have an opportunity. Bid specifications should be stated in terms of internationally recognized standards, and performance standards should be used to ensure equivalent products are treated equally.
- **Specifications Development:** All qualified suppliers should be invited to participate in the development of specifications prior to the issuance of requests for proposals.
- Specifications developed should be widely disseminated with a request for public comment to ensure requirements adopted for procurement can be met by the widest possible range of competitive suppliers.

- **Objective Criteria:** Bidding documents should specify the relevant factors in addition to price which are to be considered in the bid evaluation and the formula by which they will be applied.
- **Public Tenders and Bid Openings:** Tender or bidding documents should be made publicly available in the country of procurement, and all bids should be opened in public, in the presence of all bidders.
- **Award of Contracts:** Contracts should be awarded to the lowest compliant bidder or to the bid offering the best overall value (as specified in advance) on the basis of objective criteria. Awards, including the total amount of the award should be internationally published.
- **Dispute Settlement with Impartial and Fair Review:** Contracting agencies should provide unsuccessful bidders access to an impartial, fair and independent review of compliance with the bid process. Standard written procedures for lodging a protest and adequate remedies for non-compliance should exist.
- **Protection for Intellectual Property:** Bidders' rights to their technical data and patents must be protected in the procurement process. Technical submissions should be treated as proprietary and confidential. Inappropriate transfer of proprietary technical information should be sanctionable.

Other benefits of an effective transparent public procurement system integrated into improved national budgeting procedures are a more realistic market price structure, and a better control of public expenditures and resources.

Transparent procedures help attract more investment by lowering risk. A transparent procurement system allows competing private enterprises to judge the risk of doing business with the government. They can make more realistic economic investment

decisions where government procurement policies are in line with good commercial practice and public accountability requirements.

### **2.2.3 Capacity Organization and Staff Responsibility**

The systems, used for the procurement, are organizational system. They involve people in a series of strategic decisions, and a pattern of roles, responsibilities and relationships that combine to form the organizational structure of the project.

To define the organization system and decision making of procurement one must know the steps of the process of procurement, which must be taken to manage the procurement system.

The European Space Agency (1994) had designed the organization capacity of procurement according to procurement process and the phases of decision making as described below.

### **The Procurement Process**

The procurement process is designed to achieve the best possible trade-off between the objectives of technical, economy and industrial policy as defined in the Convention and in the Contracts Regulations. Luis F. Alarcon<sup>1</sup>, Rodrigo Rivas<sup>2</sup>, and Alfredo Serpell<sup>3</sup> within "evaluation and improvement of procurement processes in construction projects" paper 1995 identify the procurement processes is the processes required to supply equipment, materials and other resources required to carry out a project.

It is also implemented so as to give tenderers the guarantee, that the competitive procedure will be conducted in complete fairness, and that their offers will be evaluated with the greatest care and total impartiality.

The implementation of the procurement procedure is a joint task of technical initiating services and the Contracts Department. A major task of representatives of the Contracts Department is to ensure that the rules and procedures, established in order to achieve the objectives stated above, are strictly observed.

The following describe the internal part of the procurement procedure, and although some of its features are of no direct concern to potential tenderers or contractors.

### **The Planning and Preparatory Phase**

The key person in procurement procedure, on the technical side, is the initiator who is nominated by his hierarchical superior (Director, Head of Department, Head of Division or Head of Section). He has the responsibility, and the budget, to handle one or more procurement(s). The initiators are supported by other Agency services, in particular the Contracts Department. Before initiating a procurement action, an initiator must verify that there is a corresponding approved programmes and budgets, and certify this to the Contracts Department. At that stage, the **initiator**, together with the **contracts officer** nominated for the action, establishes the planning for the preparation and implementation of all the phases of the procurement cycle and prepares a Procurement Proposal.

For medium and large procurements, they prepare a Procurement Plan which sets out the overall approach, and identifies the main procurements which are the subject of individual Procurement Proposals. Depending upon the costs and the nature of the procurement, the procurement proposal must be submitted for approval to the Industrial Policy Committee or to an internal Adjudication Committee for approval. The main purpose of this comparatively recent procedure is to obtain early approval of the intended procurement approach - competitive or non-competitive tender; price range and type of contract; planning and phasing; industrial policy requirements if any.

### **The Initiation Phase**

The initiator starts a procurement action by transmitting to Contracts Department a 'Request for Contracts Action'. This request bears the signatures confirming all the necessary prior approvals and is accompanied by the technical/management requirements (technical specifications, work-statement, and management plan).

These shall be prepared by the technical service concerned, in cooperation with the contracts officer. They will constitute the main part of the Invitation to Tender/Request for Quotation.



## **Preparation of the Invitation to Tender/Request for Quotation**

Although the Invitation to Tender is signed by and formally issued under the responsibility of Contracts Department, the preparation of the Invitation to tender documentation is a joint effort of the technical and the contracts officers.

### **Tendering Procedure:**

The contracts officer, working in close cooperation with the initiator, will complete the preparation of the Invitation to Tender documentation by preparing and adding to the technical and management requirements a Cover Letter, Special Conditions of Tender and a Draft Contract. The Cover Letter contains a number of essential features of the Invitation to tender namely:

The reference to the programmes/activity concerned (item number in the list of intended Invitations to Tender for the year concerned), the name of the contracts officer who will be the only point of contact during the whole tendering procedure), an outline of the main conditions of the Invitation to Tender: subject and type of procurement, type of contract/price, planning, geographical distribution requirements, the formal conditions of submissions: tendering date and time of delivery of the tender.

Some Invitation to Tenders, and most of them in the field of technology and research, mentions an amount which corresponds either to a guideline for the preparation of the price submission, or to an absolute budgetary limit of the funding available. This latter element represents a substantive requirement of the Invitation to Tender, and tenderers should never exceed it if they do not want to see their offer rejected.

Attached to the letter are also the Evaluation Areas/Criteria which are pre-established.

### **General Conditions of Tender**

They contain a number of very important formal and substantive conditions for the preparation of tenders: general standards of presentation, nature of the commitments and undertakings to be given in the tender, planning and costing requirements (standard forms to be completed and delivered with the offer), conditions relating to intellectual property rights, conditions relating to subcontracts, amendments to documents, communications

with ESA during the tendering period, dispatch and receipt conditions. They are not attached to the Invitation to Tender/Request for Quotation documentation.

**The Special Conditions of Tender** specify and complete the various points of the General Conditions of Tenders concerned: number of copies, planning and costing forms selected from the standard package to be used and other specific requirements.

Invitation to Tenders/Request for quotations always contains a draft contract (or several in the case of a multi-phase procurement).

As from the Invitation to Tender/Request for Quotation preparation phase, the procurement process is governed by the provisions of the Tender Evaluation Manual and falls under the exclusive authority and responsibility of the Tender Evaluation Board.

This Board is an independent committee made up, on a parity basis, of staff directly in charge of the procurement and other staff external to the team (including Contracts Department). The chairperson is selected at a level of Director, Head of Department, or of Head of Division, reflecting the importance of the procurement.

The aim of this procedure is obviously to ensure complete fairness and objectivity this of the evaluation and recommendation. While the body finally authorized to take, the decision is free to follow to or not the Tender Evaluation Board recommendation, experience has shown that divergence is very rare, and based on additional considerations. The first task of the Tender Evaluation Board is to review the Invitation to Tender documents and to ensure that they constitute a proper basis for a fair and equitable competitive Invitation to Tender, and that they meet all requirements and instructions. The Board has also to approve the evaluation areas and criteria and to appoint evaluation panels in the case of large projects.

### **Distribution of Invitation to Tenders/Request for Quotations**

The complete Invitation to Tenders/Request for Quotations documentation must then be distributed to all the firms who have been notified, or who are known to have a potential interest and who qualify for participation according to the principles should be described.

## **The Tendering Phase:**

Preparation and Submission of an offer in a normal open competitive situation, tenderers are given a minimum of six weeks (or according to limited period which would included through bidding documents, proportionate to importance and degree of project) to prepare their offer.

## **Submission and Evaluation of Offers:**

As already stated, the responsibility for the proper conduct of the tendering and evaluation phase is under the authority of the Tender Evaluation Board, the organization and role of which should already been described.

The first formal step to be taken, upon receipt and registration of the offer by the central mail office of the establishment concerned, is for the Tender Opening Board to verify, on the closing date, that the offers received constitute valid offers which contain all the fundamental elements stipulated and that they have been prepared, sent and received in accordance with the General Conditions of Tender requirements.

The evaluation process will then start and can take from a few days to a number of weeks, or even months for large projects. The preparation and approval of these requests, which are strictly limited to clarification, and potential improvement, is carried out under the authority of the Tender Evaluation Board. Dispatch, as well as receipt of replies is handled by the Contracts Department following the same strict written procedure as during the bidding phase.

The procurement rules forbid any other kind of contact, discussion or negotiation with tenderers during that phase.

Negotiation with tenderers before the formal evaluation process under the authority of the Tender Evaluation Board (Tender Evaluation Board) has been completed, are only permitted in very special circumstances, and under very strict conditions.

When the Tender Evaluation Board is not able to make a recommendation for the award of the contract, the Board recommends negotiation. At the end of this procedure, the final Tender Evaluation Board discusses and endorses (or corrects) the various evaluation-panel

reports, establishes the final total marking of each offer, applies the weighting factors, and formulates a recommendation.

### **Award and Placing of Contracts**

On completion of the evaluation process, the final Tender Evaluation Board recommendation is transmitted to the appropriate authority for making the final decision to award one contract, or in some cases to award several contracts, or even (exceptionally) not to place any contract at all.

Depending on the nature and importance of the procurement, this final decision may be taken either at the level of the Head of the Technical/Project Department concerned and the local of Contracts Division/Unit, or by a specialized internal committee for the awarding of contracts known as the Adjudication Committee or, for major procurements, by the Industrial Policy Committee.

Immediately prior to the dispatch of the contract, or preliminary authorization to proceed, Financial Approval has to be obtained internally and a Financial Commitment made. This is the registration of the actual commitment made in the Agency's accounting system. At this stage, the corresponding geographical distribution data is also entered into the Industrial Policy accounting system.

### **Debriefing of Unsuccessful Tenderers**

The Agency is always prepared to debrief unsuccessful tenderers. Such a debrief has proven useful, especially to newcomers, as it helps to improve the quality of their tendering and to increase their chances of success in subsequent actions. In particular, it may prevent firms from losing evaluation marks through unnecessary and formal non-compliances.

Normally, unsuccessful tenderers are informed immediately after the decision of awarding a contract has been taken, but occasionally, when there is doubt as to the success of the final round of negotiation, the Executive prefers to delay the notification. This delay is kept to a minimum to avoid long periods of uncertainty for tenderers.

According to staff organization and its responsibilities through procurement process we notice that the size of capacity organization is depend on the following:

- The system of decision making (centralized/decentralized system)
- The size of projects.
- Purchasing system and financial management of projects.
- Classifications and qualifications of contractors.
- Evaluation Bidders and awarding systems.
- Mentoring and reviewing systems.
- Complaint Handling, and arbitration system.
- Developing procurement regulation, law and instructions.

## **Organization Framework**

Public procurement should operate within the public sector to meet the following:

### **a) Organizational objectives:**

- Provide public accountability
- Achieve value for money in public spending
- Work within current government policies
- Ensure contract performance
- Operate within current or reduced resources

Government procurement objectives will not be achieved simply by developing procurement legislation. Legislation provides the rules. It does not determine procurement policies, procurement strategies or procurement performance.

Assuming government's procurement objectives involve policies on de-centralization, restructuring and privatization, the government should:

- Place responsibility for procurement clearly within the individual procuring entities,
- Form a Central Procurement Policy Office to develop coherent procurement policy, rules and regulations, and
- Include in the procurement legislation the establishment of an independent appeals board, with powers to address complaints from aggrieved bidders and provide corrective remedies.

## **b) Responsibilities of the Individual Procuring Entities**

Individual procuring entities need the authority to undertake the procurement of the goods, services, and works required meeting their responsibilities with the funds appropriated to them.

Officers of the government with delegated procurement authority need to be made accountable for the public procurement decisions taken by them.

To comply with accepted international standards, the contracting, monitoring and auditing roles must be clearly separated. Such a separation of function avoids conflicts of interest, encourages competition and improves value for money spent. The separation of the three roles can help ensure that the process is accountable and is seen to be accountable. This is important for developing trust between the public sector and its suppliers as well as potential donors. A responsible officer within each entity should ensure this requirement is met.

- Independent government officials should undertake the auditing process.
- The individual Ministries and other major procuring entities should also:
  1. Set themselves targets for savings
  2. Benchmark their performance against other public sector organizations and the private sector
  3. Collaborate with other departments/organizations
  4. Share information on contracts and savings achieved
  5. Promote continuous contracting performance improvements and shared benefits

## 2.2.4 Responsibility and Decision Making

### Objectives

Will Hughes (1990) tried to clarify the relationship between the procurement process system and the procedure of decision making in procurement. Hughes considered the definition of objectives of the process as the most important part of the process, and must be a clear statement, understood by all of the contributors to the project, about exactly what is intended by the project.

Nevertheless, the paper considered the decision making is involving people in a series of strategic decisions and a pattern of roles, responsibilities and relationships that combine to form the organizational structure of the projects.

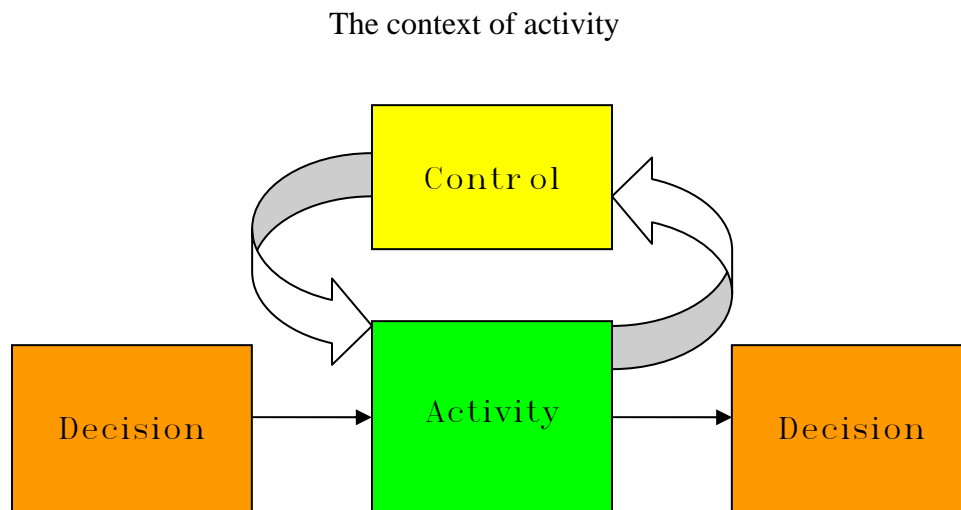


Figure: 2.1 Decision Making and Activities Relationship (Hughes, 1990)

The objectives of the project, arising from an environmental analysis, set the framework for all decisions, control systems and planning of the project.

The abstract model shows the relationships between levels of decision, stages of work, activities and operations.

## **Policy decisions**

The most important project decisions are called Policy Decisions. They trigger and terminate the process of procurement. At their simplest level they can be defined as

- a) The decision that a new project is required, and
- b) The decision that it has been supplied, in an acceptable state, and that all related contractual obligations are discharged.

## **Strategic decisions**

The identification of the stages of work is the next step in the process. There are seven distinct stages through which all projects must pass to achieve completion; these stages of work are punctuated by strategic decision points. Strategic decisions are those that link the project with its immediate environment. They also offer the client an opportunity for feedback on the project, to review progress and to enable an informed decision to be taken about proceeding with the project.

## **Tactical decisions and work packages**

Although the stages of work can be described in a way that will suit all projects, the actual tasks to be undertaken within each stage of work are unique to each project. To be able to define the breakdown of the project into identifiable work packages, it is essential to identify the tactical decisions. These will progress the project through the stage, from the trigger decision to the terminal decision. Thus, the next level of decision needs to be defined. Tactical decisions are concerned with the deployment of resources and the routine management of the project. The requirement is for a set of decisions that will incrementally progress the project to the objective for that particular stage of work.

## **Effective Decision Making**

A white paper on Effective Decision Making by Jonathan Hughes (1990) considers that a well-designed decision-making process helps those parties involved in making supplier management decisions better understand the organization-wide interests, objectives, and



constraints, allowing them to make better decisions more efficiently. Consider the three guidelines below for designing an effective decision making process.

### **Distinguish among different decision-making roles**

Determining who has the responsibility — much less the authority — to make which decisions when managing suppliers is often difficult. Absent systematic thought about how decisions will be made and by whom, it is inevitable that some decisions will take too long to make, some will be made without the benefit of important perspectives and will therefore be sub-optimal, and others will upset or alienate certain groups. Clarification of roles and authority early in the process streamlines decision making when multiple business units, functions, or geographies need to be involved.

Lack of clarity around decision-making roles internally often leads companies to send mixed messages externally — leaving suppliers to figure out who has accurate information and worse, to work on parallel and conflicting tracks at their customer's expense. In many companies, product development, engineering, logistics, procurement, and manufacturing often communicate with one another and with suppliers at different times about a variety of different but interconnected issues. Consider, for example, an organization where individuals from procurement and production interact with supplier account managers. When the account manager receives approval for a late shipment from procurement, only to receive an angry call from production when a critical line has to be stopped because of the delay, he naturally wonders who has the right information.

### **Aim to minimize the number of formal decision makers, and maximize the degree of efficient consultation**

Often companies assume that there is a fundamental trade-off between a highly inclusive but inefficient decision process and one that sacrifices the benefits of inclusiveness for speed. Many corporate sourcing and procurement groups realize that when important stakeholders are left out of decision making, key viewpoints are likely to be excluded,

which often results in poor decisions. Moreover, those who feel their voices are not heard are more likely to ignore or undermine the advice and recommendations of corporate sourcing and procurement.

### **Clearly define and balance decision-making rights with responsibilities**

Some people assume that the role of a formal decision maker is to approve or reject a recommended course of action. All experienced the frustration of working through a long and arduous decision process, only to have our hard work negated by the veto of someone who has not been involved up to that point. In an effective decision-making process, decision rights come with responsibility and accountability. Individuals who wish to have their opinion taken into account must be available and willing to make their opinions heard. Designated decision makers must put the time and effort into making a good decision, which often requires preparing for and attending meetings and consulting with others for their opinions.

By clearly articulating the responsibilities associated with each decision-making role, individuals have a better sense of the time and effort required to play that role effectively. They may find that, while they initially wanted to be a decision maker for many areas, the effort required makes it impossible for them to play that role well across too many decisions or issues. They are often then more willing to accept a different level of involvement, even in the absence of a formal voice in decision making.

### **The Decision-Making Process:**

Many of employees and managers have thought that the operations of decision making depend on inspiration and politeness or firmness behavior of the managers in the institutions. Furthermore, a closer observation to managers' behaviors indicates that their decision making process depend on their past experiences and comparison between the problems and cases which have faced them within their practical life.

However proper decision making depend on scientific methods and feasible data base, PhD. Mahmood Assaf 1982 mentioned in his reference page 506 the steps that must be followed to take the decisions which were represented in the following:

- problem definition
- collecting data and building the data base
- analysis of data base
- drafting the alternative solves of the problems
- choosing the appropriate solve and releasing the decision
- following up and assessing the decisions
- time schedule for implementation must be associated.

### Selecting a Team to Drive Decision-Making

Given the complexities of the decision-making process that is to be embarked upon, it is recommended that a team be selected early on to drive the process on a daily basis.

This should be a representative group of committed councilors and officials known for their integrity. While the team may consult with interested stakeholders and representatives it must be able to view the process from a broad, concerning stakeholder's perspective focusing above all on the interests of procurement system.

Due to the challenges inherent in the process, the team should be given adequate time in order to concentrate on this important task.

Members of the team should include a **team leader** whose primary responsibility will be keeping the process moving, ensuring that the necessary resources are available and taking the decision-making process toward closure.

A **professional stakeholder coordinator** should be appointed to concentrate on and manage the various interest groups that will want to participate in the decision-making process and be kept informed of developments.

One of the factors that might be considered when putting together a team is the representation of councilors from opposition parties. May this would add to the credibility of the final decision.

In designing the team, decisions should be taken up front about the legal and organizational status of the team: how it will be staffed; where it will obtain the resources

necessary to carry out its investigations and who will it be accountable to (for example, the Mayor, the Municipal Manager and/or the Executive Committee).

In establishing the team the Municipality should ensure that it has sufficient managerial autonomy to carry out its tasks, that it is not subject to political interference, and that major policy issues are dealt with as they arise by putting in place reporting and accountability mechanisms.

### **2.2.5 Basis of Accountability**

From a management point of view accountability usually means holding individual employees (manager or individual contributor) responsible for their work. This requires some measurable output and a standard against which to measure. The employee must also know of and accept responsibility for the output, be aware of and accept the standard, understand the quality required, and have access to the resources (abilities, skills, tools, time and whatever else is necessary) to execute against the standard.

The most common accountability system is performance appraisal or performance review. One reason for both management and individual employees dislike this system is that it usually doesn't meet anyone's standard for accountability. There are many meanings to the word of accountability:

- conscientious
- culpable
- dependable
- diligent
- ethical
- liable
- reputable
- scrupulous
- steady
- trustworthy

Mark Samuel (2000) suggests five levels of accountability

1. **Entitlement:** No one is accountable and each individual pursues his or her own agenda.
2. **Individual Accountability:** The individual is accountable for individual results. This fosters competition among employees, essentially encouraging individual results at all levels.
3. **Work Unit:** The team, project, department or division is accountable for their specific results with no obligation to integrate with other units.
4. **Cross Functional:** All functions and work units are accountable internally and to each other.
5. **Organizational:** All stakeholders, including all individual contributors, managers, functions, senior management and the Board of Directors, are accountable to regulatory bodies.

Most managers want each employee to do their job, meaning Individual Accountability. In fact, it's what most performance appraisal systems require, creating a systematic prohibition of high level performance. When individuals are responsible only for their own results, there is no implicit requirement, let alone incentive, to discretionary effort. To be accountable, means to do the best job possible for the organization as a whole. It requires some level of risk taking, which is a function of the perceived career/job safety and organizational trust level.

## **Success through Accountability**

High management level in an organization system are attempting to realize the institution aims and objectives by establishment accountability system between employees levels, to improve teamwork performance quality and responsiveness, therefore improving concerned stakeholders satisfaction.

### **Objectives of Accountability:**

- Improving performance, teamwork and developing Employees careers.
- Employees gain a better understanding of their role, and relationships with critical partners in carrying out their role.
- Employees learn behaviors associated with being accountable and self-assess their strengths and weaknesses along with making a commitment for improvement.
- Employees identify specific actions for developing or improving their relationship with interested stakeholders, team members and management.
- Employees identify strategies for going into the workplace with a clear plan for making a positive impact and creating their own job satisfaction.

One of the major problems organizations faces today is the challenge of developing accountability in their employees. Therefore, the process develops accountability by making sure employees understand how their work will contribute to the success of the team and organization.

## **2.2.6 Handling Procurement Complaints:**

The procurement complaints process is based on resolving complaints at an agency level, if at all possible. Further avenues for complaint are available where the complainant is unhappy with the agency's response.

To assist agencies to establish an effective complaints process, these guidelines address preventing complaints, the essential elements of a complaints process, complaint handling procedures and reporting requirements. The critical success factor, however, is a commitment to the efficient and fair resolution of complaints by all levels of staff in an agency, including senior management and the head of agency.

The primary reasons for establishing a procurement complaints process are to increase the level of community satisfaction and to enhance the agency / supplier relationship.

An obvious key complaints management strategy is prevention. To ensure that suppliers are provided with the fair opportunity to tender/quote for government business and that specifications are clear and not biased toward any particular brand.

The essential elements of an effective complaints process are commitment of all staff to the effective and fair resolution of complaints. The availability of capable staff to resolve the complaints and the visibility of the process are also essential elements.

## 2.3 PROCUREMENT PROCESS

Alarconl (1995) identified the procurement process as the process required to supply equipment, materials and other resources to carry out a project. This process usually involves sub-processes such as acquisition, purchasing, logistics, monitoring, quality assurance and contract administration.

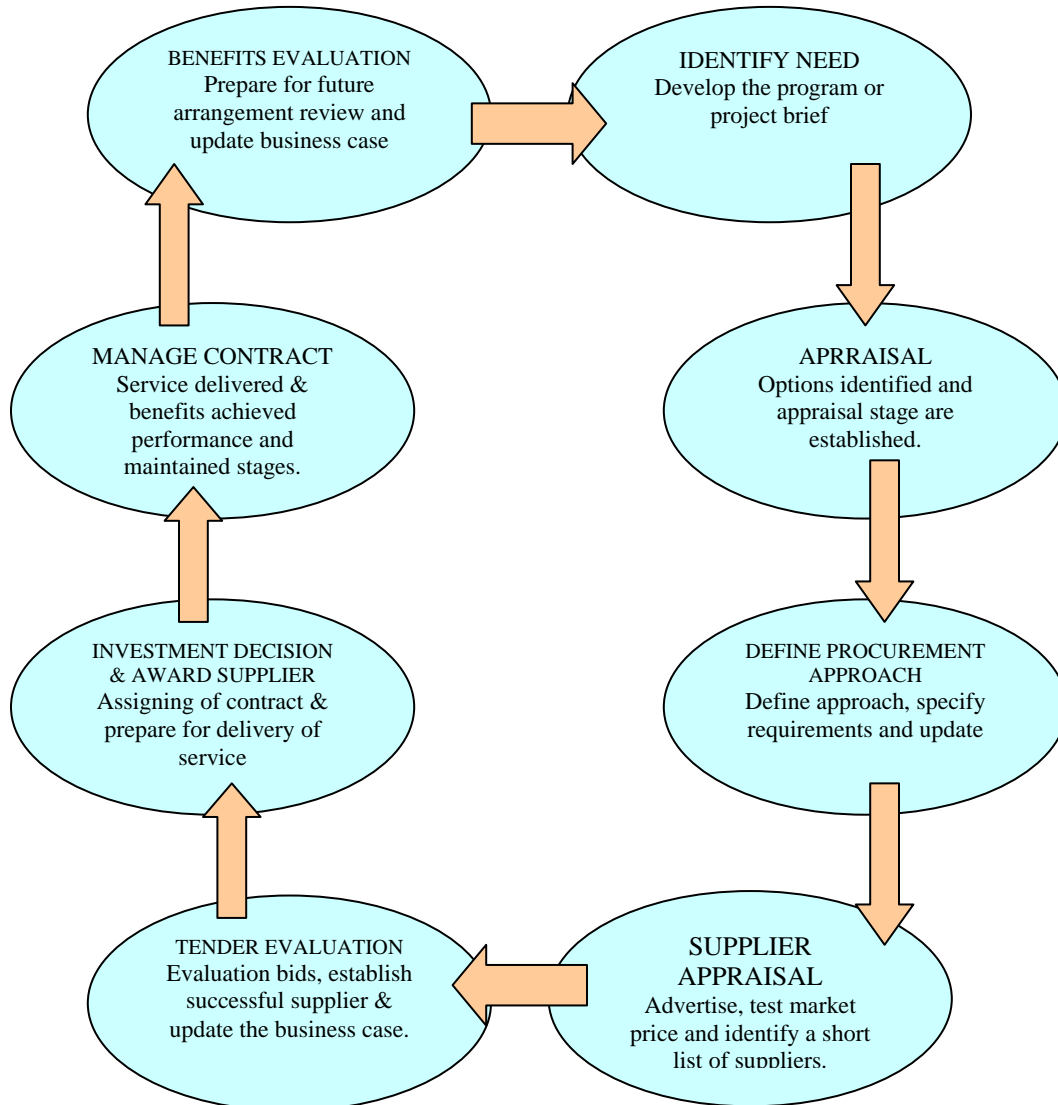


Figure: 2.3 The procurement process cycle (Improvement and Development Agency, 2003)

The Improvement and Development Agency (2003) identified the procurement cycle as a process that begin with establishing the justifiable need through development of the



business case, competition, awarding and managing the contract and preparing for what will happen once the contract expires, see Figure 2.3.

The World Bank (2001) defined the procurement process as shown the following in Figure 2.4 in section 28 of procurement manual 2001.

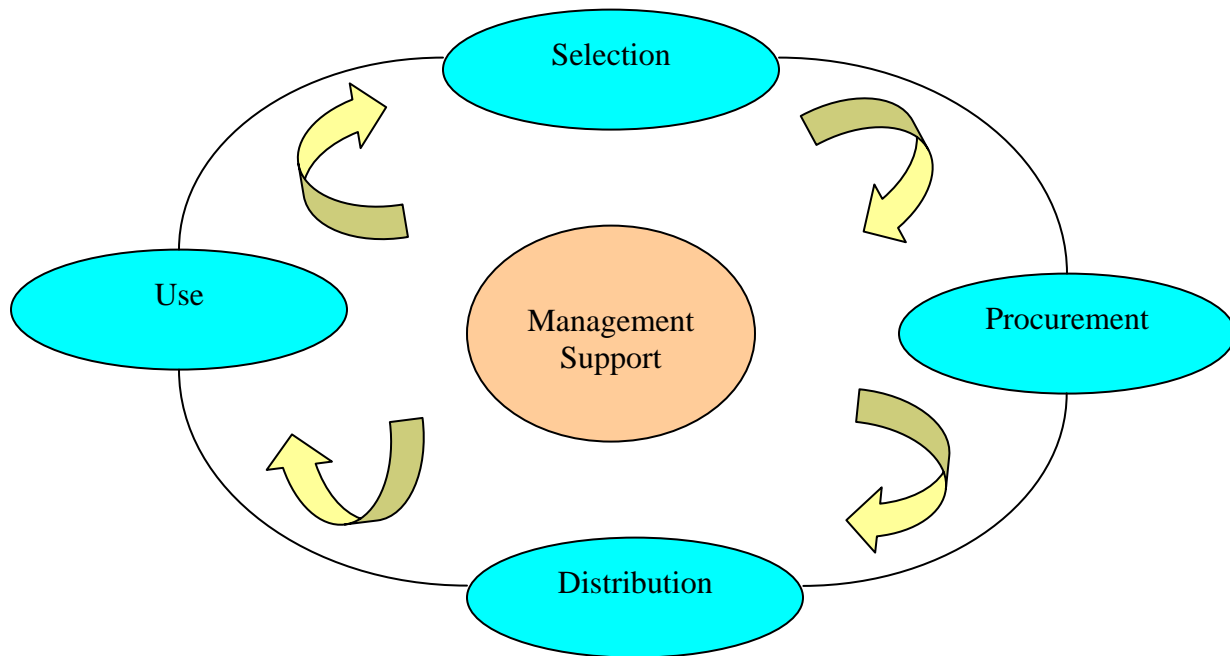


Figure: 2.4 Relations between procurement process and management support, World Bank (2001)

The World Bank experience has shown that the objectives of procurement are successfully met when careful attention is paid to a much boarder of activities and these include appropriate delivery to and storage system, stringent monitoring and assurance of quality through inspection and product testing and transparent, fair and cost effective management of the purchasing of goods, works and services.

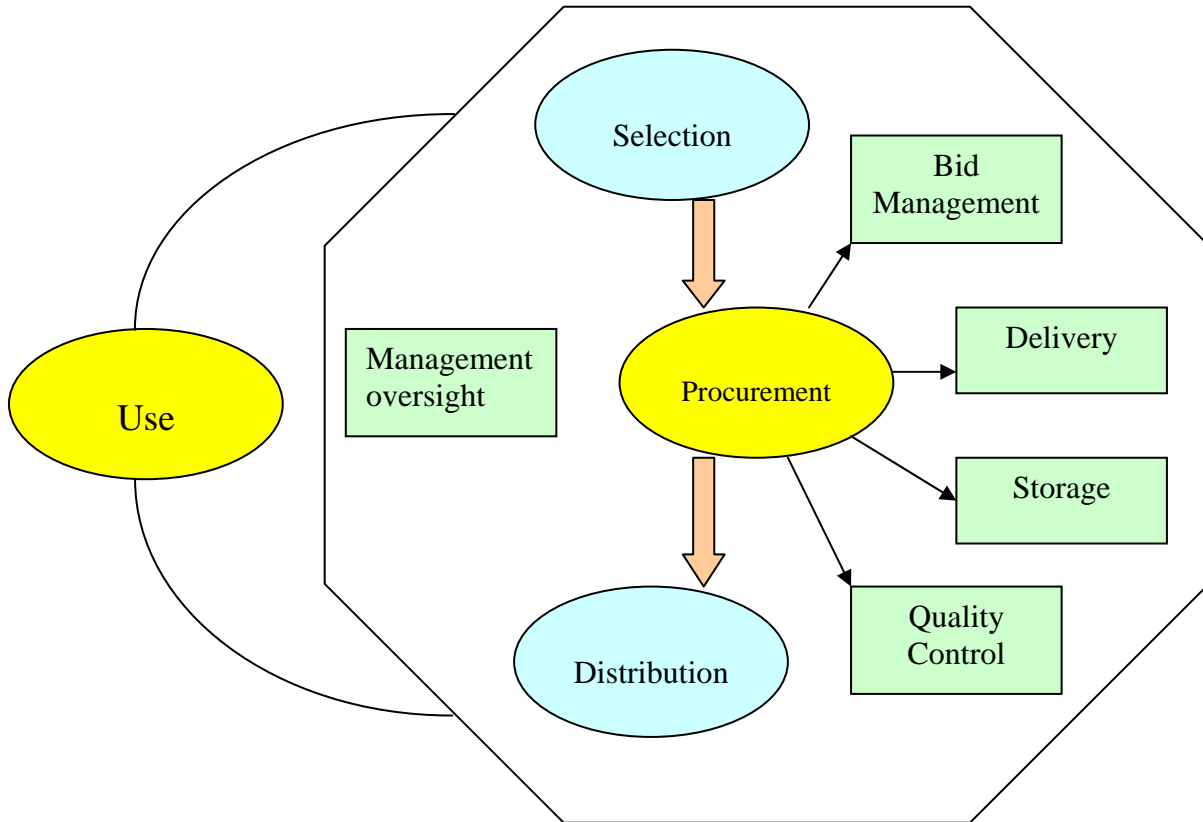


Figure 2.5 Procurement process and related operations control (The Department of Transportation and Public Works 2001)

The Department of Transportation and Public Works – Procurement Branch in Canada (2001) defines the procurement process as shown in Figure 2.5 as the steps which must be followed to realize large degree of transparency and fairness dealing with bidders.

And depending on the above relations and responsibilities and levels of management, the procurement processes was represented by the following stages:

### 2.3.1 Alternative Procurement Processes

According to some circumstances or emergency conditions in procurement practices, the municipalities must prepare other suitable procurement methods according to the municipality's policies.

### **2.3.2 Invitation to Tender**

An invitation to tender solicits competitive bids. It is used when the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria and specifications. The tender document describes the specifications to be met and the terms and conditions that will apply.

### **2.3.3 Request for Information**

It means a procurement procedure where suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. It may be used to assist in preparing a solicitation document. No contract awards are made directly from a request for information.

### **2.3.4 Request for Proposal**

A request for proposal is used when a supplier is invited to propose a solution to a problem, requirement, or objective. Suppliers are requested to submit detailed proposals in accordance with predefined criteria. The selection of the successful proposal is based on the effectiveness, value, and price of the proposed solution. Negotiations with suppliers may be required to finalize any aspect of the requirement.

### **2.3.5 Request for Qualifications**

Request for qualification means a procurement procedure used for the qualification of goods or services or to invite suppliers, if they meet the required qualification criteria, to register on a permanent source list or on a particular source list intended for a specific competition.

### 2.3.6 Request for Evaluation

According to North American Development Bank documentations (1999), the purpose of bid evaluation is to determine the lowest evaluated responsive bid from amongst the substantially responsive bids received. In order to determine the lowest evaluated responsive bid, a systematic evaluation process that follows a logical sequence should be followed.

**The process outlined in this note covers:**

- receipt and opening of bids
- examination of bids
- seeking clarifications from bidders
- evaluation and comparison of bids
- post-qualification of the lowest evaluated bid
- award recommendation
- evaluation report
- notification of award

Bids which have not been declared substantially non-responsive will then have to be evaluated in depth. Before a bid can be evaluated the following must be done:

- computational errors must be corrected in accordance with the relevant provision in the instructions to bidders
- bid prices must be converted to a common currency in accordance with the relevant provision in the instructions to bidders.
- adjustments should be made for any obvious omissions, deviations or variations which are not considered to be material and which can be quantified
- the adjusted bid price resulting from the above would constitute the basis for the subsequent evaluation and comparison of bids.

The detailed evaluation of a bid involves first checking that the technical characteristics, functional performance and commercial conditions of the bid are in accordance with the bid requirements.

The next step is to apply the evaluation criteria specified in the bidding documents and adjust each bid as appropriate using the evaluation criteria. Only the criteria specified in the bid document can be applied. No new criteria must be introduced at evaluation, and the specified criteria must be applied wherever appropriate. Specified criteria cannot be waived during evaluation.

Whereas a large number of bids to be evaluated (over six) and the spread of bid prices is relatively wide, it is not necessary, in the first instance, to evaluate all bids in detail. One can usually determine, from the specified evaluation criteria, the range of bid prices relative to the lowest bid price which stand a reliable chance of being the lowest evaluated bid. In such cases it is recommended that, in the first instance, only those bids within this range should be subjected to a detailed evaluation. If the lowest priced bid is rejected during evaluation, the range must be predetermined, and all bids in the revised range must be subject to a detailed evaluation.

The adjusted bid price of each bidder will require adjustment in accordance with the evaluation criteria in the bidding documents, in the manner and details specified therein, to arrive at the evaluated bid price.

The evaluated bid prices are compared and ranked in ascending order to determine the bidder with the lowest evaluated price.

### **Bid Evaluation Report**

A bid evaluation report with the award recommendation must be prepared. The bid evaluation report should reflect the logical sequence of the bid evaluation process in the following manner:

- receipt and opening of bids
- examination of bids
- substantially non-responsive bids

- correction of arithmetic errors
- currency conversion
- adjustment for nonmaterial deviations
- bids subject to detailed evaluation
- evaluation of bids
- comparison of bids
- lowest evaluated responsive bid
- post-qualification
- award recommendation

The bid evaluation should be prepared in the format outlined in the Model Bid Evaluation Report in the manner and detail outlined therein, including all forms should be designed in this stage.

### **2.3.7 Sole Source**

A sole source is defined as an award made using a non-competitive process that does not conform to the standard exceptions for alternative procurement practices.

### **2.3.8 Unsolicited Proposals**

Unsolicited proposals are submissions from any source where the originator believes the proposal may be of benefit to the user. These proposals are not in response to a tender call or other type of request from the entity.

The entity may consider a range of options, including a pilot project, partnership, or other arrangement, that may be undertaken to assess the merit of such a proposal.

### **2.3.9 Procurement Value**

Procurement value means the estimated total financial commitment resulting from procurement, not taking into account optional renewals when the compulsory part of the contract is completed.

### **2.3.10 Public Advertisement**

A public advertisement means advertising in the public media with provincial circulation. In addition, public advertisement includes provision of information on an Electronic Bid Notice System.

### **2.3.11 Services**

Services refer to any activity or work of a technical or non-technical nature done for hire.

### **2.3.12 Statutory Monopoly**

Statutory monopoly refers to an enterprise that in any relevant market has been designated by law or by public authority as the sole provider of a good or service.

### **2.3.13 Supplier**

Supplier means a person or company who, based on an assessment of that person's or company's financial, technical, and commercial capacity, is capable of fulfilling the requirements of procurement and includes a person or company who submits a tender for the purpose of obtaining a contract.

### **2.3.14 Technical Specification**

Department of Transportation & Public Works, - Procurement Branch Technical specifications means a specification that sets out characteristics of goods or their related processes and production methods, or characteristics of services or construction projects or their related operating methods, including applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a good, process, or production or operating method.

### **2.3.15 Tender**

Tender (also referred to as a bid or proposal) means a supplier's response to a tendering procedure (also referred to as a call for tenders).

### **2.3.16 Tendering Procedures**

Tendering procedures (also referred to as Procurement Processes) are the processes by which suppliers are invited to submit a tender, a proposal, or a cooperative business solution and include the ways in which those tenders, proposals, or information submissions are treated.



## **CHAPTER THREE**

### **Research Methodology**

#### **3.1 Introduction**

In order to realize the objectives of the research, an assessment of local procurement process was conducted, compliance with the standard international processes were studied, and a proposal to improve the national procurement policies and processes based on results obtained from assessing the local law/s is proposed.

Therefore in this chapter, methods of field survey, data gathering and analysis were introduced.

A questionnaire is used to investigate the local perception and practice in the procurement management, procurement process and procurement development. Full questionnaire form is attached in annex A.

Reviewing the local procurement law/s by comparing the current practical national procurement policies (transparency, accountability, decision-making and responsibility) with the World Bank and the European Union policies was done to define the points of conformity and deficiency.

#### **3.2 Questionnaire Design**

The questionnaire is based mainly on exploratory questions that are based on the diagnostic approach of the local practice in procurement management. The respondents were asked to address their opinion on the questionnaire topics. For most of the topics, they have to express their level of importance as well as the degree to which they are implementing the concept included in each topic. The importance is included in an ordinal scale of five degrees (Very Important, Important, I don't know, Objection, Strong Objection) each degree of agreement scale is assigned the following levels (5, 4, 3, 2, 1) respectively. The implementation is also indicated in an ordinal scale of five degrees (Strongly Agree, Agree, I don't know, Weakly Agree, and Very Weakly Agree), each degree is assigned the following levels (5, 4, 3, 2 and 1) respectively.

### **3.2.1 The Research Questionnaire**

The questionnaire is prepared based on the researcher experience, guidelines applied by the municipalities, and ideas extracted from the literature review. The questionnaire is designed to cover the requirement of the research objectives. The questionnaire includes the following topics:

1. Transparency
2. Responsibility and Accountability
3. Administrative Organization
4. Supply System Management
5. Advertisement
6. Documentation
7. Evaluation and decision making.

### **3.2.2 Questionnaire Validity**

A panel consisting of five experts was asked to verify the validity of the questionnaire topics and this relevance to the research objectives. Based on the comments of expert's judgment, some modifications in the text of the questionnaire were performed and discussed with the supervisor and then the questionnaire is finalized in its final shape.

### **3.3 Survey questionnaire**

The research has been designed in such way to assure and define the range of application of the procurement policies through asking procurement responsible persons in different governmental and private Palestinian institutions, especially contractors and suppliers.

The following topics were tackled in the questionnaire:

- Eligibility and legal frame work
- Basis of transparency and anti-corruption factors
- Basis of accountability
- Organization capacity and staff responsibility
- Procurement planning

Record keeping

### **3.3.1 Aim of the Field Survey**

The field survey aims at collecting required data to accomplish the research objectives. This includes investigating the local practice in procurement, procurement process, decision making, and magnitude of realization of the procurement practices being adopted by the Municipalities in the Gaza strip.

### **3.4 Research Sample**

In order to complete the study, the procurement situation, target groups directly involved in this business were categorized to satisfy the research objectives.

Three types of population were considered in this study. The first population is the Contracting Companies of First Class "A", First Class "B", Second Class and Third Class, who were registered by the Palestinian Contracting Union in Gaza Strip, at year 2004. 69 Construction Companies were registered; these classes were described and classified as the following:

**First Class "A":** The construction company which has an experience of projects implementation provided that the total sum of projects is not less than US\$ 8 million.

**First Class "B":** The construction company which has an experience of projects implementation provided that the total sum of projects is not less than US\$ 4 million

**First Class:** The construction company which has an experience of projects implementation provided that the total sum of projects is not less than US\$ 2 million

**Second Class:** The construction company which has an experience of projects implementation provided that the total sum of projects is not less than one million US\$

**Third Class:** The construction company which has an experience of projects implementation provided that the total sum of projects is not less than a half million US\$

Based on the above categorization, a hundred and three construction companies were registered at the Palestinian Union.

The second population is the "Engineering Consulting Firms", who were registered by the Engineering Syndicate in the Gaza Strip at year 2004. Fourteen (14) consulting firms were registered in the project management sector.

The third population is the local institutions consisting of governmental institutions (ministries) and municipalities, 20 major institutions were selected.

### 3.4.1 Sample Size

To choose the sample size from the total population, which equal 103, the formula shown below was used for unlimited population (Creative Research System, 2001):

$$ss = Z^2 p \frac{(1-p)}{c^2}$$

**Where:**

SS = Sample size

Z = Value (e.g. 1.96 for 95% confidence level)

P = Degree of variance between the elements of population (0.5)

C = Confidence interval (0.05).

$$ss = 1.96^2 * 0.5 \frac{(1-0.5)}{0.05^2} = 384.16 = 385$$

To correct for finite population, the formula below is used:

$$newss = \frac{ss}{1 + (ss - 1)} \cdot pop$$

Where: POP = population

$$newss = \frac{385}{1 + (385 - 1)} \cdot 103 = 81.3 = 81$$

### 3.4.2 Method of Choosing the Sample

Applying the above formula, the Stratified Random Sampling was used. Random choosing of each population was used one by one trying to ensure that all interviews were covered as shown in Table 3.1

**Table 3.1:** Classification of sample size of construction companies and institutions.

Population	No.	% of Sample	No. of sample	Modified Sample
Construction Companies	69	66	53.46	54
Consultant firms	14	14	11.34	11
Governmental institutions	6	6	4.86	5
Big Municipalities (class A)	14	14	11.34	11
Total	103	100	81	81

### 3.5 Field Survey Results

The questionnaire results were introduced and analyzed, using SPSS. Descriptive statistical analysis is used to identify the local practice in the management of procurement in the municipalities and institutions in the Gaza strip. Diagnosis of weakness spots within the system, which has been applied in the municipalities, in an attempt to designate consistent system, was made.

This analysis intends to help these institutions developing the law and guidelines of procurement, and identify the areas where effective tools to monitor the performance of the municipalities could be used.

### **3.6 Assessment of local procurement processes**

The assessment will specify the elements which help in defining the technical and administrative competence of the national procurement process and it will be a tool to compare the national procurement processes with the World Bank and European Union processes, including the procurement cycle management. The evaluation will tackle:

- Procurement planning
- Preparation of bidding documents
- Management of the bidding process from advertisement to bid opening
- Bid evaluation
- Contract award, effectiveness and administration
- Preparation and signing of contract
- Contract management during implementation, including dispute resolution methods.
- General handling of procurement cycle (duration, actors, reviews, etc.)
- Monitoring, evaluation and record keeping

## **CHAPTER - 4**

### **Field Survey Results**

#### **4.1 Introduction**

The field survey results were introduced, discussed and analyzed in this chapter. Descriptive statistical analysis is used to identify the local practice in the procurement management at the municipalities as well as other institutions in the Gaza strip. The relation between the importance of elements as well as the application of these elements were tested and diagnosed as part of approaching the research objectives. Comparison between the questionnaire results and the practices introduced in the literature review was made. The archival data collected using project survey cards was tabulated and analyzed to explore the distribution of the total scores achieved by the contractors, municipalities and consultants who have good experience with the municipality's practices in the Gaza strip. The selection of questions to be discussed was based on three main reasons:

- a) Issues that could be measured and have clear indicators.
- b) Issues not covered by the current procurement law and,
- c) Main issues that contradicts with the sound procurement practices.

The questionnaire in Arabic and English is given in Appendix A.

#### **4.2 First Part: Transparency Concept**

The questionnaire chart results as expressed in Figure 4.1 show the importance of the transparency indicators and the scope of its application in the municipality's procurement system. The questionnaire shows that the average importance level is 3.56 points, which indicates the extent of participant's realization for the importance of transparency indicators. The question which received the lowest degree of importance was "Do you accept to negotiate the contractor's offers after bid opening session?" When the institutions or municipalities decide to negotiate with contractors after bid opening, indeed this will cause lateral illegal agreements with the contractors. These illegal agreements will leave negative effect on transparency indicators through the procurement system in the

municipalities. The participant's recommendations were against any negotiations with the contractors after bid opening, in the belief that it leads to more corruption and fraud.

In that manner, the highest important level question no. (19), was "Is it important that the laws of procurement should include clear and specific clauses to prevent financial bribe and corruption?" The response to this question was one of the highest score. Despite that the present bidding documents do not include any clear and specific clauses to prevent financial bribe and corruption, this means that the participants specified their attitude and recommendations to prevent all forms of corruption by paying attention to include the general conditions documents to include clear and specific clauses.

At the same time, the less important question no. (6) was "The undertaking of negotiation with contractors or suppliers after bid opening, especially the lowest bidder".

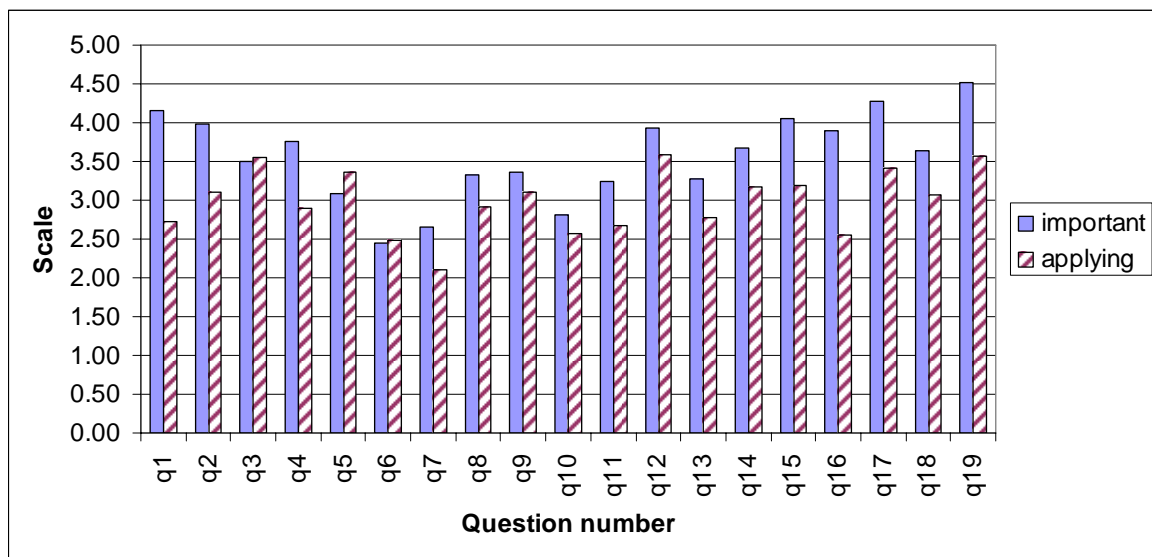


Figure: 4.1 Respondent's responses to transparency questions

#### 4.2.1 Association test

The statistical  $\chi^2$  (chi-square) test is used to measure the association between the degree of importance and application of the concept of transparency in procurement. The value of association factor is (0.00). This means that, the two categories are not completely independent. This result is clear within the above chart and the degrees of answers.



For all questions, the Cramer's V association factor is around 0.5, this value means intermediate association between the importance and the application levels.

#### 4.2.2 Discussion of Transparency Concept

This discussion is based on selected questions, considered as milestones or the most important questions, to avoid lengthy discussion of all the questions.

##### Negotiation of contractor's offer after bid opening session

Figures 4.2 a and b indicate that the majority of the respondents reject negotiation after the bid opening. This rejection is attributed to the belief of contractors that it would be a waste of time and effort to negotiate with a bidder whose price is much higher than the estimated price or the budget. Negotiating all contractors' defeats the idea of bidding and competition, as it may lead to awarding the contract to the bidder with the highest price if he gives an appropriate discount after bid prices are disclosed.

Furthermore, negotiations of prices may apply pressure on the contractor leading to accepting a price below the actual cost due to the contractor's need for a contract.

In conclusion, negotiations with the contractors after bid opening would eliminate the basis of transparency in a procurement system and performance regulations.

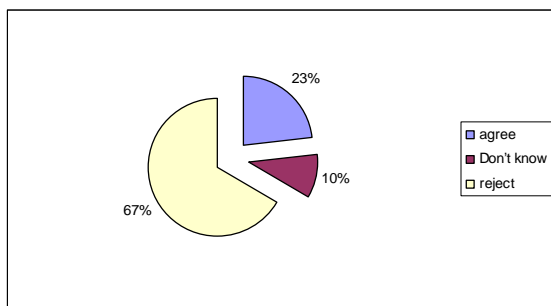


Figure: 4.2a Degree of importance of negotiation with all bidders

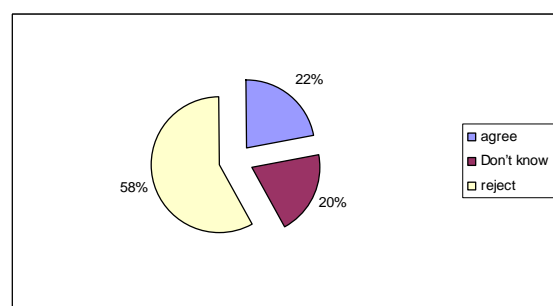


Figure: 4.2b Applicability degrees of negotiation with all bidders

### Contract negotiation with the lowest bidder only

The laws and regulations of local government which are used by the municipalities, do not permit any price negotiation with the lowest bidder "without changing the scope of work", except in the case where the lowest bidder cost exceeds the allocated budget (which is not defined in the laws of local government).

However, the World Bank guidelines (1999) prevent negotiations with any bidder, but this kind of negotiation is permitted in the case when associated with the change of the scope of work. The European Commission (EC) guidelines as well prevent this kind of negotiation.

As shown in Figures 4.3a and b, 64% of the participants rejected this kind of negotiations. 68% of the participants declared that this kind of action is not applicable actually and 20% of them were not sure of the existence of such action which means 88% had not gone through these procedures (as shown in Figures 4.3 a and b). Twelve percent of the participants went through this procedure or have an idea of its existence.

These indicators mean that at least 12% of the municipalities as well as the institutions in Gaza strip, who apply these procedures, would eliminate the transparency basis in their procurement system or regulations when they negotiate the lowest bidder.

The rejection of participants for negotiating prices is attributed to the fact that negotiations are not done on clear basis or on pre-set criteria which in-turn may lead to corruption and fraud.

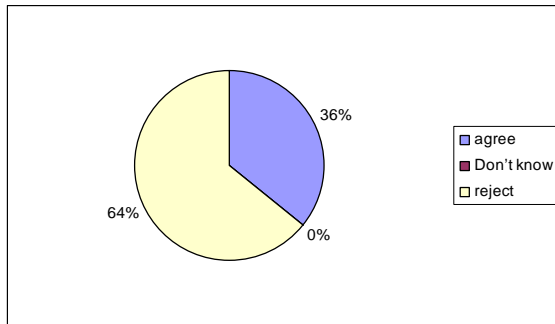


Figure: 4.3a Degree of importance of negotiation with the lowest bidder

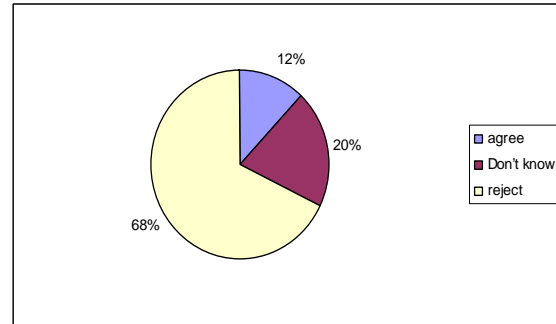


Figure: 4.3b Applicability of negotiation with the lowest bidder

### Procurement procedures violations in emergency situations

59% of the participants were not in harmony with the importance of this concept and 72% declared that it is not applicable which means that the violation of the procurement procedure will lead to more corruption and fraud.

The breach of procurement methods in difficult and complex conditions could lead to corruption and fraud cases as the difficult or complex cases are not clearly defined.

The municipal procurement methods, the World Bank guidelines or the European Union guideline do not authorize the breach of procurement methods in any case, except in certain cases which require urgent actions. This kind of change is allowed and shall be priorly approved by high administrative committee.

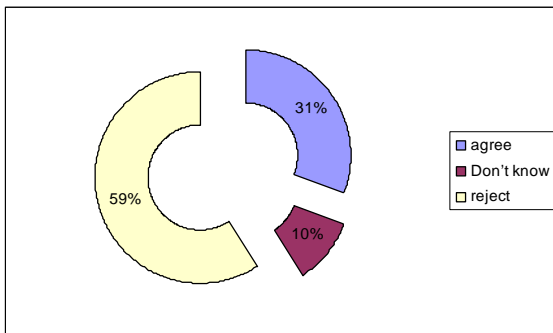


Figure: 4.4a, The importance degrees of procedures violations in emergency situation

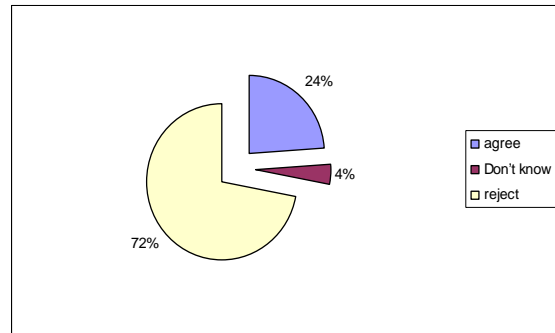


Figure: 4.4b, The application degrees of procedures violations in emergency situation

### Pre or Post qualifying of the contractors and bidders

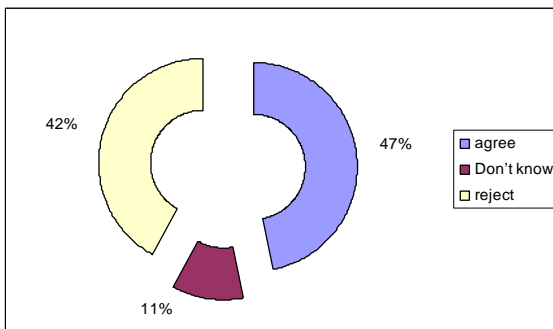


Figure: 4.5a, The importance degrees of pre or post qualification

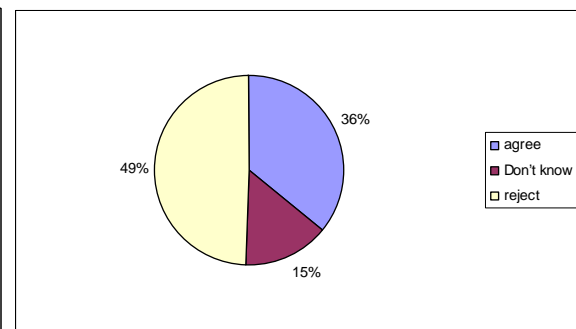


Figure: 4.5b, The application degrees of pre or post qualification

The participants' answers about the importance of pre or post qualification were almost equally divided between yes and no as well as its existence or application.

Most Municipalities and Governmental Institutions rely on the prequalification of the Ministry of Housing and Public Works and Contractors Union Committee "National Classification Committee". Therefore they do not need to conduct pre or post qualifications. Those other institutions who conduct pre or post qualifications do not have clear criteria or mechanism to do so, as the current law does not bind them to do it nor the law has clear mechanism or criteria for qualifications purposes.

The survey results clearly reflect the above and show that 47% of the contractors admit the high importance pre or post of qualifications. The same category (49%) admits that pre or post qualification is not applied. Whereas 49% were against the application of this system, 15% ignore its existence, that means 64% of the participants refuse the application of this system or ignore its existence as defined below according to the law of MOLG, (1997):-

- ❖ There is no instruction of use of this system in the actual used procedure before or after the advertisement.
- ❖ The applied law in the municipalities is based on the contractors qualification procedures used by the Contractors Union or the National Classification Committee.
- ❖ This kind of procedures is applied only for specific projects that are not included in the national classification or need specific financial, technical or administrative decisions.
- ❖ The procedure used by the National Classification Committee are not specific and do not really define the contractors financial, technical or administrative qualifications and this is due to:-
  - a. The classification requirements are not followed or controlled after the issue of classifications approval.
  - b. The classification score includes all the past and cumulative (by generation) experiences which means bad indicators of relevant experience.

- c. The classification requirements do not include any significant indicators of the contractor financial, technical or administrative qualifications.
- d. The experience approved by the National Classification Committee is based on projects termination certificates without any indication of the contractor performance during the project implementation cycle.
- e. Most of the contractors do not like any evaluation done by the owners.

### **4.3 Second Part: Accountability and responsibility concept**

Accountability is a principal part of the research objectives. The researcher aimed at this part of the questionnaire to put emphasis on the importance of these indicators, which ensure realizing the accountability in the system of procurement including its application. Improving the accountability and responsibility leads to the improvement of the procurement system. However, the accountability and responsibility concept could not be improved without having specific regulation in the law to influence the institutions to have proper organizational arrangements. These organizational arrangements shall guarantee the application of incentives and discipline measures as the case may need, depending on the delegated responsibilities.

Despite of the non-existence of the accountability and responsibility concept in the local procurement law used by Gaza Municipalities, these concepts are actually practiced based on the civil law. Figure 4.6, indicates the participants awareness and understanding of the accountability and responsibility concepts, as the average score is 4.03 for its importance. Its application score was also higher (3.15) which indicate the high level of use of such concept.

#### **4.3.1 Association test**

The statistical  $\chi^2$  (chi-square) test is used to measure the association between the degree of importance and applicability related to the concept of accountability and responsibility. The value of association factor is around (0.00) which means that the two categories are not completely independent.

For all questions, the Cramer's V Association factor is around the value of 0.5, this value means intermediate association between the importance and application levels.

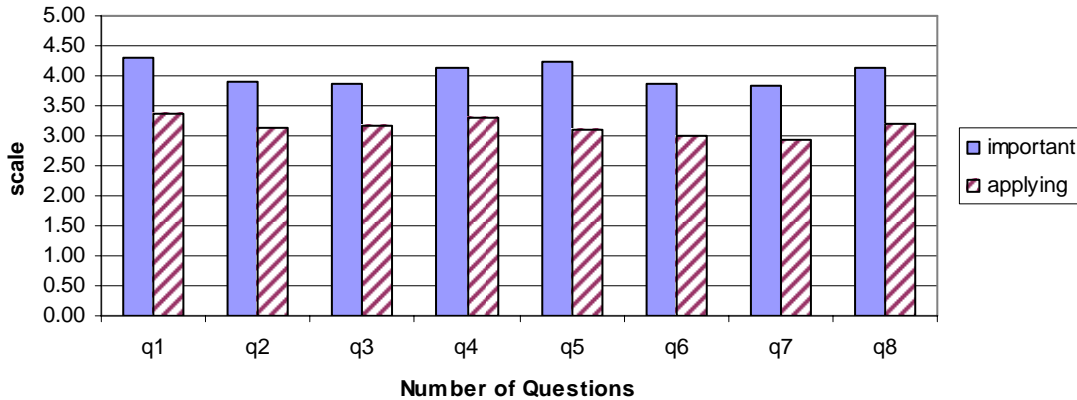


Figure 4.6 Respondents response to accountability questions

### 4.3.2 Discussion of Accountability Concept

#### The handing over and follow up of the contractor's complaints

The procurement system in the municipalities must include all factors which help to develop the system of procurement and accomplish a good magnitude of fairness and transparency. Also the procurement system must consist of clear and accurate procedures which lead to following-up the complaints and claims of contractors with no intervention from the top management.

In that manner, there must be a special venue far-away from the supervisors of projects and the management directly related to implementation. This is to prevent any intervention between authorities or allow concentrating power in one side, leading to increase of corruption and fraud in the municipalities. Therefore, the procurement system must include all the characteristics and indicators which enable the contractors to know their complaint path without any hesitation to file claims.

The Law of Local Government No. 1 (19997) does not include specific or defined procedures for submitting claims by the contractor nor nominate a specific department for following up these kinds of procedures. As Figure 4.7 shows, 85% of the participants highlighted the importance of these procedures whereas 52% declared that this procedure is actually applicable which means that the practiced procedures may satisfy a specific part of the contractors, however this is not officially or legally documented.

The handling of complaints by the implementing agency is a clear conflict of interest due to reasons explained above. Therefore, the introduction of an independent entity to handle and follow up these complaints might be a solution to a more developed and transparent procurement system.

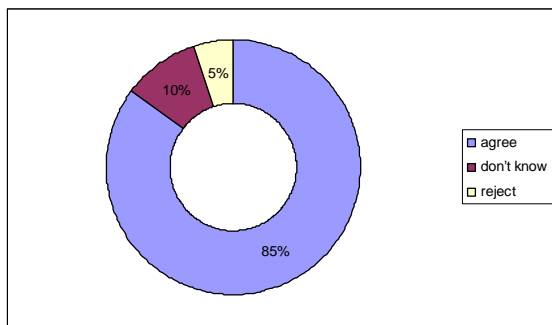


Figure 4.7a The importance of handing and follow up of the contractor's complaints

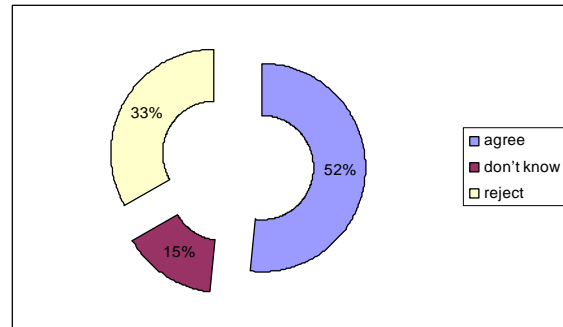


Figure 4.7b The application of handing and follow up of the contractor's complaints

### **Protecting the rights of contractors to submit complaints without being negatively affected by the procurement officials**

As shown in Figure 4.8a, 77% of the participants highlighted the importance of the existing legislations to guarantee the contractors' rights to submit complaints, whereas only 48% of the participants declared that these procedures were actually applied. In the Gaza Strip municipalities or Ministry of Local Government, most of the claims submitted by the contractors were refused or stopped at lower level management. This is because in many cases the supervising staff may be a part or cause of this claim.

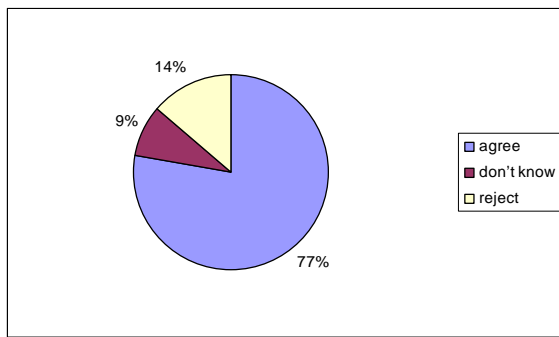


Figure 4.8a. The importance of protecting the rights of contractors

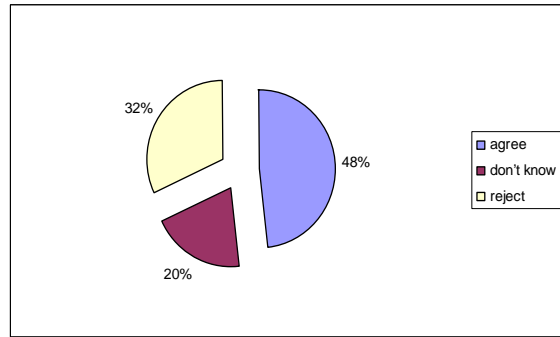


Figure 4.8b The application of protecting the rights of contractors.

### In case of any violations to procurement decisions or procedures

As shown in Figure 4-9, the majority of participants declared that there is direct intervention from the higher administrative levels in the bids decisions. This intervention is attributed to the lack of the organizational arrangements in the law of Local Governments. The law has no regulation for making or tracking decisions of bids committees or personnel. Furthermore, the lack of clear responsibilities and duties of the procurement staff allows for the said inventions.

Therefore, the procurement system/law needs to be revised to include measures to ensure the prevention of such intervention. Having a procurement department with clear responsibility matrix and clear duties and authorities will lead to minimizing any intervention.

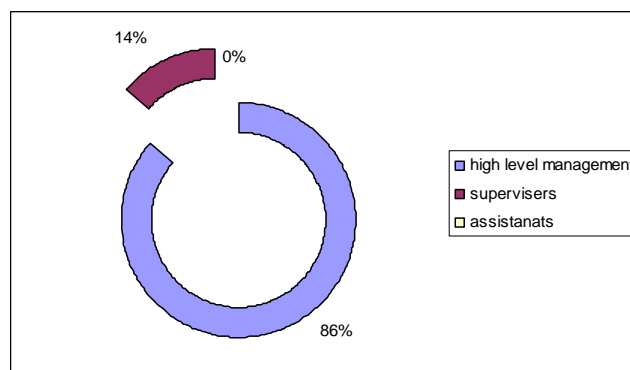


Figure 4.9 violations of procurement



#### **4.4 Third Part: Organization and administrative structure concept**

The proper administrative organization of any institution is essential for the performance of work in a proper way. It determines the work methodologies, communication channels within the departments and sections. It also indicates the limits of supervision and subordination defining responsibilities of the individuals within the organization to assume his/her role efficiently in order to achieve the required objectives. The administrative organization is considered an important factor in realizing the objectives of the research to assess the procurement system in the municipalities in the Gaza Strip. The municipalities of Gaza Strip in general do not have an independent department to implement the procurement operation. The Law of Local Government, No. 1 (1997) restricted and limited the organization of a body for procurement system; in bid opening committee and awarding committee only without any defined duties and responsibilities for the deferent concerned departments. Therefore, there is strong interference between financial, legal and technical departments in the procurement operations in the municipalities, which incapacitate the operations, performance and monitoring in the procurement system.

The third part of the questionnaire clarifies the method and type of organization and administrative structure in the Gaza Strip municipalities, with respect to the procurement, as shown in figure 4.10. The total numbers of questions were nineteen. The level of importance for seventeen of them was 3.7 points that exceeds the average marginally. But the average points of individual questions were between 2.6 to 4.3 points which indicate the importance of assessing and studying these results and each question carefully.

The research shows that question No. 15 "does the technical knowledge lead to developing the career and improving the performance?" obtained 4.36 points, the highest individual average, indicating the importance of having skilled and specialized personnel in the procurement management to improve the performance and developing the system.

The lowest individual average was 2.6 for question No. 6 "Dose the contracting with contractors and suppliers passing through complicated administrative and managerial

steps?" The responses were indicating its low importance. Nevertheless, the answer was a logical attitude for them, and incites no obligation to this procedure.

The difference between importance indicators levels in the 19 questions show that there were no correlations between them, and the degree of importance connected with the kind of procedure is for each individual question and not to the extent of correlation between questions.

For the application extent, the results indicate that the average score level was 2.84. The lowest individual average score of applying was 2.43 for question No. 2 "Is the procurement staff qualified enough and equipped with the needed knowledge for procurement?" This score indicates that there is no neither specialized nor qualified procurement staff available at the municipalities, whom can be efficiently involved in all applications of procurement regulations.

On the other hand, the highest average level was question No. 18 obtained 3.5 "Is the estimated cost prepared by the procurement department based on actual prices of the market?" degrees. This result shows that there is partially applying of this question. In reviewing the answers of municipalities' specialists 14 out of 81 participants indicated that the municipalities were not applying this procedure by specialized and professionals team or independent department. Therefore cost estimates submitted by the municipalities' engineers for bid opening sessions were not based on any scientific nor economic basis. The prices were submitted according to the requirements of the law of Local Government and regulations of procurement requirements. This law and regulations indicated that the municipalities' engineers were obliged to submit the estimated cost of project to bid opening committees in the time of bidding opening. So, the answers of the participants show that there are partial applications of procurement laws and regulations for estimated bid cost.

For question number five, the majority of participants chose to have an independent administrative staff to manage the procurement process as 70 % of the participants chose the option of forming an independent administrative body to do this work, 10% chose the option of adding the procurement responsibilities to municipal officers who have other

duties and 20% chose the option of forming temporary committees to handle the procurement issues.

Whereas, question number seven, related to the simplicity and rapidity of action in contracting with contractors or suppliers, the majority of participants indicated that the contracting process is simple and rapid as 64% agreed with the rapidity and specificity of the actual procedures, 28% confirmed the complexity and prolonged procedures and 8% considered the contracting operation is neither defined nor specified.

The Law of Local Government required the performed team to conduct the contracting award without defining their responsibility, so the staff of the municipality depends on his experience to conduct the procurement performance. The municipalities which depend on their capacities to build the procurement system such as Gaza Municipality have complex and prolonged procedures in contracting.

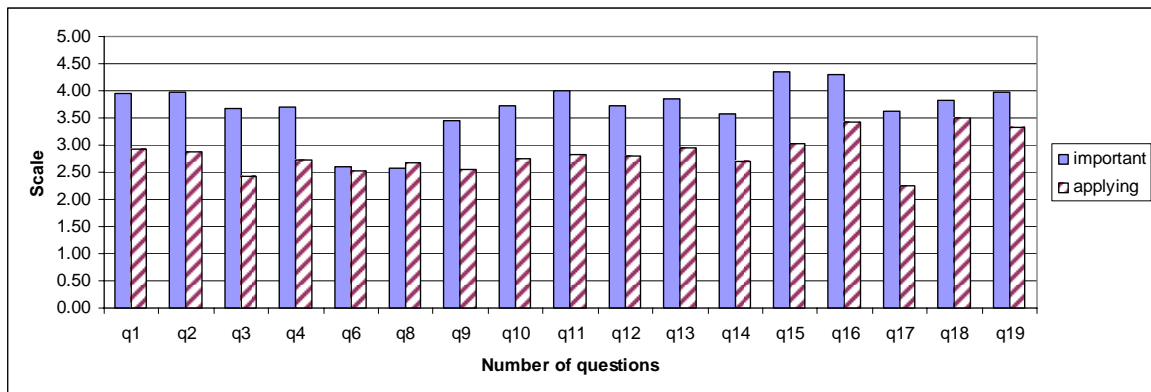


Figure: 4.10 Respondent respond to the organization and administrative structure concept

#### 4.4.1 Discussion of Organization and administrative structure results

##### The Specialized Staff and Independent Organization Structure

This section of the questionnaire "the organization and administrative structure" deals with items and indicators which relate to the organization of the procurement system. Responses to question no. 3 "Is there clear specialized duties for the contracting follow-up

jobs?" shows the importance of the existence of a specialized employee dealing with the implementation and follow up of the procurement functions.

75% percent of the participants declared that this concept is very important, whereas 23% of the participants denied the importance of these specializations.

On the other hand, 64% of the participants declared that this concept was not applied at the municipalities.

The Law of Local Government clarifies the important side of the implementing issues of these regulations, so the law authorized the (accountant, engineer and the legal advisor) of municipality to conduct the operations of procurement. However this authorization is without any real responsibility in case of violating the laws or regulations. On the other hand the law gives full responsibility to the municipal councils committees to ratify the procurement operations conducted by the technical staff. In the same time, the law does not include accountability system to prevent any corruptions or fraud.

These results demonstrate an important aim of the research to assess the organization and administrative structures of the procurement system.

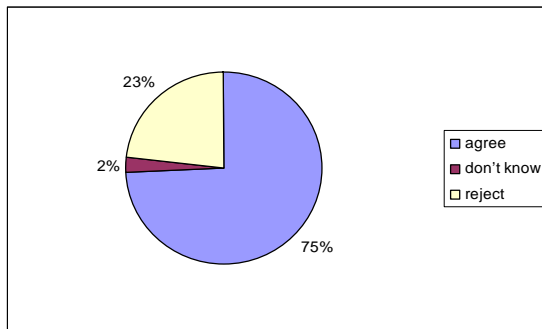


Figure 4.11a The importance of an independent entity

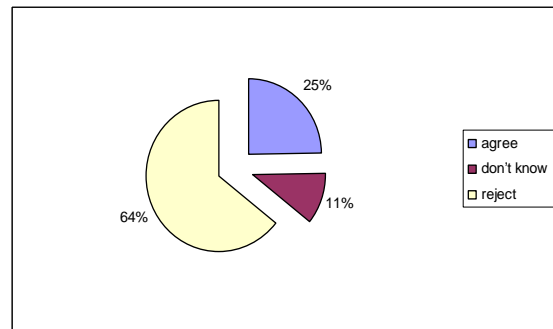


Figure 4.11b The degree of application of an independent entity

### **The participant's recommendations for establishing independent procurement department in the municipalities.**

Responses to question no.4 regarding the existence of an independent and defined administrative organization that deals with procurement issues showed that despite this concept is not practiced the majority of participants declared its importance.

Figure 4.12 shows that 73% of the participants highlighted the importance of such independent organization or section for procurement issues, 48% of them indicated that such organization does not exist.

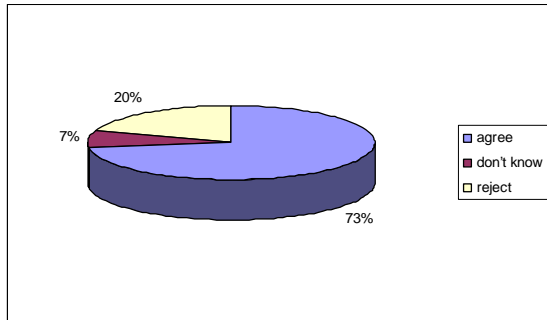


Figure: 4.12a The importance of creation independent entity

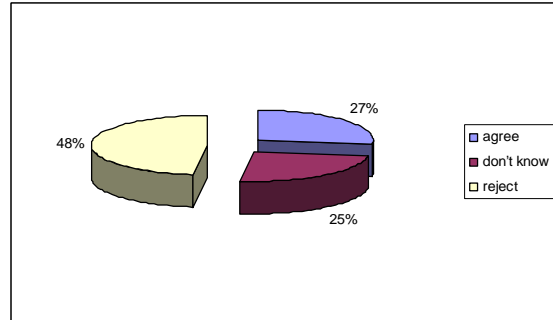


Figure: 4.12b The application to create independent entity

### The Capacity Building Programs in the Municipalities

The Law of Local Government or issued regulations had not touched the means to establish or to develop the performance of procurement staff. The Ministry of Local Government has not issued the regulations of performance which could help in applying the laws. In the same time, the Ministry of Local Government did not have strategic plan or identified vision for training the procurement staff.

Question no.14 relates to capacity building programs which read "Are there effective training programs to improve the efficiency of the employees or develop this sector" confirm negligence of the Law of Local Government to build the capacity of municipalities staff. Figure 4.12a shows that 57% of the participants responded with the importance of such procedure, whereas 48% answered that such training course were not existing or functioning. The absence of training is due to the nonexistence of regulations or specialized staff to proceed with assessing the capacity building needs and implementation of capacity building plans.

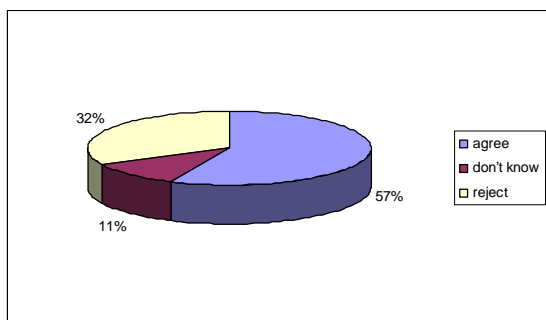


Figure: 4-13a. The importance of capacity building in the Municipalities

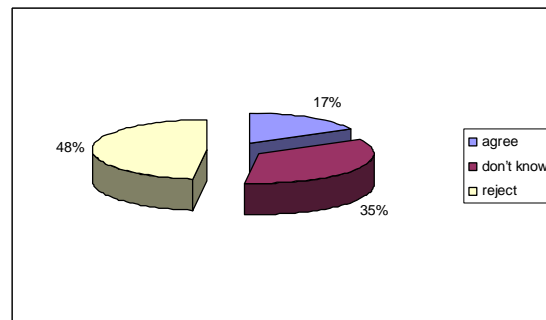


Figure: 4-13b. The application of capacity building in the Municipalities

From assessing the above results, an important part of the research objectives have been realized. The following could be used as remedial action to improve the implementation of procurement:

- The municipalities need to establish an independent managerial entity for procurement.
- The Bylaws in the municipalities must define the specializations of employees in procurement departments.
- The regulations of related departments must adhere to establish an action training plan for improving and developing the capacity of procurement employees in the municipalities.

#### **4.5 Fourth Part: Management of supplies system concept**

The World Bank Procurement Guidelines, (1999) in defining the management of supplying system, mentioned that there is a need for economy and efficiency in the implementation of projects including the procurement of goods and works involved.

In order to realize the required efficiency and economy as well as transparency in the procurement process, the management of supplies system depends on for main aspects:

- i) managerial
- ii) technical
- iii) legal and
- iv) financial elements

These elements include law, organization, staff, planning, programming, supporting tools and equipment. The said elements must be quality and quantity sufficient and available in order to manage the procurement system in the municipality efficiently.

In spite of the importance of these elements, the law of local government ignored most of these elements.

A group of seven focused questions were designed and distributed to cover the above aspects. Figure 4.14 shows the respondents to the management of supplies system. The average score was 3.99 points highlighting the importance of these elements that must be realized within the financial regulations and the mechanism of supplies.

On the other hand, the average score of application shows that the indicators of supplies management in the municipalities were 2.75 points, which means that these indicators has not been applied within documented regulation or according to the system requirements.

These results can explain that such regulations and guidelines were not explicitly explained in the municipal bylaws. Also decision-makers at the top level at local authorities were not well aware of such regulations.

Regarding question No. 5, which reads "Are suitable tools for planning and implementing procurement being used in large scale projects?", the level of importance reaches 4.0 points and the level of application reaches 3.1 points. This indicates the confusion between

the time schedule defined for contract handover and the time schedule defined for completion of contractual procedures and project financial and technical closeout. This means that the Law of Local Government ignored the stage of planning within the procurement process, and the officials in the procurement departments had not designed this stage of procedures.

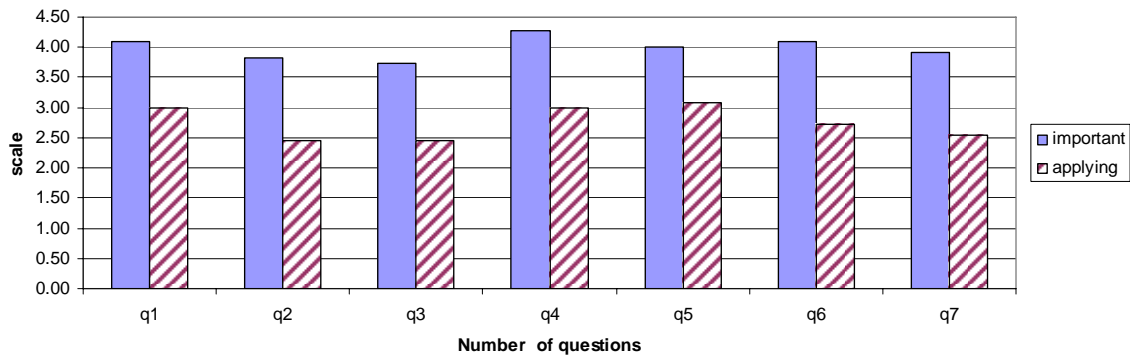


Figure: 4.14 Respondents response to management of supplying system concept

#### 4.5.1 Association test

The statistical  $\chi^2$  (chi-square) test was used to measure the association between the degree of importance and application of the questionnaire at concept of management of supplies system.

The value of association factor is between (2.95 to 12) and the sig. is (0.369-0.718) factors. This means that the two categories are independent.

For all questions the Cramer's V Association factor is around the value of 0.5, this value means intermediate association between the importance and the application levels.



## **4.5.2 Discussion of Supplying System Concept**

### **Procurement Planning**

Question No. 2 "Are there complete scheduling (procurement plans) proceeding the projects tendering?" shows the importance of the planning indicator which lead to developing the procurement management process.

The procurement planning means; the planning of procurement processes (advertisement period, bid opening, evaluation, awarding, contract assigning, project starting, project handing and closeout of project) before starting the implementation of projects. The planning enables the staff of procurement departments to estimate the magnitude of procurement processes for project and the time which is needed to perform all the procurement stages.

In spite of the importance of the procurement scheduling according to the institutional balancing (budget) management, the Law of Local Government ignored a principal essential element for enhancing the municipality's staff and improving the performance of the organization system. The implementation of this indicator leads to create administrative specialized staff and organization structure management which enable designing and implementing this indicator. The design of procurement a schedule compels the municipalities to establish integral management to adapt a procurement system and is considered as the first step towards improving the financial management in the municipalities.

### **Feasibility studies for the proposed projects before issuing tenders**

The answer of Question No. 3 "Do the different concerned institutes prepare feasibility studies for the proposed projects before issuing the project for tender?" shows that 64% of the participants agree with the high importance of conducting feasibility studies. However, 55% assured that feasibility studies are not performed before projects' tendering. This is attributed to the fact that the Law of Local Government and its regulations do not mention or specify the importance of feasibility studies, and do not mention the technical steps which must be followed to itemize the priority of projects implementation. Therefore, the results show that the preparation and defining the priorities of projects implementation

were not based on a socioeconomic or legal assessment before or after projects implementation.

Despite of the importance of the stage of conducting appraisal studies to be implemented and preparing comprehensive list of prioritized projects in accordance with the citizens needs and demands, the Law of Local Government had not treated this stage of projects cycle and had not issued the suitable regulations to oblige the municipalities to prepare feasibility studies for projects before implementation stage to identify its priorities. The Law of Local Government did not also touch on the investment cost nor on the operation and maintenance cost which is also a very importance element of the project cycle.

In the current conditions, the municipalities define their priorities and the projects to be implemented based on actual political and economical conditions or respond to the donors' agendas, guidelines or instructions.

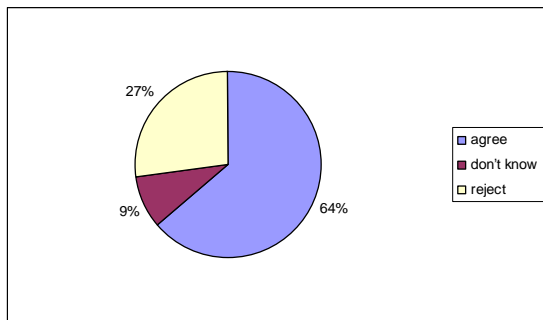


Figure 4.15a The importance of feasibility studies for projects

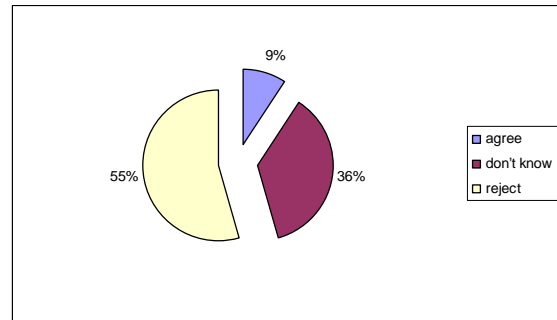


Figure 4.15b The application of feasibility studies for projects

### Establishing of procurement units database

The results of question No.7 "Do the procurement units have updated goods and works database?" show that 73% agreed with the importance of this subject and the need of studying the local market conditions and the variation of cost and its causes.

Whereas 64% of the participants who work in the municipalities or related institutions mentioned that this not applied actually in the municipalities and no attention is being paid to the cost estimates before the bid advertisement.

On the other hand the operations of procurement system are an essential part of projects management. In the same time, the evaluation processes must be based on integral steps to enable the evaluator for performing the comparison based on integrated feasibility study of projects. An actual realistic investigation of market prices and utilization of practical experimental performance of other implemented projects.

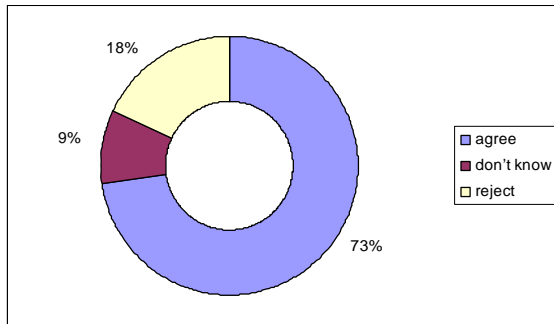


Figure 4.16a The importance of establishing procurement units

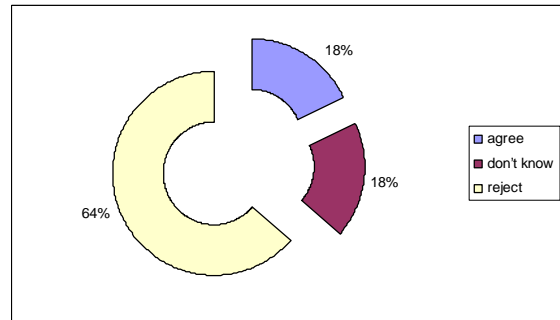


Figure 4.16b The application of establishing procurement units

#### 4.6 Fifth Part: Preparation of documents

The Law of Local Government and its regulations highlighted that the bidding documents projects must contain general conditions, special conditions and specifications. These documents must be prepared by the municipal engineers. These regulations did not clarify the content of these documents as well as the extent of relation with bid procedures. In the same time, the law did not mention the documents to be prepared for international bidding and did not specify the procedures that should be followed. Therefore, the questions related to the documents preparation stage are based on obstacles that may intercept the preparation of these documents. Whereas under financing projects from the World Bank or European Commission, the municipalities must prepare bidding documents for each project involving international or national competitive bidding. Generally the bidding documents for supplies include the following:

- **Invitation for bid**
- **Instructions to bidders**
- **The bid data sheet**
- **Evaluation and qualification criteria**
- **The general condition of contract**
- **Special condition of contract**
- **Schedule of supplying**
- **The technical specifications and drawings**
- **Form of bid**
- **Sample contact form**

The above items are somehow required by the Law of Local Government except for the form of bid which is considered by the World Bank regulations the only legally binding documents.

Ten specific questions were designed and distributed to itemize the elements or documents which must be prepared in bidding contracts. The results indicated that the importance of these kind of indicators is 4.03 points meanwhile the application of these indicators is 2.79 points which is lower than the average of the questionnaire points as shown in Figure 4.6. The Law of Local Government did not mention the documents which must be included in the bidding contracts, so, all the project documents which had been advertised by municipalities are either incomplete or vague as, for example, it has no form of contract or description of how the bid will be evaluated. The guidelines of the World Bank and the EC regulations decide on the contract forms to be used before bidding advertisement through standard bidding documents, and these instructions itemized the documents which must be displayed for contractors before signing the contract.

The result also shows that, the used procurement system has no clear regulation or mechanism to implement or perform, whereas the legal advisors are very eager to issue the decisions on case by case basis depending on their own understanding and capacity. This leads to different levels between the importance and the applying degrees within the questionnaire diagram.

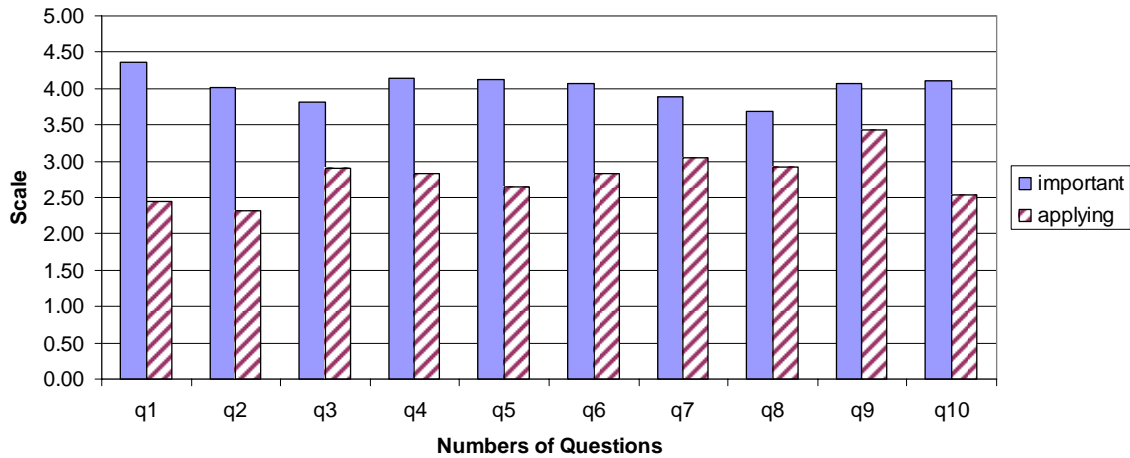


Figure 4.17 Respondents response to Preparation of documents

#### 4.6.1 Association test

The statistical  $\chi^2$  (chi-square) test is used to measure the association between the degree of importance and applying the concept of documentation.

The value of association factor is (0.00) independent. This result is clear within the chart and the degree of answers. And for all questions, the Cramer's V association factor is around the value of 0.5 which means intermediate association between the importance and the applying levels.

#### 4.6.2 Discussion of special & general conditions documents for the International Tenders

Question no.3 which reads "Is there general and special conditions for the International bids?" shows the importance of having such conditions as 79% agrees with it. However, the result of the application score ignored as there is actually no general or special conditions for international bids exist.

All the awarded contracts to-date were tendered following donors guidelines and conditions using donor standard bidding documents.

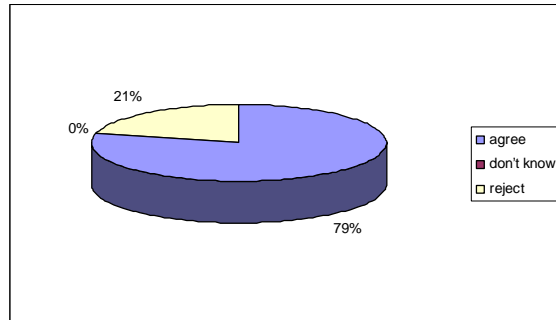


Figure 4.18 the importance of special & general conditions For international tenders

#### 4.7 Sixth Part: Advertisement

This part deals with the advertisement for bids and their importance for the client and the bidders.

Referring to the Law of Local Government, the advertisement for bidding is considered the focal point for the stabilization of the legal situation for procurement, and is considered the important part in the series of procedures in the procurement system. The legal advisors of local government and municipalities consider that the advertisement for competitive bidding is the basic step for evaluating the bids.

According to the Law of Local Government, the advertisement for supplying goods or works shall be published in most widespread local newspapers for two consecutive days. Such advertisement must be in Arabic, except when supplies procurement or works execution is an international tender, where it must be in both Arabic and English.

The advertisement shall include the number of bid, the type of materials or works to be procured the deadline of tender document purchase by the interested contractor, the deadline of bids submission, the price of bid and other necessary details.

Due to the above, the results of the eight distributed survey questions were fairly good. The average score for the level of importance for seven questions were around 3.85 points which indicates the sufficiency of the used form of advertising. The average score of the level of application was fairly good as well (2.8 points) which indicates the sufficiency of the advertisement.

However, the level of application for question number five regarding the presence of bids evaluation and awarding requirements in the advertisement was only 2.7 points which indicate that there are other instructions used in bid evaluation not published or written in the bidding advertising as shown in Figure 4.19. The regulations of Law of Local Government had not been issued to help municipalities for implementing its articles, so the law inclusively did not drop the old instructions to unify the regulations of implementation.

On the other hand for question number four regarding the sufficient duration of bid preparation, 51 % chose 10 days which indicates that the bidders do not understand the objective of the bid preparation duration that gives the bidder enough time to study the actual condition of the local market to avoid future contractual problems regarding the items costs. Despite of the importance of giving the contractor enough time to study the bidding documents and put realistic prices for the bid to avoid future problems during implementation, the procurement law does not give minimum duration for the contractor to prepare bids, however the duration is left up to the engineer to decide.

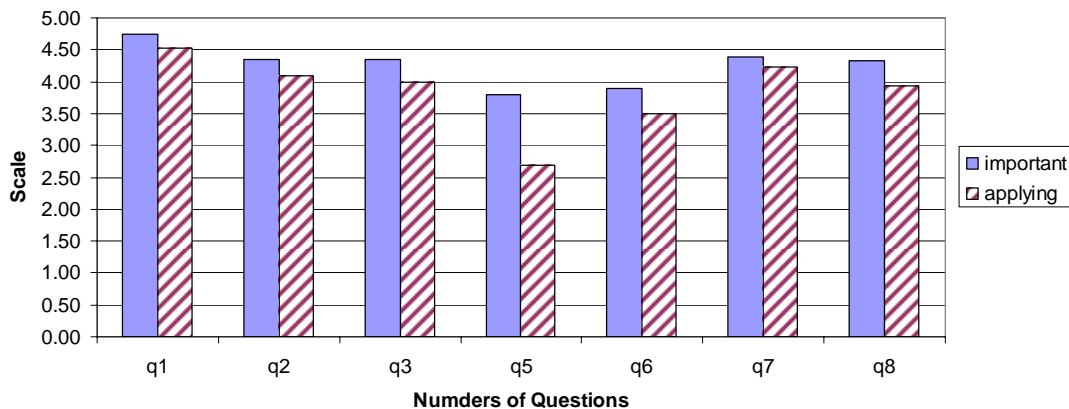


Figure 4.19 Respondents response to the Advertisement procedures

### 4.7.1 Association test

The statistical  $\chi^2$  (chi-square) test is used to measure the association between the degrees of importance and applying of the questionnaire for the concept of advertising.

The value of association factor is (0.00), this means that the two categories are not completely independent.

And for all question, the Cramer's V association factor is around the value of 0.5 this value means intermediate association between the importance and the applying levels.

### 4.8 Seventh Part: Evaluation of Bids

In reference to page 41 " procurement processes – request for evaluation); the purpose of bid evaluation is to determine the lowest evaluated responsive bid from amongst the substantially responsive bids received. In order to determine the lowest evaluated responsive bid, a systematic evaluation process that follows a logical sequence should be followed. According to the guidelines of the World Bank, the evaluation is the comparison operation and the analysis process of the information which is submitted within the bidding documents of the competitive bidding and the information which is requested within the bidding regulations by the owner, to get the lowest evaluated cost. the bid evaluation must be consistent with the method, terms, and conditions set forth in the bidding documents. The European Commission (EC) considered the evaluation as the obligation process by using the evaluation criteria, which was published in the tender dossier.

According to bid evaluation guide-lines of the World Bank and European Commission, the bid evaluation process is conducted in two stages, the financial and technical comparison between bids. The bid evaluation report should reflect the logical sequence of the bid evaluation process in the following manner:

- Advertisement dates and details
- Bidding document distribution dates
- receipt and opening of bids
- examination of bids



- Post qualifications
- substantially non-responsive bids
- correction of arithmetic errors
- currency conversion
- adjustment for nonmaterial deviations
- bids subject to detailed evaluation
- evaluation of bids (Technical)
- comparison of bids
- lowest evaluated responsive bid
- award recommendation

The Law of Local Government has not mentioned any articles for clarifying the evaluation process, but the law mentioned that the examination stage of bid awarding is limited to arithmetic check and prices comparison according to market price without any regulations for comparison in order to minimize the factors which lead to corruption and fraud.

The questions in this part are based on the administrative policies of evaluation of bids and contain seven questions. The average score of the level of importance was 4.03 points and the average score for the level of application was 2.8 points. This means that the contractors were denying applying these indicators within the evaluation process despite of its importance.

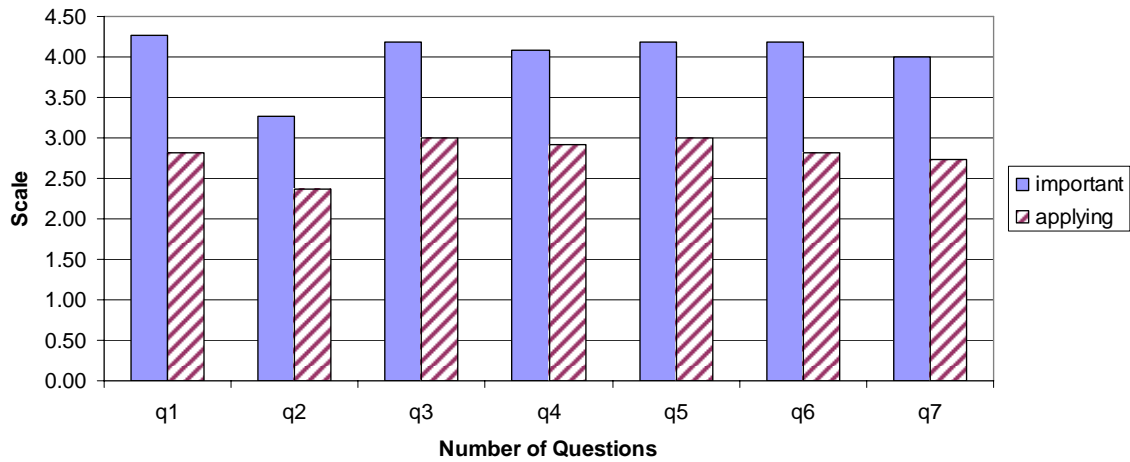


Figure 4.20 Respondents response to evaluation of bids

#### 4.8.1 Association test

The statistical  $\chi^2$  (chi-square) test is used to measure the association between the degree of importance and applying the concept of evaluation of bids.

The value of association factor is around  $(0.33) > 0.05 = \alpha$ , it means that the two categories are completely independent.

And for all questions the Cramer's V association factors is around the value of 0.5 this value means intermediate association between the importance and applying levels.

## **CHAPTER – 5**

### **Proposal Form of Bid Law**

#### **5.1 Introduction**

Based on the literature review and the survey results, the researcher would like to suggest a general framework for procurement law that would encourage sound commercial practices and satisfy all stakeholders. However the researcher is not intending to re-invent the wheel but rather use internationally acceptable and sound practices.

Sound procurement law depends on fundamental categories; transparency, accountability, eligibility and decision-making. The procurement law should as well support these concepts: accountability to establish clear lines of responsibility in decision-making structures, responsiveness to citizens, professionalism to improve individual and system performance, and transparency concepts to ensure that the procedures and policies are understood and acceptable by procuring entities in the municipalities, competition to attract high-quality national and international partners and appeal rights to redress meritorious grievances of suppliers. Based on the questionnaire results and after reviewing the laws of Mongolia, Latvia and Albania a draft framework for public procurement included the followings could be proposed as follows.

#### **5.2 The Procurement Law Basics**

The Procurement is based on the following basic issues: objectives; scope of law; definitions; procedures for tendering proceedings; qualification and exclusion of bidders; form requirements for communications; record of tendering proceedings; alternative methods of procurement, including restricted tendering, methods; involving negotiation, a simplified request for quotations procedure, and single-source procurement, as follows:

### **5.2.1 Objectives**

The objectives of the Law include maximizing competition, fair deal to suppliers and contractors bidding to carry out work, and enhance transparency and objectivity, are essential for fostering economy and efficiency in procurement and for curbing abuses.

### **5.2.2 Scope of the Law**

The Law sets forth procedures to be used by procuring entities in selecting the supplier or contractor with whom to enter into a given procurement contract. The Law does not claim to address the contract performance or implementation phase. Accordingly, one will not find in the Law provisions on issues arising in the contract implementation phase, issues such as contract administration, resolution of performance disputes or contract termination.

### **5.2.3 Policy objectives**

In its preamble, the Model Law sets forth policy objectives that procurement systems strive to achieve and which underlie the detailed requirements of a legal framework for public procurement.

### **5.2.4 Economy and efficiency**

Those twinned objectives refer to the public purchaser obtaining the best value for expenditures from the public purse. That includes the concept that the procurement process should not present a disproportionate burden in terms of time and monetary expenditures relative to the nature, volume and value of the procurement. For example, a procurement system promotes economy and efficiency by maximizing utilization of commercially available, proven and priced goods or services, rather than unnecessarily ordering custom designs and specifications.

Economic development is another aspect of economy-related objectives in public procurement. States may differ as to how they pursue development objectives in the context of procurement. What is increasingly acknowledged across the board is that a

transparent, competitive and efficient procurement is a driving force in improving public administration and sound commercial practices by the private sector – both fundamental elements of the development agenda.

### **5.2.5 Competition**

Competition is generally regarded as the way to obtain the best value and quality available in the commercial market. Whether procurement will be conducted using unlimited solicitation (“open tendering”), or whether participation is restricted and thus competition limited will depend in particular on the value, nature or urgency of the procurement "UNCITRAL law, art 35" 2003.

### **5.2.6 Fairness**

Both the reality and the perception of fairness are important for private sector confidence in the integrity of the procurement system. Lowered perceptions of fairness can contribute to lower rates of participation in procurement proceedings. Bidder confidence is bolstered by demonstrating that procurement proceedings are conducted in a fair and truly competitive manner.

Fairness is an objective of procedures at the various stages of the procurement process. At the procurement planning stage (before the actual procurement proceedings (acquisition phase)), fairness is bolstered by the following key steps to be taken: a packaging of contracts that attracts competition; selection of objective technical and qualification evaluation criteria; non-discrimination and openness in bidder pre-qualification systems, promoted by, for example, equal diffusion of necessary information to all participating bidders, and effective review of bid challenges.

### **5.2.7 Transparency**

Transparency in the public procurement process is central to achieving the fundamental objectives of economy, competition, fairness, and accountability. Transparency in a procurement system displays itself in the availability to concerned parties of the various types of information.

The procedures governing procurement proceedings need to be known and understood fully by bidders as well as by the public officials involved. This means providing access to the governing legal and regulatory texts for the general public (UNCITRAL Law, art. 5 2003).

This will avoid creating separate instruments for procurement of goods and construction, or having multiple, overlapping, and possibly inconsistent normative texts. A related approach is to harmonize procurement rules applicable throughout a state to the different levels of administration.

Bid solicitation documents should pre-disclose applicable procurement procedures and qualification criteria as well as all applicable bid evaluation criteria, quantified in monetary terms to the extent possible, to enable bidders to participate meaningfully

Clear and adequate information should be provided on:

- ❖ the operation of prequalification systems;
- ❖ the applicable procurement rules; and
- ❖ the identification of procuring entities subject to the rules.

### **5.2.8 Accountability**

This objective is fostered by the provisions establishing transparency (UNCITRAL Model Law, art. 11 2003 (record of procurement proceedings)), and the provisions on review. In addition, the framework of procurement law should contain provisions requiring rejection of bids whose proponents offer improper inducements, avoidance of conflicts of interest in the procurement process, and rules on bidder conduct.

## **5.3 Elements of the Framework for Procurement Law**

### **5.3.1 Preliminary Provisions**

#### **5.3.1.1 General provisions**

This section of the law shall govern the award, the execution and the review of contracts including freedom of access to procurement proceedings for all eligible and interested bidders, equal treatment of tenderers and transparency in public proceedings.

#### **5.3.1.2 Agency responsible for procurement proceedings**

This section shall indicate the proceedings, measures and mechanism for procurement entity.

#### **5.3.1.3 Candidates / Tenderers**

This section shall set the basis of excluding any candidate/tenderers as well as the qualification of candidate/tenderers. The section shall also regulates the use of subcontractors and the basis of joint ventures.

### **5.3.2 Procurement Proceedings**

#### **5.3.2.1 Methods of procurement**

This section shall indicate the allowed procurement methods and their use conditions as well as a clear description of each method. The section also sets the advertisements requirements and the basis of tender evaluation. This section shall also set the regulations of preferences, if any.

#### **5.3.2.2 Provisions applying to intellectual services (Consultancy)**

This section shall explain what is meant by intellectual services and shall set the basis of short-listing, evaluation, selection and negotiations leading to awarding.

### **5.3.3 Contract Execution**

#### **5.3.3.1 General Provisions**

This section shall list all the documents that form the contract, the scope of contract, price and other conditions.

#### **5.3.3.2 Securities**

This section shall indicate the needed securities such as tender and performance bonds or advance payment security and their form of submission.

#### **5.3.3.3 Modifications during the execution of the contract**

This section describes the changes in quantity or price of a contract and whether it needs formal amendments to the contract. The section also deals with the extension of time for completion and its price implication on either party, if any.

#### **5.3.3.4 Termination and suspension of contract**

This section sets the guidelines of termination by either party or its cost implication or termination indemnity. This section shall also deal with suspension of executing the contract or part of it and the implication of suspension if it exceeds a certain period or duration.

### **5.3.4 Payments**

This section indicates the types of payments such as advance progress or final payment and the purpose, amount and payment duration for each of them. The section also deals with the certification of payments and the liability of each party. The section also deals with the delay of payment.



## **5.3.5 Reviews and Bidders Complaints**

### **5.3.5.1 Contract award review**

This section shall deal with the publishing of awarded contracts and the time limit for its publishing and the place of publishing. This section also regulates and explains the mechanism of handling the bidder's complaints regarding pre-qualifications, awarding decision, etc.

### **5.3.5.2 Contract disputes**

This section explains the mechanism to be followed incase of a dispute, from negotiations to reach an amicable solution to law suits.

## **5.3.6 Control**

This section deals with the procurement regulating its members, organization, function...etc.

## **5.4 Framework for the proposed Organizational Structure for the Procurement System in the Municipalities**

### **5.4.1 Procurement Department**

The organizational size and set-up of the procurement department may vary from one institution to another, depending on the size of the institution. In larger institutions it may be feasible to have a procurement department that has a procurement director, specialized procurement officers, IT manager, financial manager, filing and archiving, advertising, etc. In smaller institutions, a procurement officer and accountant may serve the purpose of procurement related to all needed tasks from planning to implementation and filing.

According to the guide line of the procurement system of the Brandeis University 2003, the Office of procurement Services consists of a team of professionals trained in managing all facets of the procurement cycle, including the sourcing of goods, services and execution of works, the main job of the procurement department, the development of the appropriate business and contractual relationships with suppliers, contractors, and coordination of deliveries for works, goods and services received by the municipalities.

### **5.4.2 Responsibilities of the Director:**

According to the U.S. Department of Labor site (2004) and Admainguide.stanford.edu site, the authority of the director will represent the following points:

- ❖ The Director may adopt policies and procedures, consistent with the policies of municipalities, governing the procurement and management of all materials and services procured.
- ❖ The Director shall serve as the Chief Procurement Officer for the municipality.
- ❖ It shall be the Director's responsibility to perform or supervise the following:

1. Procure works, materials, supplies, equipment and contractual services for the municipality

2. Prepare and issue instructions and insure that the selection process is in compliance with the procurement law
  3. Issue purchase orders for materials, supplies, services and works
  4. Prepare procurement plan in coordination with all related department
- ❖ Delegate authority to a Procurement Officer within the procurement law and the regulations of municipality that include:
- The procurement expertise, specialized knowledge, past experience, and performance of the Procurement Officer.
  - The impact of the delegation on procurement efficiency and effectiveness; and,
  - The abilities and resources of the prospective procurement officer to exercise the authority.

### **5.4.3 Information Management**

The Information System Manager is responsible for managing all information systems hardware and software related to procurement system including planning and purchasing of goods, works and consultant. The Information Systems Manager provides association-wide applications support as well as programming and technical support for specific applications in accounting and development, wherever it is needed. The Information Systems Manager also provides training to assist staff in efficient use of applications, and advises the Association in the purchase of new systems and applications. In general the responsibilities and duties of the Information Manager/Officer would vary, depending on the existence of an IT department in the institution (2006).

### **5.4.4 Financial Director/Accountant**

The Finance Director/Accountant is responsible for the financial operations of the procurement projects and programmes, including financial and procurement planning and flow charts, control, and reporting. The Finance Director/accountant is also responsible for the preparation of the annual operating budget of projects and services, and long-range

plan financial projects, monthly financial statements, banking relations, coordination with information systems management department and organizational procurement policies.

#### 5.4.5 Procurement Manager

Manage the purchase, control, and expediting of subordinates assigned parts or product supply from existing validated suppliers at the optimum price, quality, and delivery.

Oversee performance measurement and coordinate with the other concern departments.

#### 5.4.6 Proposed Procurement Department Organizational Structure for Big and Small Municipalities

The organization chart below indicates the essential elements needed to have a proper procurement department in big municipalities. In smaller municipalities a small procurement section which is supported by resources from other sections will be sufficient.

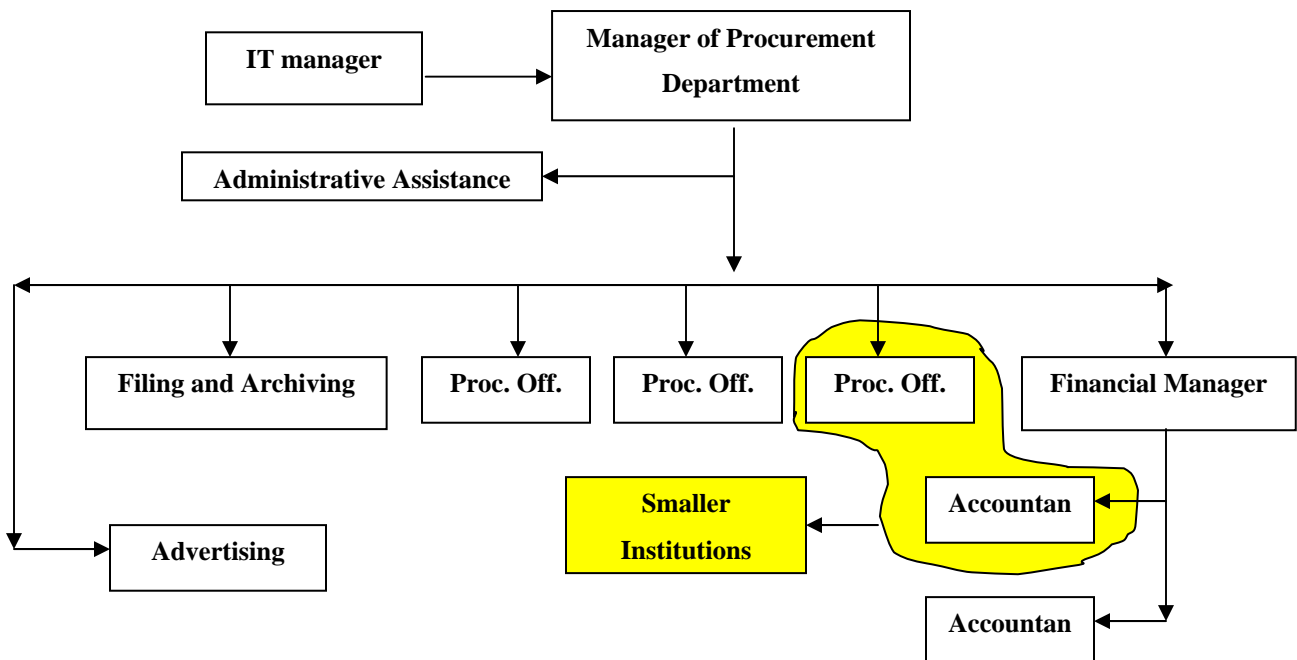


Fig: 5.1 Proposed Procurement Departments Organizational Structure

# **CHAPTER - 6**

## **CONCLUSIONS AND RECOMMENDATIONS**

### **6.1 Introduction**

This research is conducted in order to form a framework model that is suitable for the procurement management in the municipalities of the Gaza Strip trying. The framework model is intended to put a clear based for decision making during the procurement management process (as discussed earlier in chapters two and five). The researcher relied on literature review, field survey and his experience to achieve the goals of the research. In the process of conducting the research, some conclusions and general recommendations emerged.

### **6.2 Conclusions**

Reviewing the questionnaire analysis there is a general agreement at the importance of the questionnaire concepts where the procurement specialists insist on their importance and urgent need to take actions in this consideration. Meanwhile instructions shall be added and legal procedures shall be taken as the following:

- ❖ The Law of Local Government does not comply with the needs of municipalities, as well as ambitions of the employees in this field.
- ❖ The Law of Local Government does not include specific instructions or sufficient conditions for consulting services procurement.
- ❖ The Law of Local Government does not include instructions or guidelines to procure goods, works or consulting services from outside the country if it is not available in local market or when there is a desire from institutions to obtain or to have a competitive price to strategic construction projects.
- ❖ Most of the procedures and guidelines used by the municipalities are the World Bank and Europe Union conditions and guidelines.

- ❖ Many of the applied steps do not have any legal basis, these undermining the municipal decision in dealing with contractual problems with contractors, suppliers or consultants.
- ❖ The majority of the participants in the questionnaire indicated that only the high administrative authority have the right to intervene in the contractual procedures, and a very little proportion mentioned that the middle administrative levels intervene to change or infract the procurement law.
- ❖ Many of the participants prefer to create an independent administrative section in every municipality to undertake the management of procurement system.
- ❖ Forty percentages (40%) of the participators have suffering from complicated and lengthy administrative procedures.
- ❖ A large group of the participants prefer that the advertisement period (Bid preparation) should not be increased to 10 days.
- ❖ The elements which are suggested to be taken into consideration for selecting the winning bidder were as the following:-
  1. Cost
  2. Actual status of the ongoing company projects.
  3. Evaluation of performance in completed projects and relevant experiences.
  4. The company reputation in the market.
  5. Financial capability or fiscal situation of the company.
  6. Qualification of the company and staff on projects base (administrative staff).
  7. In addition, the participants preferred to have an Arabic version of tenders or procurement documents parallel to the English one.

### 6.3 Recommendations

From the previous discussion, explanations and analysis, the following are key recommendation possible to be adopted by the municipalities:

- ❖ Creation of new training system (Human Recourses and development Program) to study the employee's needs in this field and creation of comprehensive, theoretical and practical training method to enhancing their performance level.
- ❖ Creation of specialized procurement departments within the municipalities to practice procurement functions with specialized independent officers.
- ❖ Formulation of procurement law to comply with the municipalities needs in all fields (works, goods and consultancy services) depending on the procurement fundamental rules.
- ❖ Formulation of procurement law and documents for international procurement needs.
- ❖ Establishing of complaint system able to treat the claims being submitted by the contracting companies. These departments or administrations shall be independent in a sufficient form from the supervision and preparation departments in order to achieve transparency and equity.
- ❖ Establishing of accurate and specific complaint system to provide the contractors with capability to advance complaint with out any curiosity or intervention, and this system may be based on single person, collection of persons or administrative departments according of capability and magnitude of the municipality. But with out any pressure from monitoring, supervisor or the owners of the direct relation with the contractors, and all of that to achieve a high transparency level in municipality performance.
- ❖ The general conditions for every bid shall contain a forceful comparison and evaluation system to determine which contractors respond to the bid conditions and which one have the capability to carrying out the project, and not just reliance on the lowest price.

- ❖ Evaluation of the financial situation for the companies is considered as a difficult task facing the evaluation group. Therefore, the bid documents should include clear and accurate conditions to determine and verify the financial capability of bidders.
- ❖ The National Classification Committee must intervene to making a form of performance certification which should be issued from the municipalities to the contractors. The certificate shall include all information which determine the capability of the company, strength of its performance and distinguished the employees.
- ❖ The Contractor Union or any authorized authority must be responsible for financing training projects (Human Resources and Development Program) for the contractors to be fully aware on how to monitor the market activity and how it affects the price of commodities or currencies.
- ❖ The bid preparation period must be determined by the law, and be proportional to the bid size and its complexity.



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الجامعة الإسلامية – غزة  
عمادة الدراسات العليا  
كلية الهندسة – هندسة مدنية  
أدارة مشاريع هندسية

**QUESTIONNAIRE**  
**Assessment of Procurement Guidelines in**  
**PALISTINE**  
استبيان لتقييم نظم العطاءات في فلسطين

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**Dr. Rifat Rustum**  
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## المقدمة:

- 1- إن هذا الاستبيان هو جزء من دراسة تقييم نظم الشراء و العطاءات في قطاع غزة المعمول بها في مؤسسات السلطة الفلسطينية.
- 2- الدراسة هي البحث التكميلي لنيل شهادة الماجستير في إدارة المشاريع الهندسية في الجامعة الإسلامية بغزة.
- 3- يأمل الباحث من هذه الدراسة إيجاد نظام موحد شامل لنظام العطاءات ووضع تصور لإجراءات العطاءات في قطاع غزة
- 4- إن المعلومات التي ستساهمون في تقديمها لهذا البحث الدراسي سوف تسهم وبدون أدنى شك في وضع تصور واضح وصحيح عن حالة وآلية الخطوات الإدارية المتبعة في إجراء المناقصات
- 5- إن المعلومات التي ستساهمون بها سيتم التعامل بها لغرض البحث فقط.
- 6- يأمل الباحث أن تكون المعلومات المقدمة دقيقة ومعبرة عما يحدث أو مع ما هو كائن في واقع الأمر دون مبالغة.

## مكونات الاستبيان:

يتكون الاستبيان من سبعة أبواب رئيسية، كل باب منها يخص جانب من جوانب الأداء، جزء منها مخصص للمؤسسات المالكة أو الممولة لتنفيذ المشاريع والجزء الآخر موجه لكل الفئات وهي كما يلي:

- 1- مبادئ الشفافية
- 2- مبادئ المحاسبة والمسئولية
- 3- التنظيم الهيكلي والإداري
- 4- إدارة نظم التوريدات
- 5- تحضير الوثائق
- 6- الإعلان
- 7- اختيار العطاءات وتقييمها



## **Introduction:-**

1. This questionnaire is part of study for the assessment of the procurement and bidding systems evaluation and the bids in Gaza Strip which applies in Palestinian Authority institutions.
2. This study is complementary part to fulfill the requirements of the Master of Science Degree in projects management at the Islamic University of Gaza.
3. The researcher hopes that he could, through this study to contribute in creating creation unified and inclusive system for procurement and creating guidelines for the procurement procedures in Gaza Strip.
4. The information that you will present to this study research will undoubtedly contribute to put a clear picture about the state current and mechanism which are observed in bids procedures.
5. The information that you will contribute with will be used only for research purpose.
6. The researcher hopes that the contributed information will be accurate and expressive about what is applied without exaggeration.

## **Questionnaire ingredients:-**

This questionnaire consist of seven main parts, each part pertains a side of performance sides, part of it's dedicated for owner institutions, and other part serve other institutions such as (consultative offices , contractors , municipalities ..... etc ), the parts comprise the following :

1. Transparency principles.
2. Accountability and responsibility principles.
3. Administrative and structural organization.
4. Supplies systems management.
5. Preparation of biding documents.
6. Invitation and advertisement.
7. Evaluation and selection of bids.

### First: Transparency Concept

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1.	In light to your practical experience, do you believe that the procurement procedures of goods and works need modifications?										
2.	Is there a need to publish the procurement rules among the public?										
3.	Is the tendering period specified (time from bid invitation to bid opening) enough to study and fill the tender documents both technically and financially?										
4.	Do you believe that the different organizations need a newsletter dedicated for tendering issues and contractor's news?										
5.	Is the bid opening procedure suitable to announce the primary contractor's price results?										
6.	Do you believe to negotiate the contractor's offers after bide opening session?										
7.	Is it right to negotiate the contract with lowest bidder only.										
8.	Dose the procurement rules satisfy transparency and fairness.										
9.	Are the procurement of goods and works rules and procedures clear?										
10.	Is it possible to break the procurement rules in the emergency cases?										
11.	Is the announcing of the award of contract needed? (i.e. announcing the name of the winner bidder).										
12.	Are the insurance and securities requirements clear and appropriate?										
13.	Are there clear and fair standards for qualifying the contractors and bidders?										

**First: Transparency Concept**

		Importance					Application				
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
14	Are the applied bids evaluation procedures appropriate to produce fair and logical decisions?										
15	Is there importance of informing all the participating bidders about the procedures made for their bids?										
16	Are there meetings being organized with the contractors and business men to discuss procurement issues?										
17	Not permitting the persons working in procurement to provide services out side there employment.										
18	Dose the used laws applying enough penalties to ban corruption?										
19	Is it important that the laws of procurement include clear and specific clauses to counter the financial bribe and corruption?										

## Second: Responsibility / Accountability Concept

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Do you believe that the procurement officials following the job ethics										
2	Is the handing over and follow-up of the contractors' complaints facilitated, defined and clear?										
3	Is the used procurement laws save the rights of contractors' to submit complaints without being affected by the procurement departments' employee future negative actions?										
4	Are the communications channels with the projects administrators defined and clear?										
5	The projects administrators apply a follow up mechanism to organize the behavior of the procurement employees?										
6	The projects administrators review the administrative procedures in order to have fair processing of the contractors' complaints?										
7	Is the applied managerial and financial system in the Institutions defining the obligations of the different parties during the bidding period in order to allow for follow up?										
8	Dose the top management stress on the importance of being abide to the rules of procurement.										
9	In case of any violation to the rules, this could be attributed to one of the following parties:- (select one only) <ul style="list-style-type: none"> <li>• Top management</li> <li>• Procurement employees involved directly in the decision</li> <li>• Other non-decision making employees.</li> </ul>										

### third: Administrative and structural organization

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Is the procurement staff update there selves with all the updates on the procurement lows and rules (or you believe that the staff misses such updates)?										
2	Is the procurement staff qualified enough and equipped with the needed administrative knowledge for procurement issues.										
3	Are there specific and clear qualifications in the procurement employees?										
4	Area there defined and independent organization structure for procurement issues without interference with other departments?										
5	Do you prefer that the staff handling the procurement issues shall be under one of the following? <ul style="list-style-type: none"> <li>• Independent organizational system within the institute.</li> <li>• Adding the procurement tasks to the employees of the institute whom already have another tasks</li> <li>• Establishing temporary committees for different procurement category depending on its kind and nature.</li> </ul>										
6	Dose the contracting with contractors and suppliers pass through complicated managerial steps?										
7	Dose the contracting with contractors and suppliers pass through one of the following steps (chose only one)? <ul style="list-style-type: none"> <li>• Clear and fast managerial steps.</li> <li>• Long and complicated managerial steps.</li> <li>• Undefined and unclear managerial steps.</li> </ul>										

**third: Administrative and structural organization**

		Importance					Application				
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
8	Dose the unspecialized managerial levels intervene in the contracting procedures of works and goods?										
9	Dose the higher administration intervene in the contracting procedures?										
10	Do the managerial contracting authorities updated regularly?										
11	Are there follow up and checking for each step during the tending process before concluding the contract?										
12	Are the follow up and checking steps systematic to level assuring preventing violations before they happen?										
13	Do you feel the established procurement committees or the employees assigned to carry out the contracting tasks have high professional experience?										
14	Are there capacity building programs efficient to improve the capacities and development of the sector?										
15	Dose the technical knowledge lead to developing the profession and improving the performance										
16	Are the procurement employees preferred to have projects management experience?										
17	Are there prior plans for monitoring and follow up of the tendering processes?										
18	Are the cost estimate prepared by the contracting authorities based on real prices of the market?										
19	Do the contracting authorities use implemented projects past experience in managing new projects?										

**Forth: Supplies Systems management**

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Do the projects management units have staff trained on project management, cost estimate, tenders evaluation and contracts management?										
2	Are there complete scheduling (procurement plans) proceeds the procurement implementation?										
3	Do the different concerned institutes prepare a feasibility studies for the proposed projects before issuing the project for tendering?										
4	Do the concerned institutes prepare annual projects needs assessment based on strong technical & financial grounds?										
5	Do the concerned institutes using specific planning tools to manage the interrelated contractual steps especially in larger projects? (e.g. using computer programs or project planning and scheduling)?										
6	Do the concerned institutes normally divide proposed project into sub-projects to facilitate the contractual processes?										
7	Do the procurement units have updated materials and work market prices database?										

### Fifth: Documents Preparation

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Do you believe that the contracts general & special conditions and the other contractual annexes addendums are clear enough to avoid any dispute in the contract interpretation										
2	Do the contract special & general conditions and the other related addendums fulfill the contractual needs during project implementation?										
3	Are there special & general conditions for the international tenders?										
4	Do the instructions to Bidders of the tenders documents include all the information needed by bidders to prepare their bids?										
5	Do the provided tenders' documents clearly specify to the bidders the bids evaluation methodology and who is going to carry out the evaluation?										
6	Do the tender documents include all the needed information to accept or reject tender/tenders?										
7	Do the concerned institutes conduct contractors' pre and post qualification.										
8	Do the concerned institutes have specific contractors' qualification programs either before or after issuing the project for tendering?										
9	Dose the contract conditions guarantee enough contractual protection for the concerned institutes without imposing risk on the bidders?										
10	Dose the implementation contract conditions guarantee enough contractual protection for the concerned institutes without imposing extra risks on the bidders?										



### Sixth: Invitation and Advertisement

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Do the concerned institutes advertise for competitive biddings?										
2	Do the concerned institutes give the bidders enough time to allow the bidders get the tender documents and prepare their bids?										
3	Do the concerned institutes give the bidders enough time to review their bids in case of issuing addendums to the tender documents?										
4	The period you believe is suitable to advertise for competitive bidding is? (select only one) <ul style="list-style-type: none"> <li>• Ten days at least</li> <li>• Twenty days at least</li> <li>• Thirty days at least</li> </ul>										
5	Is the contract award criteria specified in the advertisement form for the competitive bidding?										
6	Do the concerned institutes respond to the bidder's queries or questions on the bidding documents during the bidding period (i.e. before bids opening)?										
7	In cases where modifications and addendums to the original bidding documents, the institutes assures getting those modifications to all the participating bidders?										
8	<u>Knowledge of the employees in municipalities and other concerned institutes</u> Do the concerned institutes keep accurate records of all correspondences during and after the bidding period?										

**Seventh: Bids Evaluation and caparison**

		Importance				Application					
		Strongly Agree	Agree	Don't Know	Object	Strongly object	Strongly Agree	Agree	Don't Know	Object	Strongly object
		5	4	3	2	1	5	4	3	2	1
1	Do the tenders evaluated through especial committee and with clear data?										
2	Do the concerned institutes assign special committee for each tender?										
3	Do the applicants comply with all the documents and the experiences requested in the bid documents?										
4	Does the evaluation procedure go through the criteria which were defined in the tender documents?										
5	Dose the evaluation completed within the original contract period?										
6	Do the evaluation reports contain all the basic information?										
7	Do you believe that there is a clear difference in the evaluation procedure for material supply bids and works implementation bids?										
8	8. How do you think that the differentiating procedure between the eligible bidders can be applied? A- B- C- D-										