

# POLICY REFORMS FOR SUSTAINABLE PUBLIC PROCUREMENT IN KENYA

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**PUBLIC PROCUREMENT OVERSIGHT AUTHORITY**  
*Transforming Procurement*





- ✓ Aspects of policy reforms for sustainability
- ✓ Reservations for disadvantaged groups
- ✓ Domestic preference for local contractors
- ✓ E-procurement initiatives updates
- ✓ Sustainable reforms in the cards
  - Green procurement
  - Community participation
- ✓ Way Forward





- ✓ Until 1970s public procurement undertaken by Crown Agents due to lack of local capacity
- ✓ In 1974 responsibility transferred to ministries & departments under Central Tender Board
- ✓ Ministry of Finance regulated public procurement through Circulars to ministries. In 1978 Ministry of Finance issued the *Government Financial Regulations and Procedures* for administration of procurement & tendering Regulations



# POLICY REFORMS FOR SUSTAINABILITY



- ✓ District Tender Boards (DTBs) established to procure at lower levels of government
- ✓ Treasury circulars set out procedures & policies
- ✓ System was inefficient – overspending, inferior quality, variations, lengthy lead times
- ✓ Need for reform became urgent
- ✓ In 1999 *Report of Kenya Public Procurement Systems* recommended establishment of legal framework under the Exchequer and Audit Act, cap 412



- ✓ The Regulations of 2001 allowed the Minister of Finance to exempt from regulations defence procurements
- ✓ Weaknesses of regulations 2001 led to promulgation of the Public Procurement & Disposal Act, 2005 and the Regulations there under
- ✓ Procurement & disposal law to provide -
  - Categories of preference
  - Protection of persons, groups previously disadvantaged by unfair competition or discrimination
  - Sanctions



## National values of governance

patriotism, sharing, rule of law, participation of people  
equity, social justice, equality, non-discrimination,  
protection of marginalised, good governance, integrity,  
transparency & accountability for sustainable  
development

## Bill of Rights

Art 21(3) - all public officers duty bound to address needs  
of vulnerable groups: women, elderly, disabled, youth,  
minorities, communities enforcement of Bill of Rights

Art 27(3) - right to equal opportunities in economic  
spheres





### Affirmative action:

Art. 55 - ensure youth have economic opportunities

Art. 56 - ensure minorities & marginalised groups have special economic opportunities

Art. 201(b) – public expenditure to promote special provision for the marginalised

Art. 227(1) - Public Procurement system:

- ✓ fair, equitable, transparent, competitive & cost-effective

Art. 227(2) - procurement & disposal law to provide for:

- ✓ Categories of preference
- ✓ Protection of persons, groups previously disadvantaged by unfair competition or discrimination





Constitution 2010 calls for: Affirmative action

- ✓ maximise economy & efficiency
- ✓ promote competition & fair treatment of competitors
- ✓ promote integrity & fairness
- ✓ increase transparency & accountability
- ✓ increase public confidence
- ✓ facilitate promotion of local industry & economic development



Sanctions against suppliers who have not performed professionally, per agreements or law

Sanctions against tax defaulters, corrupt & serious violators of employment laws & practices

PPDA continues in force under Section 7(1) of 6<sup>th</sup> Schedule of Constitution

PPDA to be re-enacted within 4 years under 5<sup>th</sup> Schedule of Constitution (Period extended by 9 Months w.e.f August, 2014)





## Public Procurement and Disposal ,Preference and reservation Regulations 2011

### Application/Target group

- ✓ Small enterprises
- ✓ Micro enterprises
- ✓ Disadvantaged groups (Physically disabled, youth & women)
- ✓ Citizen contractors
- ✓ Local contractors; and
- ✓ Citizen contractors in Joint Venture or Sub-Contracting arrangements with foreign suppliers



# PREFERENCE AND RESERVATIONS



- ✓ Applicable to citizen contractors that are based and operate in:-
  - Constituencies;
  - Local authorities; and
  - Counties.
- ✓ Exclusive preference to local contractors in the said regions except where established that local capacity is not available
- ✓ The scheme for local preference applicable is limited to procurements using CDF and LATF funds



# PREFERENCE AND RESERVATIONS



✓ Local contractors enjoy reservations where:-

- Motor vehicles plant and equipment assembled in Kenya
- Furniture, textiles and foodstuffs made in Kenya
- Goods manufactured, mined, extracted or grown in Kenya

✓ Exclusive preference for citizen contractors up to:-

- Kshs. 1 Billion for procurement of road-works
- Kshs. 500M for other works
- Kshs. 100M Goods and 50 for services



# PREFERENCE AND RESERVATIONS



- ✓ 15% margin of preference for goods, manufactured, mined, extracted or grown in Kenya
  
- ✓ Margin of preference to citizens:-
  - 6% if citizen shareholding is less than 20%
  - 8% if citizen shareholding is between 20% and 50%
  - 10% if citizen shareholding is above 51%
  - 10% if in joint-venture or sub-contracting arrangements with citizens



# RESERVATION OF 30% PROCUREMENT SPEND



## LEGAL NOTICE 114

- ✓ Gave further direction on preference and Reservation
- ✓ 30% budgetary reservations to small and micro enterprises owned by youth, women and PWDs
- ✓ Unbundling of goods, works or services to ensure
- ✓ Maximum participation
- ✓ Facilitation of LSO/LPO financing by PEs
- ✓ Payment shall not delay beyond 30 days.
- ✓ PPOA to monitor the schemes and maintain a register of SMEs and disadvantaged groups
- ✓ All tender awards applying the schemes must be reported to PPOA within 30 days





- ✓ Reduced fees for tender documents from maximum of KES. 5,000 to 1,000 and abolished fees for documents acquired electronically, EOI and Pre-qualifications
- ✓ Reduced minimum period of preparation & submission of tender documents under various procurement methods
- ✓ Allows bid bonds from DTMFIs, Saccos, YEDF and WEF
- ✓ Merged 3 committees namely, TEC, NC and I&AC into one TPC
- ✓ Reduced period of tender evaluation from 30 to 15 days
- ✓ Revised contract variation to a cumulative maximum of 25% of original contract sum
- ✓ Reduced appeal window from 14 to 7 days from date of occurrence of breach or notification of award



# IMPLEMENTATION OF E-PROCUREMENT



- ✓ The implementation of the P2P system commenced in July 2012
- ✓ Collaborative effort between IFMIS department, Public Procurement Oversight Authority (PPOA)
- ✓ The fully automated P2P system has financial, audit, technical, operational and logistical benefits to the government
- ✓ Increases visibility of all financial activities related to procurement of goods and services



# E- PROCUREMENT AND ITS BENEFITS



Enables the procuring entities to evaluate vendor and employee compliance to contracts and agreements

Curtails risk of fraud and other errors like double payment

Reduces processing costs



## Accountability & public confidence

- ✓ Public officials must explain decisions / actions (sec. 67 of PPDA)
- ✓ Errant officials to be punished (sec. 137 of PPDA)-individuals-
- ✓ Provision of tender award criteria, fair competition, transparency & integrity boost accountability & public confidence

## Promotion of local industry & economy

Public procurement as the vehicle to deliver economic development through an “all inclusive” private sector doing business with Government





## **Green procurement**

It is important that as new legislations are enacted they give due considerations to conservation of environment, reduced pollution , wastage and efficient use of energy/renewable energy

## **Community participation**

Developments affect the local citizenry directly and they are best placed in monitoring the performance of contractors

The country has legislated public procurement since 2005. It is important the new law draws from lessons learnt, take into consideration the new dispensation created by the constitution 2010 and make provision for emerging issues in Public Procurement.





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