



PUBLIC PROCUREMENT IN THE COUNTIES RESPONSIBILITIES AND CONTROLS

PRESENTED AT THE FINANCIAL MANAGEMENT AND REPORTING
CONFERENCE FOR COUNTIES, SAFARIPARK HOTEL, NAIROBI, 24 – 26
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by

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SCENARIO

- **BUDGETS:** Approximately 240 billion to be disbursed to counties in 2013/14
- **PROCUREMENT & BUDGET IMPLEMENTATION:** Other than paying salaries a significant portion (over 50%) of budget will be used to procure goods/services/works to run the county governments and for projects





SCENARIOS

- **THE DISCONNECT:** The culture of **PLANNING PROCUREMENTS** and **LINKING TO BUDGET** has not caught-on, as revealed by evidence from procurement audits carried out by PPOA – yet the law makes it mandatory to plan all procurements in line with budget





SCENARIOS

- **INEFFICIENCY:** Prior to devolution – reported absorption rates for budget other than for salaries is under 40% - recall the last minute rush to procure furniture and other items in the last two months of government financial year. Will this inefficiency devolve to the counties?





SCENARIOS

- **A SIGNIFICANT RISK:** Over 90% of cases being investigated by the Ethics and Anti-Corruption Commission are procurement related. Will the unethical practices devolve to the counties?
 - **UNCOOPERATIVE RELATIONSHIPS:**
Traditionally the relationship between procurement and finance has been less than cooperative - yet the two functions are symbiotic.
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VISION 2030

For progress to be made towards turning Kenya into a newly industrialized nation by 2030, and for consolidation of the resultant gains the vision 2030 blueprint acknowledges that:

- Initiatives targeting reforms in public finance must address public procurement
- Improvement in procurement efficiency and capacity must be achieved alongside improvement in expenditure management, for the latter to be meaningful



VISION 2030

- Procurement is singled out as a key cost savings tool that will free-up resources for use in priority areas – cost reduction initiatives in agriculture (fertilizer procurement) and in the health sector (procurement of medicines) will leverage on procurement strategies





VISION 2030 SUPPORT TO ECONOMIC PILLARS

- Macroeconomic Stability for long-term development: *Design policies and implementing procurement regimes and practices that promote growth of local enterprise.*
- Infrastructure: *Embracing special procurement methods e.g. PPPs, concessions, support to infrastructure projects*
- Energy: *Procurement of alternative energy technologies*
- Green/sustainable procurement initiatives: *Lower or eliminate externalities associated with procured items, their maintenance and disposal.*



PROCUREMENT PRACTITIONERS

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- s. 27(3) of PPDA:
shall ensure the PPDA & regulations, directions of PPOA are complied with
- s. 39(5) of PPDA:
shall comply with PPDA & regulations in respect of preferences & reservations when processing procurement in the Counties





EXTENT OF PUBLIC PROCUREMENT LEGAL FRAMEWORK

- Constitution of Kenya, 2010
 - Public Private Partnerships Act, 2012
 - Supplies Practitioners Management Act, 2007
 - Public Procurement and Disposal Act, 2005
 - Public Procurement and Disposal Regulations, 2006
 - Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009
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EXTENT OF PUBLIC PROCUREMENT LEGAL FRAMEWORK

- Public Procurement and Disposal (Preference & Reservations) Regulations 2011
 - Review Board decisions and Case law
 - Procurement & Disposal Manuals
 - PPOA Directives
 - Government Contracts Act
 - State Corporations Act
 - Public Officer Ethics Act, 2003
 - Ethics & Anti-Corruption Commission Act, 2011
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CONSTITUTIONAL PROVISIONS

Practitioners required to:

- promote the purpose, values, spirit & principles of the Constitution of Kenya, 2010
- Section 227 of the Constitution sets the foundations for procurement in the new dispensation including preferences and reservations: *Public procurement must promote national development goals and must be conducted in a manner that is fair, equitable, transparent, competitive and cost-effective*





CONSTITUTIONAL VALUES & PRINCIPLES

- National values & principles of governance - Art. 10
 - bind all state organs, state officers, public officers & all persons whenever:
 - applying or interpreting Constitution
 - applying or interpreting any law
 - making or implementing public policy decisions





CONSTITUTIONAL VALUES & PRINCIPLES

- Values relevant to public procurement to be adhered to by all participants (Governors, Directors, Officers) in a public procurement:
 - patriotism, sharing, rule of law, participation of people
 - equity, social justice, equality, protection of marginalised
 - good governance
 - sustainable development



CONSTITUTIONAL VALUES & PRINCIPLES

- Values & principles of public service – Art. 232:
 - high standards of professional ethics
 - efficient, effective & economic use of resources
 - responsive, prompt, effective, impartial & equitable services
 - involvement of people in policy making
 - accountability for administrative acts
 - transparency & accurate timely information to public





DEVELOPMENT AGENDA

- public expenditure to promote equitable development & special provision for marginalised groups/areas - Art. 201(b)(iii) – of the constitution





CONSTITUTIONAL AFFIRMATIVE ACTIONS

Special focus area for public procurement in the current dispensation is economic empowerment:

- ensure youth have economic opportunities - Art. 55 of the constitution
 - ensure minorities & marginalised have special economic opportunities - Art. 56(b) of the constitution
 - Registration of youth seeking to access public procurement is still being carried out at the National Treasury in Nairobi -
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PREFERENCES AND RESERVATIONS

- fair, equitable, transparent, competitive & cost-effective - Art. 227(1)
- procurement & disposal law to provide for: - Art. 227(2):
 - categories of preference
 - protection of persons, groups previously disadvantaged by unfair competition or discrimination





PURPOSE OF P&R REGULATIONS

- To promote local, national and regional industry & support socio-economic development by defining:
 - the target group & eligibility requirements for benefitting from the preference and reservations schemes;
 - the % margin of the preference, where applicable;
 - the goods works and services set aside/ reserved for specified target groups;
 - the regions within which to apply the scheme; and
 - the means of measuring its effectiveness in achieving the objectives.



TARGET GROUPS / APPLICATION

- 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
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LOCAL PREFERENCE & RESERVATIONS

- applicable to citizen contractors based & operating in:
 - Constituencies;
 - Local authorities; and
 - Counties
- exclusive preference to local contractors in the said regions unless local capacity is not available
- Current scheme for local preference applicable is limited to procurements using CDF funds





NATIONAL PREFERENCE

- 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 less than 51% but above 20%;
 - 10% if citizen shareholding is above 51%
 - 10% if in joint-venture or sub-contracting arrangements with citizens
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10% RESERVED PROCUREMENT

Directive of previous government to reserve 10% of public tenders for youth has never been applied.....



..... a small elephant in the room!



30% RESERVED PROCUREMENT

- Directive of current government to reserve 30% of public tenders for youth.....



.....a big elephant in the room!



COUNTY PROCUREMENT AND, PREFERENCES & RESERVATIONS

- In the **new procurement frontier for Counties** has to a significant extent, performance of Governors/Senators/Representatives will be measured by how effectively the directives on reservations as well as laws/regulations on preferences are implemented;
- The facility may be prone to abuse!
- There will be need to consider capacity constraints on the supply side and how this affects quality and delivery – a long term problem!



COUNTY PROCUREMENT AND, PREFERENCES & RESERVATIONS

- For procurement practitioners to ably implement the directives, there is need for synchronization of the directives with the existing Public Procurement and Disposal (County Government) Regulations, 2013 and the Public Procurement and Disposal (Preference and Reservations) Regulation, 2011 – this is yet to be achieved but is a key prerequisite



PROFESSIONALISM

- Recent surveys show that many Councils (which have grown to be Counties) did not engage professionally qualified procurement staff
- PPDA Clause 26(7) requires that only qualified staff should be engaged in procurement functions
- To support qualifications – a local national exam under Kenya Institute of Supplies Examinations Board will be put in place





PROFESSIONALISM

- There is need for continuous professional training or capacity building – delivered by KISM, Government training institutes and other educational institutes
 - Procurement practitioners have obligation to apply strategic approaches to procurement such as PPP's; use of procurement agents; supply market analysis and vendor rating; use of risk allocation models; relationship management etc.
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STRUCTURES AND POSITIONING OF PROCUREMENT

- The County Treasury places the Transition Head of the County Finance Department in charge of Finance and Procurement, reporting to the Principal Officer of the County Treasury
- The County Head of Supply Chain Management reports to the Head of County Finance Department.
- Effective procurement management demands that procurement to be headed by a procurement professional duly empowered to implement procurement law & regulations, contribute to budget, planning, strategies and policy



STRUCTURES AND POSITIONING OF PROCUREMENT

- For effectiveness, current procurement law requires the head of procurement to report to the Accounting Officer of any public organisation
- Procurement should play an advisory role in the County Executive Committee and County Assembly Service Board on implementation of procurement law
- Above position has been arrived at after 50 years of experimentation at the Central Govt and we should desist experimenting another 50 more years of procurement mis-positioning at the Counties. Let us devolve what works!



MONITORING BEST PRACTICES

- Procurement audits and administrative reviews by the authorities
- Procurement monitoring and reporting as per templates provided by PPOA
- Procurement monitoring by interest groups and/or the public – acknowledges the acutely low capacity of central and devolved government agencies to monitor





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