

PUBLIC PROCUREMENT & ASSET DISPOSAL (PP&AD) ACT

NO. 33 of 2015

PFM Seminar - South Rift Branch

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Venue: Sun Shine Hotel - Kericho

Presentation Outline



- ❑ Constitutional provisions
- ❑ Overview of PP&AD Act 2015
- ❑ Provisions in Public Finance Management (PFM) Act 2012 on Procurement.
- ❑ Impact on Public Finance Management

Article 227 of CoK 2010



❑ In Chapter 12: Public Finance, Article 227 on Procurement of Public goods and Services, it stipulates in Sub-section (1) that;

*“when a state organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is **fair, equitable, transparent, competitive and cost-effective**” .*

Article 227 of CoK 2010

Cont'd



❑ Article 227 on Procurement of Public goods and Services provides in sub-section (2) as follows;

*“An Act of Parliament shall prescribe a framework within which policies relating to procurement and **asset** disposal shall be implemented”.*

❑ The sub-section further protected marginalised groups and sanctions those: contractors not performing, breaching tax obligations or the corrupt.

Overview of PP&AD Act 2015



- ❑ Public Procurement & **Asset** Disposal Act No. 33 of 2015, was assented to on 18th December, 2015 but came into effect on 7th January, 2016.
- ❑ The Act repealed the Public Procurement & Disposal Act of 2005.
- ❑ However, Regulations that are to operationalize the act are yet to be released.

Overview of PP&AD Act 2015 Cont'd



- ❑ Public Procurement & Disposal Regulations 2006 are still used as a point of reference.
- ❑ Transitional Provisions under s183 (11), states ***“Regulations contemplated under this Act shall be made within a period of one year immediately after the effective date of the Act”.***

Provisions in PFM Act on Procurement



- ❑ Public Finance Management Act 2012 provides in **s30** and **s121** how national government and its entities and County Government and its entities respectively should carry out procurement of goods and services.
- ❑ The sections refers to Article 227 of CoK and relevant legislation.

PP&AD Act 2015 – Impact on Public Finance



- ❑ PP&AD Act 2015 provides in **s53(2)** requires that all procurements must be contained in an Annual Procurement Plan within an Approved Budget. – *must therefore be part of budgeting process.*
- ❑ **s53(4)** - All asset disposals shall be planned by the accounting officer concerned through Annual Asset Disposal Plan in a format set out in the Regulations. - *Projected earnings to be captured in the budget as part of revenue streams.*

PP&AD Act 2015 – Impact on Public Finance Cont'd



- ❑ **s53(6)** - All procurement and asset disposal planning shall reserve a minimum of **thirty per cent** of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups. – **Equalization.**
- ❑ **s53(8)**-Accounting officer shall not commence any procurement proceeding until satisfied that **sufficient funds** to meet the obligations of the resulting contract are reflected in its approved budget estimates.

PP&AD Act 2015 – Impact on Public Finance Cont'd



- ❑ **s53(9)** - An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, **commits an offence** under this Act.
- ❑ **s53(9)** - Any state or public officer who fails to prepare procurement and disposal plans shall be subject to internal disciplinary action.

PP&AD Act 2015 – Conclusion



❑ Summary of key issues

1. Procurements must be planned and tied to availability of funds.
2. Transparency, Accountability, Competitiveness and cost-effectiveness.
3. Reporting requirements to Public Procurement Regulatory Authority on reservation schemes.
4. Quarterly Cash Flow projections **shall** be supported by Procurement Plan.

PP&AD Act 2015 – Conclusion Cont'd



5. Expenditure commitments for goods and services shall be controlled against spending by approved Procurement Plan.
6. s176 -Offences and sanctions – a fine not exceeding Ksh 4 million or custodial sentence of up to 10 years or both for a natural person and a fine not exceeding Ksh 10 million for a body corporate.

THE END



THANK YOU