

ACCESS TO GOVERNMENT PROCUREMENT OPPORTUNITIES LITERATURE

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Introduction

Public procurement may be defined as the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from national budgets. The items involved in public procurement range from simple items or services, to large commercial projects such as the development of infrastructure including roads, power stations and airports. World Bank (2004) defines public procurement as the acquisition of goods, services and works by a procuring entity using public resources. It involves the process of acquiring goods, services and works by public procuring entities. It includes hiring, leasing, purchasing or any other contractual means of engaging suppliers in public services to the public. The main aim of public procurement is to achieve maximum value for money while ensuring fair competition and meeting the needs of the public. It also includes: - minimizing administrative costs, satisfying the customer in terms of the cost, quality and in time, conducting business with integrity, fairness and openness and meeting public objectives (Ndolo and Njagi, 2014).

Public procurement in Kenya has become a major driver of the economy in Kenya since the government spends huge sums of money in providing essential services such as health, education, security and defense, infrastructure, water and so on. To provide these services, the government purchases goods and services from the market place through public procurement. The total value of Public Procurement in Kenya is currently estimated at 12per cent of the GDP.

Access to Government Procurement Opportunities

The cabinet secretary for the National Treasury Published Public Procurement (Preference and Reservations) (Amendment) regulation 2013 whose aim is to support the special interest groups in Kenya in terms of giving them preference in the provision of goods and services to the public entities. This is in line with one of the key promises of President Uhuru Kenyatta and his

government which was to give the youth, women and persons with disabilities at least 30per cent of all supply contracts to the public entities.

The youth, women and persons with disabilities are categorized as part of vulnerable populations that are normally over looked by government initiatives and programs and are therefore less likely to receive skills training which puts them at a greater risk of being unemployed and having no source of income (Attaran, 2002). This is one of the reasons that the Kenyan government came up with the Access of Government Procurement Opportunities AGPO program. The program is an affirmative action aimed at empowering youth, women and persons with disability who own enterprises by giving them an opportunity to do business with government entities (Republic of Kenya, 2013).

However, despite the government’s support by reducing several documentation requirements such as: the 2015 Companies Act eliminated the requirement to have registration documents notarized before the Commissioner of Oaths, which reduced procedural complexity and the time to start a business overall; the abolishment of the stamp duty on the memorandum and articles of association and the statement of nominal capital; financial support through Uwezo Funds, Women Enterprise Fund, Youth Enterprise and Development Fund and the National Fund for Persons with Disability and the introduction of e-procurement to motivate the beneficiaries to participate in public procurement and to reduce the cost of doing business in Kenya, there are still significant challenges that face the procuring entities and the potential beneficiaries that has seen very low utilization of the public procurement opportunities that are available in both levels of government. As at 24th August 2017, the total number of AGPO registered enterprises from the Public Procurement Regulatory Authority (PPRA) website were 71,192 distributed as shown in Table 1.

Table 1: List of Registered Target Groups by Category and Group

Target Group	General Supplies	Fresh Produce/Agribus	Professional Services & Cons	ICT Services	Small Works & Engineering	Total
Youth	29,750	1040	3,390	3,250	3,200	40,630
Women	19,780	870	2,700	710	3,432	27492
PWDs	2,340	125	240	100	265	3070
Total						71,192

Source: Public Procurement Regulatory Authority www.ppoa.go.ke

However, data from the Treasury shows that as at 6th September, 2017, only 68,186 enterprises were registered under AGPO as shown in Table 2 implying a decline in the number of AGPO registered firms. What happened? It is possible that there had been double registrations by AGPO beneficiary's business entities

Table 2: Registered and Certified Enterprises under AGPO since Inception in 2013

Target Group by Category	Number	Percentage
Youth	25,549	37.47
Women	39,681	58.20
PWDs	2,956	4.34
Total	68,186	100

AGPO Secretariat at National Treasury -6th September, 2017

As Table 1 shows, there are more women in the general supplies category than in any other category followed by small engineering works and professional services and consultancy contrary to expectation because it involves a lot of expenses plus the fact that one has got to be registered with the National Construction Authority. This could be attributed to the allegation by the procuring entities of women fronting for rich businessmen. It could also be attributed to the fact that the general supplies and construction are the most lucrative compared to the others. Very few women are found in ICT services and fresh produce.

To qualify for a contract under the 30per cent set aside quota, a woman/youth or PWD entrepreneur must first acquire an AGPO certificate. To qualify for this certificate under the preference and reservations scheme, an enterprise should be a legal entity that:

- (i)Is registered with the relevant government body;
- (ii)Has a proprietorship or directorship of at least 70 per cent of the preference group they wish to apply for, for instance made up of 70 per cent women to qualify for the women's category.

The above is assuming the enterprise is already registered and it has:

- (a) A certificate of incorporation
- (b)Business Registration Certificate/ Certificate of Incorporation.
- (c)PIN/VAT Certificate.
- (d)A Tax Compliance certificate
- (e)Partnership Deed for Partnership Business.

(f)Memorandum/Articles of Association and CR12 mandatory for Registered Companies indicating where the majority shareholding lies

(g) All the necessary licenses for example Construction Category, Letter/Certificate from the National Construction Authority, Energy Regulatory Commission or any other Authorized Public Technical Body.

The total cost of obtaining an AGPO certificate can range from Ksh.7800 if it is not in the construction sector to Ksh.12800 if it is in the construction sector. The cost can also be higher depending on the type of business permit and the County. Obtaining a single business permit costs Ksh.6800 in the rural counties like Nyeri and Ksh.15200 in Nairobi.

To obtain these documents requires moving from home or where the business is situated to the nearest Huduma center or the County Treasury to apply for a business permit. So the certification process although challenging is compounded by financial challenges which may even make it difficult for a woman entrepreneur to win a tender.

Data shows that Nairobi County has the highest number of registered AGPO firms accounting for 76 per cent of total registered firms. Nairobi is followed by Mombasa (6 per cent) and Kiambu (5 per cent), Nakuru and Uasin Gishu (2 per cent); Kisumu, Kajiado, Kitui, Nyeri (1 per cent each). This may be due to limited access to information regarding AGPO tenders especially in the rural areas outside Nairobi.

Prequalification

The next stage is pre-qualification where an enterprise can be registered for pre-qualification to supply goods, works, services and consultancies to whichever institution sends out a Notice for Pre-Qualification. Pre-qualification is beneficial, as institutions are supposed to call upon pre-qualified suppliers directly to bid for a tender in their field, as opposed to putting out Expression of Interest (EOIs) or Request for Proposal (RFPs) notices although some institutions announce open EOIs but even then, pre-qualified suppliers have an added advantage.

When tender notices are circulated nationally, bidders are usually given a period to purchase or download the tender document from the procuring agents website. The bids that ultimately comply with the eligibility criteria of the notice and the bidding document are evaluated after tender opening. The tender is then awarded after an exhaustive evaluation. Filling out the

documents can be a tedious and discouraging process and for the less educated women entrepreneurs, it may lead to disqualification if instructions are not followed properly.

Preparation of Financial and Technical Proposal

The next stage is preparation of a financial and a technical proposal. To successfully win a tender, the woman entrepreneur's financial proposal should be the most competitive compared to those of the other competitors. In the tender documents, one needs to specify the credit period because the contract obligates the supplier to continue supplying the goods and services for the duration of the contract even when an invoice has not been honored. So the entrepreneur needs to have a good relationship with a bank which can extend credit required to purchase the goods to supply while waiting for payment for goods supplied or services rendered. This can be quite a challenge for new businesses that do not have a credit history. Banks and other micro-finance institutions are not always ready to lend to a startup because they have no credit history. Recommendations letters may also be required and these can also pose as a challenge for a new business.

Award of Tender

Assuming that a woman wins a tender under the AGPO initiative after having bought the documents and supplied the goods using bank credit, the other challenge is delayed payments. A lot of money is held up for long, which is discouraging if she is servicing a loan. Apart from the challenges that women face as they try to access these opportunities, critics argue that the country's procurement procedures are still bureaucratic and lack the desired transparency. Also, some of the contracts are "abnormally" capital intensive, thus locking out would-be beneficiaries who may not necessarily have the amount of money required to carry out such capital intensive contracts. Because of such limitations, enterprises that qualify to undertake government jobs can only get the very basic contracts. This is a view that is entrenched within government, with all the procuring entities setting aside what is known within the procuring entities as 'grass cutting' jobs for the youth, women and persons with disabilities. Thus contracts set aside for these groups will include delivery of flowers, newspapers, office stationery, cleaning services and maintenance of grounds. The latter involves maintenance of gardens and hence the name grass cutting.

Table 3 shows AGPO performance from 2013 to 2017 by category of procuring entity.

Table 3: AGPO Performance from 2013 to 2017 by Category of Procuring Entity

Financial Year	Category of Procuring Entity	No. of Tenders Awarded to Women	Value of Tenders Awarded to Women	per cent of Tenders to Women	No. of Tenders Awarded to Youth	Value of Tenders Awarded to Youth	per cent of Tenders to Youth	No. of Tenders Awarded to PWDs	Value of Tenders Awarded to PWDs	per cent of Tenders to PWDs
2013-2014	Ministries	2,518	4374,809,698	75.77	2,133	1374055269	23.8	50	24942262	0.43
	Parastatals/SAGAs*									
2014-2015	Ministries	3,372	8,807,468,342	52.81	3,416	7511704746	45.04	261	357639358	2.14
	Parastatals/SAGAs	689	420,037,404	41.57	836	554021907	54.83	70	36295303	3.59
2015-2016	Ministries	2,694	5,201,061,451	49.54	2402	5099202420	48.57	186	198541314	1.89
	Parastatals/SAGAs	6,101	2,291,222,470	44.26	5225	2495184952	48.20	741	389808235	7.53
2016-2017	Ministries	4,209	5,256,750,204	48.41	3159	5345724325	49.23	332	256493839	2.36
	Parastatals/SAGAs	7,274	3,093,507,948	47.75	5635	2981648223	46.03	686	402815223	6.22
	Commissions**	441	231,678,547	60.41	352	139111000	36.27	42	12735300	3.32
	Counties***	283	554,421,807	42.17	468	710447339	54.04	27	49,758408	3.78
	Total	27,401	30,230,957,871	51.97	23626	26211100181	45.06	2395	1729029242	2.97

Source: The National Treasury.

*Parastatals/SAGAs reports were not received in 2013/2014 financial year

**Commissions reports were segregated from Parastatals/SAGAs report in 4th quarter

***Only 4 Counties submitted their 2016/2017 financial year reports information on the identity of these counties was not forthcoming.

During the 2015/2016 financial year, women got 2,694 contracts from ministries worth Ksh5.2 billion and 6,101 contracts from parastatals/SAGAs worth Ksh.2.3 billion which was 49.5 per cent and 44 per cent of tenders awarded by ministries and parastatals/SAGAs respectively. By the end of the 2016/17 financial year, the total number of contracts awarded to women was 27,401 with a value amounting to Ksh.30.2 billion or 52 per cent of tenders awarded to the target group. However, it is important to note that only 4 Counties submitted their 2016/2017 financial year reports on the number and value of tenders awarded to the target groups. Apart from the Counties not submitting, only a very small proportion of government procurement entities have

been submitting their reports which makes it very difficult to tell how the program is performing. It may be an indication of systemic challenges facing the procurement entities and hence making it difficult for them to file returns.

A study by HIVOs in 2018 found that out of a possible 2,232 tenders, only 172 were awarded to AGPO registered firms. This is only 7.71 per cent of the tenders awarded way below the 30 per cent envisaged.

Kiriti-Nganga (2017) found that women were only able to access 38 per cent of contracts under AGPO that they had applied for and even those who won the tenders, majority of them were being fronted by men. The contracts were also in small businesses while men won big contracts in enterprises such as construction, ICT and so on.

CHALLENGES FACING AGPO

Challenges facing women with AGPO certificates are: (a) filling standard tender documents; (b) certification, technical and financial challenges; (c) delays in payment for goods and services delivered; (d) corruption; (e) short timelines to respond to tender; and (f) stiff tendering requirements.

The challenges facing those without AGPO certificates are: 1. Lack of awareness of AGPO initiative; 2. Lack of information of how to register a business and for an AGPO certificate; 3. Perception of corruption in government and 4. Fear of suffering loss due to delayed payments.

The procuring entities face various challenges such as: (i) Lack of funds for capacity building for both the target group and the procurement officers, (ii) Lack of capacity to make returns to The National Treasury and the Public Procurement Regulatory Authority as required by law, (iii) Delayed payments due to funds reallocation to other uses, (iv) Poor flow of information between procurement and finance departments, (v) Corruption, (vi) Lack of coordination between Treasury and the Public Procurement Regulatory Authority, (vii) Strict Regulations Leading to Challenges For the Target Group, (viii) Lack of capacity to use Integrated Financial Management Information Systems (IFMIS) and (ix) Lack of Proper Signage leading to Poor Accessibility.

RECOMMENDATIONS

The challenges faced by the target group and the procurement entities can be addressed using the following measures:

- (i) To make sure that there is proper targeting of the vulnerable groups, there is need to do away with the regulation that only 70 per cent of the ownership of the enterprise needs to be women, youth and PWDs. This encourages rich people who would otherwise not qualify for this facility infiltrate it by sponsoring the target groups. Studies have shown that most target groups that qualify for this facility and especially the most lucrative ones, are usually sponsored by rich individuals mainly men. There should be 100 per cent ownership of the enterprise by the target group.
- (j) To reduce corruption in the procurement entities and more so among the procurement and financial officers, there is need for officers to adhere to the code of conduct governing public officers especially on matters of integrity and as necessary take regular training on good ethical practices and effectively streamline the public procurement processes.
- (ii) Sensitization and capacity building for the target group through use of a targeted approach in order to demystify the AGPO initiative. This training should be done at the National level, at the County level and even at the procurement entity level and targeted to specific group since each group has got its own challenges.
- (iii) It is also important to ease the stiff requirements that prevent the target groups from registering with AGPO.
- (iv) The National Treasury and the Public Procurement Regulatory Authority should strive towards cooperation and coordination in order to streamline registration of businesses under AGPO in order to avoid possible double registrations by AGPO beneficiary's business entities.
- (v) To avoid delayed payments and reduce the suffering of suppliers, the funds set aside for payment for goods and services should be ring-fenced to prevent reallocation to other uses.
- (vi) Official timelines set for payment for goods and services delivered should be strictly adhered to and all LPOs/LSOs and tender contracts issued to AGPO beneficiaries should contain a provision that the procuring entity should pay interest at the prevailing mean commercial lending rate as determined by Central Bank of Kenya on delayed payments that are beyond recommended time period the date the invoice was received by the procuring entity. This would ease the pain the supplies go through in paying debts that they incurred in supplying goods and services to the procuring entities.

- (vii) For those procuring entities that do not make returns, it is important to train and build their capacity on how to make the returns and the importance of having up to date data on the performance of AGPO. There should also be a penalty imposed on those procuring entities that do not make returns after every 6 months.
- (viii) It is also important to have a multi-sectoral approach within government departments to the implementation of AGPO to the effect that the planning, finance and procuring departments work together in terms of coordination, communication and cooperation.
- (ix) There is also need for the procuring entities to work together in publishing the enterprises that have been winning tenders because it is clear that the same enterprises could be winning tenders in almost all procuring entities over the years taking advantage of the lack of a multi-sectoral approach to the implementation of the AGPO initiative.
- (x) The AGPO certificates could be serialized such that if at any one time a woman/youth or PWD has put in a tender application, they cannot at the same time apply for another tender in another ministry, parastatal or SAGA until the procurement process of evaluation in the first one is over. This would prevent some firms dominating and becoming the dominant suppliers in the procuring entities at the expense of the other firms. This would enhance transparency and accountability.
- (xi) It is important to train both procurement officers and the target groups on the use of IFMIS and at the same time, sort out the technological issues associated with IFMIS to make it user friendly.
- (xii) To make sure that information on AGPO tenders is known to all including those in rural areas, it is important that tenders advertisement is not just in the internet and newspapers since these are mainly exclusive to urban areas. Information should be disseminated to the counties, wards and villages and even at chiefs and sub-chief's offices where most people get information from. Putting this information on notice boards in strategic places such as outside churches, mosques, market centers, at the chief's and other administrators' offices, can reach many people.

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