

**GOVERNMENT PROCUREMENT AND AFFIRMATIVE ACTION:  
ACCESS TO GOVERNMENT PUBLIC PROCUREMENT  
OPPORTUNITIES FOR WOMEN, YOUTH AND PERSONS WITH  
DISABILITIES**

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Lecture Delivered during a One week Workshop on *Women Entrepreneurs and Incubation Program* Organized by the School of Business and African Women Studies Centre, University of Nairobi, Lower Kabete Campus on the 28<sup>th</sup> of September 2018.

# Background

- Access to Government Procurement Opportunities (AGPO) initiative for women, youth and persons living with disabilities was operationalised in the Public Procurement and Disposal Act 2005.
- Gazetting of the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 vide Legal Notice No 58 dated 8th June, 2011.

# Background

- In 2013 the Cabinet Secretary, National Treasury, issued an amendment to the Public Procurement and Disposal Act, (No. 3 of 2005) under Legal Notice No. 114 dated 18th June, 2013 and enacted the Public Procurement and Disposal (Preference and Reservations) Amendment Regulations, 2013.
- Regulation (31) (1) provided that a procuring entity shall allocate at least 30% of its procurement spending for the purposes of procuring goods, works and services from micro and small enterprises owned by youth, women and persons with disability.
- Regulation (31) (2) for the purpose of paragraph (1) provided that, a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices, contract awards and submit quarterly reports to the Authority. This was to ensure that the disadvantaged groups were not to compete with the well-established firms.
- In 2016, Kenya passed a new Public Procurement and Asset Disposal (PPAD) Act in terms of the implementation of the Preference and Reservation Scheme.

# Background

- The Public Procurement Regulatory Authority (PPRA) is a state corporation responsible for the implementation of the Public Procurement and Disposal Act (PPDA), 2005 and its attendant Regulations.
- The key objective of the statutes is to ensure public procurement is undertaken in an open, fair, transparent and competitive manner.

# AGPO INITIATIVE

- GoK has over the years put in place a number of measures aimed at reducing barriers faced by the target group in doing business with government under the AGPO initiative.
- (1) Bid bonds are not required;
- (2) Pre-qualification is automatic once business is AGPO certified;
- (3) There is an on line tenders portal on the PPRA website which is good platform as information about tenders is easily available;
- (4) PPRA has a section on its website that provides information about market prices and this is also helpful to MSEs especially when it comes to submitting successful bids;
- (5) Both the PPRA and National Treasury have developed tools and issued circulars to all Procurement entities for use to file their returns.

# **Legal notice no. 114 of the public procurement and disposal act (No. 3 of 2005)-13<sup>th</sup> June 2013**

- This published and made new regulations regarding the public procurement and disposal (preference and reservations) (amendment) regulations, 2013.
- Some of the new regulations were:
- (1) Small or micro enterprise or a disadvantaged group wishing to participate in public procurement shall apply for registration with the National Treasury or the respective county treasury with which they operate and are located in the form set out in the First Schedule to these Regulations.
- (2) All lists of registered enterprises from the national and county levels shall be submitted to the Authority for consolidation and publication.

# Number of Registered AGPO SMES

- The number of registered and certified AGPO Small and Medium enterprises as at September 2014 was 14,644-comprising women, youth and persons living with disabilities.
- June 2017, this had increased to 54,306 registered enterprises
- November 2017 - 63,801 9
- 10<sup>th</sup> September 2018, these had fallen to 23, 794 registered enterprises.

# Areas Reserved for AGPO

- **General Supplies** - for stationery, furniture, computer hardware, fittings, computer accessories, printers, photocopiers
- **Small Works & Engineering** - for construction in categories of electrical works, water works, road works and building works, plumbing works, interior design
- **ICT Services** - for repair and maintenance of ICT equipment, networking, configuration, web design, programming
- **Professional Services & Consultancy** - for cleaning services, fumigation services, sanitation services, event organization, catering services, entertainment services, insurance brokerage services, asset valuation services, car hire services, transport services, professional consultancies, veterinary services, asset tagging
- **Fresh Produce and Agricultural Products** - for supply of fruits, vegetables, grains, cereals, meat products, fertilizers, agro-chemicals



# List of Registered Target Groups by Category and Group-24<sup>th</sup> August 2017

Target Group	General Supplies	Fresh Produce/ Agribusiness	Professional Services & Consultancy	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
<b>Total</b>						<b>71,192</b>

Source: Public Procurement Regulatory Authority [www.ppoa.go.ke](http://www.ppoa.go.ke)

# Registered and Certified Enterprises under AGPO since Inception in 2013 - 6<sup>th</sup> September, 2017

Target Group by Category	Number	Percentage
Youth	25,549	37.47
Women	39,681	58.20
PWDs	2,956	4.34
<b>Total</b>	<b>68,186</b>	<b>100</b>
<b>AGPO Secretariat at National Treasury</b>		

# Qualification for AGPO

- For the purpose of benefiting from preference and reservations schemes, an enterprise owned by youth, women or persons with disabilities shall be a legal entity that:
  - (1) Is registered with the relevant government body; and
  - (2) Has at least 70% membership of youth, women or persons with disabilities and the leadership shall be one 100% youth, women and persons with disability, respectively.

# Role of Procuring Entity

- Facilitate financing of enterprises owned by target groups that have been awarded contracts, by authenticating their notifications of tender awards and LPO/LSO and subsequently entering into an agreement with the relevant financing institution with conditions that include paying the contracted enterprise through their account opened with the financier.
- Ensure that all money paid out to an enterprise owned by target group is paid into an account where the mandatory signatory is a youth, woman or a person with disability.
- Make prompt payments for all performed contracts through electronic media where possible and should not delay beyond thirty days.

# Role of Procuring Entity

- Where delay is inevitable, a procuring entity should make at least 50% part-payments and should give a written explanation for the delay to the enterprises that have supplied goods or services.
- In the event that that delay of payments for works performed are likely to happen, a procuring entity is expected to facilitate invoice discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises

# Role of Procuring Entity

- The procuring entities at the national and county level are supposed to make a report after every 6 months to the PPRA and the report should:
  - (1) Certify compliance with the provisions of AGPO
  - (2) Provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.
  - (3) Submit quarterly reports on the implementation of AGPO to National Treasury as well as their annual procurement plans by 31<sup>st</sup> August which is within 60 days of the new financial year.

# Role of PPRA

- Make a report to Parliament after every 6 months for consideration by the relevant committee responsible for equalization of opportunities for target group
- Report should contain details of the procuring entities and how they have complied with the regulations and provisions of AGPO.

# Role of AGPO Secretariat (in National Treasury)

- Responsible for the implementation of the preferences and reservations under the Public Procurement and Asset Disposal Act.
- The secretariat is responsible for:
  - (1) Registration, prequalification and certification of the persons, categories of persons or groups as provided for in Part XII of the Act;
  - (2) Training and capacity building of the above target groups;
  - (3) Providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under the Act; and
  - (4) Monitoring and evaluating the implementation of the preferences and reservations under this Act.
- National Treasury is expected to provide adequate staff and resources for the operations of the secretariat.



# Process of Qualifying for an AGPO Contract

- To qualify for a contract under the 30% set aside quota, a woman/youth of PWD entrepreneur must first acquire an AGPO certificate.
- The application can be done on line or in a Huduma Centre

# Steps in Acquiring an AGPO Certificate and Cost

Steps	Documents Required	Cost Ksh.	
Register with AGPO Website	Identity card and provision of contact details	Nil	
Apply for AGPO Certificate	Copy of Identity card	Nil	
	<b>For Sole Proprietorships</b>	Copy of business registration certificate	850
		Copy of PIN certificate	Nil
		Copy of Tax compliance certificate	Nil
		Reserve Company Name	150
		Business Permit	6,800-15,200
		Registration with National Construction Authority	5000
		<b>Cost of Procedure</b>	<b>12,800-21,200</b>
	<b>For Partnerships</b>	Copy of business registration certificate	850
		Reserve Company Name	150
Business Permit		6800-15,200	

# Qualification Criteria

- **Certification**
- To qualify for this certificate under the preference and reservations scheme, an enterprise should be a legal entity that:
  - (1) Is registered with the relevant government body;
  - (2) Has a proprietorship or directorship of at least 70% of the preference group they wish to apply for, for instance made up of 70% women to qualify for the women's category.
- The above is assuming the enterprise has already registered and it has:
  - (a) A certificate of incorporation
  - (b) Business Registration Certificate/ Certificate of Incorporation.
  - © 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.

# Qualification Criteria

- **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 EOIs (Expression of Interest) or RFPs (Request for Proposal) 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.

# Qualification Criteria

- Preparation of Financial and 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 the invoice has not been honored.
- So the enterprise 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.

# Qualification Criteria

- 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.**

# 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	% of Tenders to Women	No. of Tenders Awarded to Youth	Value of Tenders Awarded to Youth	% of Tenders to Youth	No. of Tenders Awarded to PWDs	Value of Tenders Awarded to PWDs	% of Tenders to PWDs
2013-2014	Ministries	2,518	4,374,809,698	75.77	2,133	1,374,055,269	23.8	50	24,942,262	0.43
	Parastatals /SAGAs*									
2014-2015	Ministries	3,372	8,807,468,342	52.81	3,416	7,511,704,746	45.04	261	357,639,358	2.14
	Parastatals /SAGAs	689	420,037,404	41.57	836	5,540,219,077	54.83	70	36,295,303	3.59
2015-2016	Ministries	2,694	5,201,061,451	49.54	2,402	5,099,202,204	48.57	186	198,541,314	1.89
	Parastatals /SAGAs	6,101	2,291,222,470	44.26	5,225	2,495,184,952	48.20	741	389,808,235	7.53
2016-2017	Ministries	4,209	5,256,750,204	48.41	3,159	5,345,724,225	49.23	332	256,493,839	2.36
	Parastatals /SAGAs	7,274	3,093,507,948	47.75	5,635	2,981,648,223	46.03	686	402,815,223	6.22
	Commissions**	441	231,678,547	60.41	352	1,391,110,000	36.27	42	12,735,300	3.32
	Counties**	283	554,421,807	42.17	468	7,104,473,399	54.04	27	49,758,408	3.78
	<b>Total</b>	<b>27,401</b>	<b>30,230,957,871</b>	<b>51.97</b>	<b>23,626</b>	<b>26,211,100,181</b>	<b>45.06</b>	<b>2,395</b>	<b>1,729,029,242</b>	<b>2.97</b>

**Source: The National Treasury.** \*Parastatals/SAGAs reports were not received in 2013/2014 financial year,

\*\*Commissions reports were segregated from Parastatals/SAGAs report in 4<sup>th</sup> quarter, \*\*\*Only 4 Counties

# Challenges in AGPO initiative

- **Getting finances** to start the registration process to get the AGPO certificate, the technical part of preparing the proposal and the financing of the tenders
- **Delayed Payment**-money is held up for long, which is discouraging if she is servicing a loan.
- Procurement procedures are still **bureaucratic** and **lack of transparency**.
- **Abnormally” capital intensive nature of contracts** thus locking out would-be beneficiaries who may not necessarily have the amount of money required to carry out such capital intensive contracts.
- **Basic contracts**- enterprises that qualify to undertake government jobs can only get the very basic contracts such as ‘grass cutting, delivery of flowers, newspapers, office stationery, cleaning services and maintenance of grounds.
- **High Transport Costs and Requirement for Quality**
- **Corruption**-favoritism, nepotism, tribalism
- **Procurement funds are diverted or reallocated to other votes and hence leading to pending bills**
- **Lack of Knowledge of the Law by Procurement Officers**
- **Lack of Coordination** -between the Treasury and the Public Procurement Regulatory Authority.
- **Lack of Proper Signage leading to Poor Accessibility**
- **Lack of Capacity to use IFMIS**



# **How to Overcome the Challenges Faced by Women Entrepreneurs**

- **Fast track Payment for Goods Delivered and Services Rendered**
- **Eradication of corruption**
- **Change the way tenders are advertised**
- **Increasing the Local Purchase/Service Order Financing**
- **Training and Capacity Building**

# Question and Answer

- *Thank You*