

2ND ANNUAL GENERAL PUBLIC PROCUREMENT AND DISPOSAL STAKEHOLDERS FORUM

KENYATTA INTERNATIONAL CONFERENCE CENTRE

ISSUES RAISED BY STAKEHOLDERS FOR DISCUSSION

7/31/2009



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

No.	Subject	Stakeholder	Proposal	Current position of the law
1.	Lacunae in the Act	Peter N. Mbugua	Sec. 4 provides for scope of application the law to include contract management, supply chain management, inventory and distribution.	Law silent in its detailed procedures
			Need to give guidelines on procurement and disposal of fixed assets/real property	Section 126 limits procedures to disposal of stores and equipment
		Kenya Post Office Savings Bank	The Disposal (Section 126-132) remains inadequate hence the need to enrich	
2.	Administrative review proceedings	Kenchuan Architects	Grounds of Appeal should be made more stringent	Section 93(2)(d) precludes frivolous appeals but does not define.
			Time for administrative and judicial reviews reduced.	Sections 97(1) and 100(4) provides that reviews shall be conducted within 30days
3.	Prequalification	Kenchuan Architects	Combine EOI stage with Request for Proposals to cut down the procurement period and make it cheaper for tenderers, reduce duplicated information in both stages	Section 78-81 makes a distinction between EOI and RFP
4.	Cost of tender documents	Protective Security Industry Association (PSIA)	Cost of Tender document should not exceed a maximum of Kshs. 2,000/- to encourage SME's	Regulation 39 sets the threshold for fees for tender documents for the purpose of recovering costs related to printing, copying, distribution or converting documents into electronic form
		National Builders Co-Operatives Society.	Cost of tender Documents is prohibitive. It should be minimized or eliminated	

5.	Tender security	Protective Security Industry Association (PSIA)	Tender security should not exceed a maximum of Kshs. 100,000/-	Section 57 gives PEs the discretion to require tender security. And Reg. 41 provides for its application if adopted by PE
		Peter N. Mbugua	Regulation 41 (3) should exempt SMEs from submitting tender security	
		National Builders Co-Operatives Society.	Bid security to be eliminated and other mechanisms be used to secure bids as it is not affordable	
6.	Advertisements	Sunday Publishers Limited (Publishers of The Sunday Express)	Waive Sec. 54 (2) of the Act which prohibits magazines which have not been in operation for the last 2 years from seeking Government advertisements	Section 54(2) requires advertising in two newspapers of nation wide circulation which has been regularly published for at least two years
		Ayub Asamba	PEs should be advised to put their tender advertisements on their website or on the PPOA website	
		Peter N. Mbugua	Amend Sec. 78 (3) on advertisement for Expressions of Interest to be at least twice in one daily newspaper just like for other procurements	Sec. 78(3) provides that an EOI should be advertised in at least two daily newspapers.
7.	Tender validity	Kenchuan Architects	A provision should be made for PEs to extend validity periods without reference to tenderers	Section 61 provides that PEs shall give a notice of extension to tenderers
		Kenya Revenue Authority	The law should determine the fate of a tender validity in the event of administrative or judicial review	
			Section 61(1) of the Act, does not state for how long and how many times the extension may be sought.	
8.	Tender Committee membership	Kenya Revenue Authority	No provision has been made for Ag. Chair person in the tender committee when the substantive chair & vice are away.	Reg. 12(2) provides that tender committee quorum shall be five members including chairman

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9.	Threshold matrix	Kenya Post Office Savings Bank	Simplify Threshold matrix for ease of application	Section 26(1) and First schedule of the Regulations, 2006 sets forth the Threshold Matrix for ensuring that decisions are made in a structured manner
		Kenya Revenue Authority	The threshold matrix set for low value procurements should be reviewed upwards from Kshs.30,000 to Kshs.300,000 and maximum threshold for procurement committee be Kshs.2million	Threshold matrix provides for threshold for low value procurements as Kshs. 30,000/-, 20,000/- and 10,000/- for Class A, B and C respectively
10.	Interest on overdue amounts	Cosmos Limited	Remove the discretion Sec. 48 to pay the interest on overdue amounts	Section 48 gives contractual parties the discretion to set forth a clause on interest overdue amounts
		National Builders Co-Operatives Society.	Payment to suppliers should be prompt	
11.	Preference and Reservations	Cosmos Limited	Implement Sec. 39 on preferences and reservations to avoid many Kenyan jobs being exported to other countries	Section 39 on preference and reservations
		Kenya Association of Manufacturers	Implement the margin of preference is 15% for local manufacturers.	Section 39(8)(a) provides for exclusive preference to citizens of Kenya
			Amend Section 39 (8)(a) to replace “citizens of Kenya” with “Kenyan manufacturers” for the purpose of encouraging foreign direct investments.	
		Ayub Asamba	PEs should give priorities to young companies for tenders of less than Kshs. 200,000/-	Sec. 39(4) (a) provides for SMEs but no regulations yet

12	Negotiations	Kenya Revenue Authority	The Act should allow for negotiation in other methods other than direct procurement	Sections 74 (Direct procurement) and Section 84 (Request for Proposals) allow negotiations.
13	Public Private Partnerships (PPP's)	Kenya Airports Parking Services Ltd.	<p>Whether the PPP approach:-</p> <ul style="list-style-type: none"> • Can actually deliver additional value for money compared to the traditional procurement method. • Is more complex, time consuming, and thus more expensive than the traditional procurement method. • Can be used to as a tool to bypass public spending controls by moving the debt off the government's balance sheet, whilst the government bears most of risk involved. • Takes away flexibility from the public sector • Excludes small and medium-sized enterprises(SMEs) from tendering 	Section 92 and Regulation 64 provides for PPP as a specially permitted procedure
		Proudly Kenyan	Establish a Public Private Partnership Authority.	PPP Steering Committee set forth under the PPP Regulations, 2009
		National Builders Co-Operatives Society.	Establish public-private partnership Authority for the promotion of PPPs. This body should be a company with 51% shareholding by the private sector and 49% by the Government.	
14	Professional fees	Kenchuan Architects	Amend the Act to allow respective special fee scales for various professions	Section 82(5) provides for mandatory evaluation of both technical and financial proposals
15	Scope of the Law	Kenya Post Office Savings Bank	The Act currently covers the Public Sector (Section 3) only. There is need to have this Act to cover private sector to create a level playing ground for all stakeholders	Section 4 covers public sector only