

Public Procurement reforms in Kenya: The Procurement Oversight & Regulation

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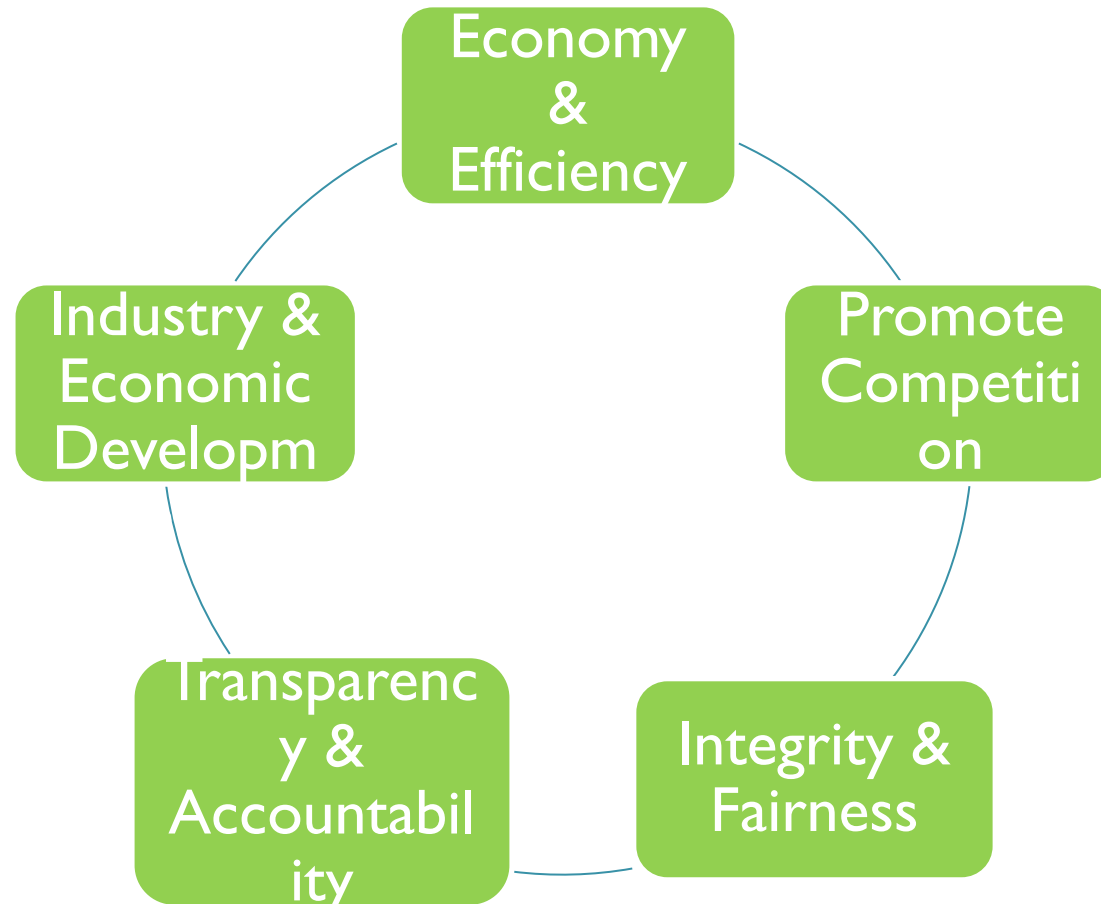
PRESENTATION OUTLINE

1. **Where we are coming from, from 1963 to date**
2. **The Kenyan Public Procurement Oversight Authority (PPOA)**
3. **Our Initial Efforts**
4. **Challenges faced by PPOA, the predecessor of PPRA**
5. **Deepening reforms-Public Procurement Regulatory Authority**
6. **Challenges faced by PPRA**
7. **Going Forward**

PROCUREMENT REFORMS

- 1963-1969 : -Local purchases determined by individual entities
- International procurement were conducted by Crown Agents
- 1969-1978 : Treasury Circulars
- 1978-2001 : Supplies Manual
- 2001-2007 : Exchequer & Audit (Public Procurement) Regulations, 2001
- 2007 -2015 : Public Procurement & Disposal Act, 2005
- 2010 to date : New constitution
- 2016 –to date : Public Procurement & Asset Disposal Act, 2015 & its attendant Regulations of 2020

PRINCIPLES OF THE PPDA 2005



Basic Tenets of the Procurement Law 2007-2015

- ✓ Full autonomy to entities to act within the Law
- ✓ Full oversight by PPOA
- ✓ Segregated authority
- ✓ Role of procurement professionals
- ✓ Role of stakeholders-Annual stakeholders forum
- ✓ More information to Public on Procurement e.g. on contracts awarded.
- ✓ Time Compression for finalizing the procurement process
- ✓ A right to administrative review for an aggrieved party
- ✓ A debarment (for a period of not less than 5 years)

ABOUT THE PPOA

- Became operational in October 2007
- Had an Advisory Board (9 out of 11 members are from private sector and professional associations)
- Provided support to the Administrative Review Board

MANDATE

- ❖ Ensuring that procurement procedures established under the Act are complied with;
- ❖ Monitoring the procurement system and reporting on its overall functioning;
- ❖ Assisting in the implementation and operation of the public procurement system.
- ❖ Initiating public procurement policy.

PPOA INITIAL EFFORTS

FOCUS ON INTERNAL STRENGTH FIRST

- Apply modern management techniques (transparency, use of technology)
- Strong, credible management systems
- Inculcate a culture of performance based system
- Inculcate proper programming and planning (Strategic plan; Annual, Departmental, and Individual work plans)
- Capacity Building and Professionalism (including bidders)
 - ✓ Short Term Capacity Building Strategy (Sensitization);
 - ✓ Medium Term Capacity Building Strategy; and
 - ✓ Long-term Strategy.

PPOA INITIAL EFFORTS...cont.

- Piloting of procurement performance measurement tools
- Widen scope & Regularly update of price reference guide for common user items
- Widened Availability and Access to Procurement Information by Stakeholders
- Widened Access to Services of the Review Board
- E-Procurement strategy in place (focus on quick wins; eg. e-advertising)

Challenges faced by PPOA

There were challenges facing the procurement system in Kenya such as:

- ✓ streamlining procurement function;
- ✓ achieving value for money;
- ✓ developing the capacity in personnel, procuring entities and suppliers
- ✓ the strong perception by the public and stakeholders that procurement is riddled with corruption
- ✓ Equally, the PPOA was cognizant that Kenyans and stakeholders had a legitimate expectation, a real change in the manner in which public procurement system was managed

Deepening/furthering reforms 2016 to date

WHY THE NEW LAW?

- ❑ To realign law with Constitution of Kenya 2010
- ❑ To realign law with Kenya Vision 2030
- ❑ To addresses challenges in the repealed Act.
- ❑ To clarify the role of National Treasury as the policy developer
- ❑ To enhance and distinguish the roles of public procurement regulators
- ❑ To incorporate the need for devolution as required by new constitutional dispensation.
- ❑ To enhance asset and contract management.
- ❑ To professionalize the procurement function

Deepening/furthering Reforms continued...

- ❑ The Public Procurement and Disposal Act, 2005 was repealed on 7th January, 2016 through Kenya Gazette Supplement No. 207
- ❑ It was replaced with the Public Procurement and Asset Disposal Act, 2015.(PPADA)
 - ✓ Came into force on 7th January,2016
 - ✓ New Legal Framework for Procurement and Disposal activities.
 - ✓ Contains rules on processes, institutions and enforcement.

Deepening/furthering reforms cont'd....

❑ Basic tenets of PPADA:

- Full autonomy of entities to act within the law.
- Regulatory bodies; The National Treasury, PPRA and PPARB.
- Corporate decision making within institutions
- Segregated authority
- Role of procurement professionals

- Scope of Application is widened to emphasize and include:-
 - ✓ Procurement by public entity
 - ✓ procurement planning,
 - ✓ inventory management,
 - ✓ asset management,
 - ✓ disposal of assets and
 - ✓ Contract management
- Application excludes procurement of PPPs
- Ratified Treaties or agreement shall prevail in case of conflict the Act.

Public Procurement Legal and Regulatory Framework:Regulatory Institutions(1)

**The National
Treasury**

**Public
procurement
policy
development**

**Public
Procurement
Regulatory
Authority**

**Ensure
compliance
with Public
Procurement
Law**

**Public
Procurement
Regulatory
Board**

**Debarment of
errant
bidders**

Public Procurement Legal and Regulatory Framework: Regulatory Institutions (2)

**Public Procurement
Administrative
Review Board**

**Hears and
determines Public
Procurement
Appeals**

KISM

**Enforcement of
code of conduct
and Ethics of
procurement
professionals**

Achievements/updates



- ❑ The Authority issued code of ethics for business persons participating in public procurement and asset disposal activities in Kenya
- ❑ Regulations to operationalize the Act were issued on 2nd July 2020 which enables the Authority to institute debarment of errant bidders/contractors
- ❑ Authority has issued new standard tender documents
- ❑ Authority has upgraded and trained users on the
- ❑ PPIP
- ❑ The National Treasury is finalizing on the public procurement and asset disposal policy
- ❑ Authority has acquired ample office staff
- ❑ Authority is in the process of restructuring due to the expanded mandate and establishment of Regional Offices

Relationship Between the Authority & PEs, Other Agencies

- The procurement law provides full autonomy to each procuring entity to carry out procurement without interference
- Authority provides advice and technical support where requested
- Authority monitors procurement and asset disposal undertakings by respective PEs
- The authority uses collaborative approach with other enforcement agencies in realization of its mandate

- Challenges

- ✓ Budget constraint
- ✓ Weak staffing levels
- ✓ poor records management by PEs
- ✓ Procurements and asset disposal system largely manual

GOING FORWARD

- Widen and deepen use of compliance tools (assessments, audits, investigations)
- Fully implement transformative initiatives including leveraging on ICT
- Focus on measuring and improving performance
- Communicate loudly and often
- Involve CSOs in contract management
- Continue liaising with other regulatory/enforcement agencies (locally and internationally)

Lessons learnt

For procurement regulator to be established and operate smoothly there is need for:

- ✓ Supporting/enabling Legal framework
- ✓ Political goodwill
- ✓ Guaranteed financial support/resources- need for the regulator to generate its own resources
- ✓ Competent and dedicated staff
- ✓ Authority to identify partners and work together with other enforcement agents
- ✓ Communicate loudly and often on its activities/achievements

The End