

PUBLIC PROCUREMENT AND DISPOSAL BILL, 2005

Background

The Public Procurement Reform in Kenya was jointly initiated in 1997 by the Kenya Government and the World Bank. The procurement audits carried out on Kenya's public procurement system disclosed serious shortcomings ranging from inefficiency to lack of sound and transparent legal framework. The government decided to review and reform the existing procurement system with a view to enhancing efficiency, economy, accountability and transparency in public procurement.

The Public Procurement Reform undertaken by Kenya is home grown and has also borrowed good practices from the rest of the World. The Government developed and put in place appropriate Public Procurement Regulations, which were published as Legal Notice No. 51; The Exchequer and Audit (Public Procurement Regulations, 2001 dated 30th March, 2001 and the amendment of the same in 2002.

To further streamline the legal framework and deepen the public procurement reforms, the Government drew and published Public Procurement and Disposal Bill, 2002, 2003, 2004 and 2005. The failure of the Government to enact this bill has been interpreted by development partners and other stakeholders as lack of commitment to good governance. Indeed, currently the enactment of the Bill is a conditionality under the Economic Recovery Strategy Assistance.

A technical committee comprising of staff from Ministry of Finance, World Bank, AG Chambers and Consultants have over the years reviewed the Bill. In addition, stakeholders' workshops and consultative-meetings have been held and their views and recommendations have been used to fine tune the Bill.

Main highlights of the bill

The Public Procurement and Disposal Bill has borrowed heavily from the Exchequer and Audit (Public Procurement) Regulations, 2001. At the same time, it has introduced some major changes in the Public Procurement System. The major highlights include:

1. It promises in Part I section 2 on purpose of the Act, which is to:
 - (i) Maximize economy and efficiency
 - (ii) Promote competition and ensure that competitors are treated fairly.
 - (iii) Promote the integrity and fairness of the procurement procedures.
 - (iv) Increase transparency in those procedures, and
 - (v) Increase public confidence in the procurement procedures.
2. The proposal to set up an Authority to be known as the Public Procurement Oversight Authority, whose principal function is to oversight of the public procurement regulations and no to deal with actual procurement.
3. The proposal to establish an Advisory Board that will advise the Authority on excise of its powers and performance of its functions, approve the Budget and recommend the appointment of the Chief Executive Officer.
4. The proposal to bar public servants from participating in the tendering while still in service in order to avoid conflict of interest.
5. Maintains the Public Procurement Complaints, Review and Appeals Board that is contained in the Public Procurement Regulations but changes its name to “Public Procurement Administrative Review Board”.
6. The Bill also provides for sanction to serve as a deterrent to those who breach the law, on conclusion, misrepresentation, corruption, interference with tendering, conflict of interest and disobeying decisions of the Review Board and Judicial Review.
7. The Bill will regulate security procurement.and shows how such procurements and disposals shall be managed, audited and laid before parliament in the annual report. The security organs shall maintain a dual list i.e. an open and restricted list. Items under the restricted list shall be procured in accordance with the method approved by the Authority.

8. New methods of procurement procedures for low value items and specially permitted procurement procedures.
9. The Bill seeks to repeal the requirement for the Permanent Secretary, Treasury to countersign contracts in the Central Government as stipulated by the Government Contracts Act, Cap 25.

Advantages of the Bill

- (i) It will establish a strong Public Procurement System which will enhance:
 - Economy and efficiency
 - Competition
 - Integrity
 - Transparency
 - Public Confidence
 - Conducive investment climate
- (ii) It will establish a strong organizational framework with a strong oversight mechanism, well defined Procuring Unites and Tender Committees.
- (iii) The Bill will reduce delay in the procurement process.
- (iv) It will strengthen professionalism in public procurement through recognizing the role of the professionals and the need for continuous staff training and development.
- (v) It will seal loopholes for corruption, therefore it will reduce wastage of public resources.
- (vi) It will enhance compliance with the Act and the Regulations due to the sanctions for non compliance.
- (vii) It will improve the image of the country as a good investment destination.