

Policy Brief

Promoting gender responsive public procurement: Strengthening the procurement ecosystem in Kenya

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Gender responsive procurement is defined by UN Women as ‘the selection of suppliers of goods, civil works or services that consider the impact on gender equality and women’s empowerment’ (Combaz, 2018). Gender responsive procurement seeks to promote gender equality by prioritising positive outcomes for female and male suppliers in the purchase of goods and services (Chin, 2017). Creating an ecosystem for gender responsive procurement involves establishing a supportive environment where various stakeholders collaborate to promote gender equality and women’s empowerment within procurement activities. In Kenya, the Access to Government Procurement Opportunities (AGPO) programme is an affirmative action that seeks to promote public procurement among marginalised groups by reserving at least 30 per cent of all government procurement for women, youth and persons with disabilities (The National Treasury, 2023). This policy brief focuses on women’s access to government procurement and highlights how the ecosystem can be improved to increase participation.

Why gender responsive public procurement matters

Public procurement policies are viewed as one of the means of redressing discrimination and economic exclusion. Gender responsive public procurement is conceived as a strategic tool to advance public policy goals, support economic and social development, and foster innovation (OECD, 2018). The AGPO programme and similar measures elsewhere are about the realisation of the need to reduce widening inequality in the distribution of wealth within the segments of the population considered vulnerable, ending poverty, building shared prosperity and improving governments’ service delivery (World Bank 2016). Orser et al. (2021) established that women-owned small businesses have fewer resources with which to exploit public procurement opportunities. Thus, governments adopt affirmative action initiatives by setting aside targeted amounts of money or opportunities to benefit women-owned businesses in public procurement. This is especially important as public procurement is viewed as instrumental in enhancing women’s economic outcomes by creating an enabling business environment for them (Orser et al., 2019). Increasing the opportunities for more economic agents, particularly small and medium-sized enterprises (SMEs), to engage in the delivery of goods and services can result in improved outcomes for the alleviation of poverty and

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increasing gender equality. This will benefit women-owned businesses that are disproportionately located in this sub-sector of the economy (Basheka, 2020).

However, according to the International Trade Centre (2014), women entrepreneurs face several challenges related to government procurement. The first category relates to imperfections in the public sector environment and procurement processes namely, lack of information about tender opportunities, complex and burdensome tender procedures, unreasonable technical and financial qualification requirements, large contract sizes, insufficient time to assemble tenders, price competition, lack of feedback from procuring agencies, and failure by those agencies to promptly pay women-owned businesses. The second category relates to problems stemming from a lack of skills and self-efficacy in public procurement by women entrepreneurs, as well as technical, financial and human capacity constraints.

Thus, on the one hand, there are affirmative action initiatives to promote the participation of women entrepreneurs in public procurement, and on the other, many challenges within the ecosystem that undermine the effectiveness of those initiatives. Against this background, a research project on *Enhancing the effectiveness of government procurement programmes in achieving women's economic empowerment* was carried out by Strathmore University Business School between 2021 and 2022. The outcomes of the research are discussed in this policy brief that addresses how the public procurement ecosystem can be enhanced to address gender responsive public procurement, specifically under the AGPO programme.

About the Research Project

The project aimed to examine the effectiveness of the AGPO programme in enhancing women entrepreneurs' empowerment². Since the launch of the AGPO programme in October 2013, and 10 years later, the uptake of these opportunities by women, youth and persons with disabilities has continued to be low at about 4.1 per cent of the total tender value compared to the targeted 30 per cent. Thus, the project had the following specific objectives:

- (i) Assess the effectiveness of AGPO in enhancing women's participation and economic empowerment.
- (ii) Examine the barriers that affect women's access to public procurement opportunities.
- (iii) Formulate interventions to enhance women's access to public procurement opportunities.
- (iv) Determine how these interventions can be integrated into the public procurement ecosystem to increase uptake.

² This research project was carried out with the aid of a grant from the International Development Research Centre (IDRC), Ottawa, Canada, through the Growth and Economic Opportunities for Women – East Africa initiative.

Twenty-five counties were purposely selected. The study used a sequential mixed method. The first part involved a survey of 1,591 women entrepreneurs across the 25 counties, sampled in three categories:

- (i) Those that had been awarded AGPO tenders
- (ii) Those who applied for AGPO tenders but had been unsuccessful
- (iii) Those that were not AGPO-registered, although they are eligible to register.

This was followed by focus group discussions with 370 women entrepreneurs from the same counties to gather insights into some of the findings from the quantitative research that relates to the public procurement ecosystem. Additionally, interviews with The National Treasury which is the custodian of the AGPO programme and the regulator, the Public Procurement Regulatory Authority (PPRA) provided insights into the findings.

The gender responsive public procurement ecosystem

The AGPO programme falls within Kenya's larger Preference and Reservation (P&R) Scheme in Public Procurement. The objectives of the P&R Scheme are:

1. Employment creation – by buying products traded by the targeted groups, the Government can create avenues through which enterprises expand and create jobs directly or indirectly within the supply chain.
2. Promotion of local industries – through the creation of markets for products.
3. Transfer of skills and technology – the law is tailored to allow target groups to work with established businesses for skills development and mentorship.

The study findings showed that for the public procurement ecosystem to meet the requirements of gender responsiveness, the actors need to work together as they carry out their mandates. These are explained below:

1. **Policy Framework:** Two key entities involved in policy formulation and regulation are the National Treasury and the Public Procurement Regulatory Authority (PPRA).
 - (a) The National Treasury is the custodian of the AGPO programme and developed the legal framework for its implementation. The AGPO programme was launched in October 2013. It was initially implemented as a Presidential Directive, with the National Treasury issuing circulars and directives until January 2016 when the Public Procurement and Assets Disposal Act (PPADA) came into effect. Since then, the implementation of AGPO has been guided by both the PPADA and the Public Procurement and Asset Disposal Regulations 2020. The National Treasury continues to issue circulars to clarify and/or guide the implementation of the programme.

However, National Treasury data from the 2021/2022 financial year showed that Kshs.41 billion was awarded to AGPO tenders, of which Kshs.22.6 billion was awarded to women-owned enterprises. The total procurement budget was estimated at Kshs. 1.45 trillion for the same year, suggesting that the AGPO award was at only 2.82 per cent, far below the 30 per cent legal provision, raising the question of why the uptake continues to be so low.

These were some of the explanations from the National Treasury:

- *There is low uptake by AGPO groups due to lack of awareness or inertia. There are few tender applications. In some cases, procuring entities have to re-tender when no bids are received.*
- *Lack of understanding of the requirements, which is linked to lack of technical capacity which leads to many bids getting disqualified.*
- *Inadequate financial resources, hence, the need for an AGPO Fund, and the unbundling of large contracts. Private sector financial institutions could also provide LPO financing.*
- *Failure by some procuring entities to comply with the law. Not all of them are allocating 30 per cent of their procurement budgets to the AGPO target groups.*

(b) Public Procurement Regulatory Authority (PPRA) established by the PPADA and whose mandate includes monitoring the implementation of the preference and reservation schemes by procuring entities. The law requires that at the beginning of every financial year, all public procuring entities plan for AGPO as part of their annual procurement plans. Further, a mini plan for only preferences and reservations be prepared and submitted to PPRA and the National Treasury within 60 days after the commencement of the financial year. After planning, the law requires that procuring entities implement AGPO by ensuring that 30 per cent of the procurement budget is awarded to women, youth and PWD entrepreneurs every financial year. After implementation, procuring entities are required to report to both PPRA and the National Treasury on a semi-annual basis, while PPRA reports to Parliament also on a semi-annual basis. The PPRA and National Treasury have been empowered to enforce these provisions and promote gender responsive procurement.

However, PPRA identified the following challenges facing women entrepreneurs leading to their low participation:

- *Lack of understanding of tender documents.*
- *Inadequate feedback from procuring entities for unsuccessful bids.*
- *Lack of awareness of their rights, such as lodging complaints when payments are delayed, and demanding ethical treatment by procuring entities.*
- *Lack of awareness of the diverse options available for tendering, such as Request for Quotations and community participation.*
- *Lack of understanding of the overall public procurement process.*

The PPRA also identified limited financial resources for capacity building and enforcing compliance as one of the challenges it faces.

2. The third key player is **formal women-owned enterprises**. Not all women-owned enterprises benefit from the AGPO programme. It is only for those running formalised enterprises. Additionally, the enterprises must be registered for the AGPO programme with The National Treasury. Any woman entrepreneur participating in AGPO is required to provide several documents, including a national

identity card or passport, business registration certificate or certificate of incorporation and CR12³ for Limited Company from the registrar of business. These requirements suggest that to be AGPO registered, an enterprise should have some stability in terms of registration, ongoing business activities, location and employees.

Once the entrepreneur receives the AGPO certificate, they need to understand the market entry points. More than 90 per cent of government tenders are issued through Request for Quotations (RFQ) and Open tendering process. Open tenders can be accessed through the procuring entities' websites or the media. However, most of the tenders, more than 60 per cent, are issued through RFQ. To benefit from RFQ, they need to be in the procuring entities list of suppliers. Data from the study showed that more than 80 per cent of them were not aware of the RFQ as a method of government procurement.

However, the women noted that there were challenges in each step of this process.

- *At registration, the challenges included the inability to access the AGPO website, inability to renew registration upon expiry and delays in getting the certificate.*
- *At procurement, the challenges included complex tender documents, little time to submit bids, unfair tender award processes that were not transparent, and a lack of finances to service tenders once awarded.*
- *After procurement, the main challenge was not getting timely payment from the procuring entities as defined in specific supplier contracts. This is even though the entities are expected to have budgeted for all their procurement needs.*

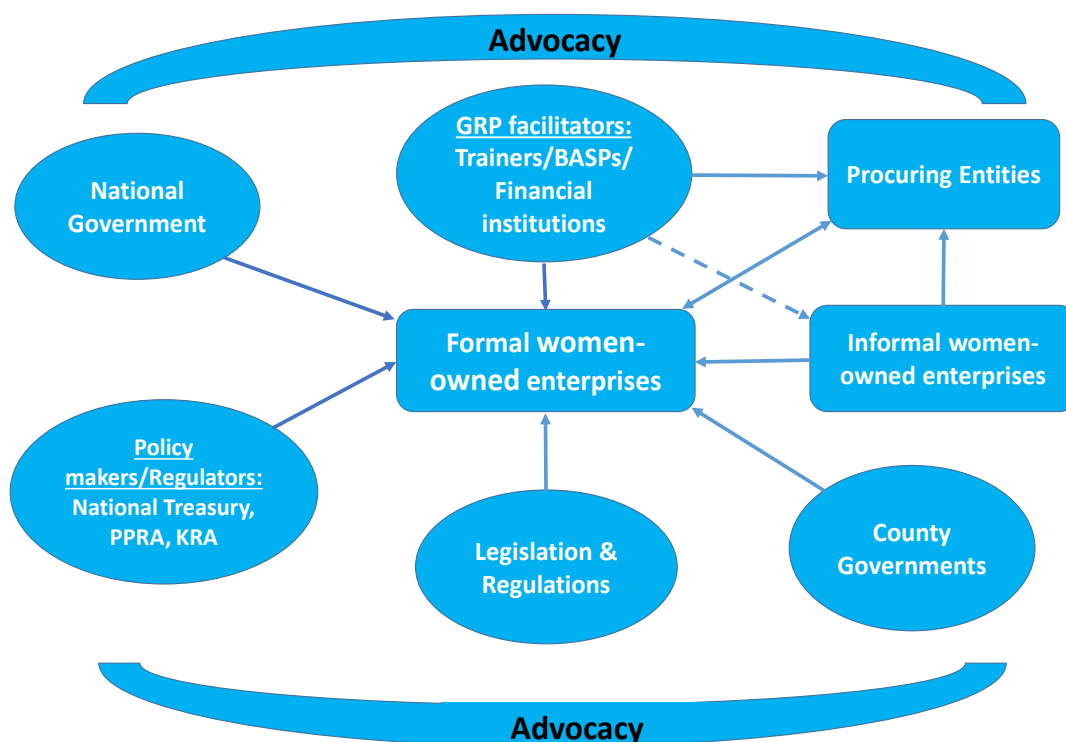
The women entrepreneurs also noted that although the AGPO programme focuses on formal enterprises, there are many informal enterprises involved in government procurement which may not be aware of the initiative. These include those in the rural areas which provide supplies to public institutions such as health centres and schools. Most of these are done through local arrangements without the rigour of the AGPO requirements. Some of the informal enterprises also supply to the formal ones that participate in AGPO. The impact of government procurement on these informal businesses is therefore unknown.

3. The fourth key actors are the **procuring entities**. These are the public entities that use public funds to procure goods, works and services. They are required to ensure that the procurement of goods, works and services of the public entity is within the approved budget of that entity. They must also submit to the PPRA the part in their procurement plan and budget demonstrating the application of preference and reservation schemes within 60 days after the commencement of the financial year. As such, reservations for AGPO within their budgets must be provided.

³ A CR12 is an official confirmation by the Registrar of Companies in Kenya as to whom the directors/shareholders of a company are.

4. The fifth actors are the **National and County Governments**. The law provides that the PPRA submits to Parliament a report every six months on the performance of AGPO. It is expected that at the County level, similar reports should be demanded to ensure accountability. Indeed, data gathered from the 2022 Council of Governors retreat noted the need for capacity building for all procurement officers to ensure compliance with the law and specifically with the AGPO programme.
5. The sixth actors are **capacity building institutions**. All the government institutions listed above, as well as the women entrepreneurs, identified capacity building as a key intervention to enhance the participation of women entrepreneurs in the AGPO programme. Through this project, a capacity building programme was introduced. It covered four key modules taught by different institutions: (i) Understanding AGPO and the E-government procurement system (by The National Treasury), (ii) Public procurement procedures, guidelines and regulations (by PPRA); (iii) Tax Compliance (by Kenya Revenue Authority) and (iv) Financial Management for SMEs (by Strathmore Business School).

The ecosystem for gender responsive public procurement therefore includes key national government policy implementation entities such as the National Treasury, PPRA and KRA, public procuring entities, county governments, capacity building service providers (trainers, business development service providers, financial institutions), the women entrepreneurs, and the legal and regulatory framework. This ecosystem is presented in Figure 1 below.



Source: Developed from Research Data, 2023

Figure 1: Gender responsive public procurement ecosystem

Policy and practical interventions

The effectiveness of the public procurement ecosystem in delivering gender responsive outcomes suggests several policy and practical interventions:

- (i) Capacity building of procurement professionals, women entrepreneurs and government agencies to be sensitive to the importance of gender equality in procurement processes. The contribution of the informal women-owned enterprises also needs to be captured, as they also need capacity building. Those wishing to formalise may also be incentivised to do so, such as through tax breaks⁴. Capacity building could also include knowledge sharing, role modelling and sharing of experiences to showcase successes.
- (ii) Continue to collect and analyse gender-disaggregated data to bridge the procurement gap and achieve the 30 per cent threshold.
- (iii) Design friendly procurement processes that are accessible, transparent and inclusive to ensure women entrepreneurs can participate effectively.
- (iv) National Treasury and PPRA to be effectively resourced (financially and with personnel) to enforce compliance with the law by all public procuring entities.
- (v) Establishment of an AGPO Fund and incentivising financial institutions to provide LPO financing, so that women entrepreneurs have access to capital to service the tenders.

Conclusion

The solutions to the challenges that women entrepreneurs face in government procurement lie with the public agencies, which should implement the procurement according to the requirements. The role of facilitators, including training institutions, is to enhance capacity building initiatives to support the programme. Additionally, monitoring of AGPO is critical to document successes and identify opportunities for improvement.

Further Reading

- Basheka, B.C. & Auriacombe, C.J. (2020) Barriers to Women's Participation in Public Procurement in Africa: Empirical Evidence from Uganda. *International Journal of Social Sciences and Humanity Studies*, 12 (2), pp. 222-237.
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⁴ Note: Not all informal businesses are interested in formalisation. Owners consider whether the benefits of informality or formality outweigh the costs. At times the anticipated benefits of formalization are not always readily realized. See Nielsen, W. & White, S. (2021) *Dealing with Firm Informality*. Research Report, Donor Committee for Enterprise Development, Cambridge, UK, for further discussions on this.

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