

**CONSULTANCY ON THE ASSESSMENT OF THE UPTAKE OF 30% PUBLIC
PROCUREMENT BUSINESS OPPORTUNITIES FOR WOMEN, YOUTH AND
PERSONS WITH DISABILITY AT THE COUNTY LEVEL AND AVAILABILITY OF
BUSINESS DEVELOPMENT SERVICES**

REPORT

Submitted by: Luke Obiri

TO: UNWOMEN, Nairobi, Kenya

2016

Table of Contents

Executive Summary (vi)

Chapter 1 Introduction (1)

- a) *Background* (1)
- b) *Problem Statement* (2)
- c) *UN Women* (3)
- d) *Objectives* (4)
- e) *Scope* (5)

Chapter 2 Literature Review (6)

- a) *Legal Framework* (6)
- b) *International Perspective* (8)

Chapter 3 Methodology(9)

- a) *Structured questionnaire/face-to-face* (9)
- b) *Telephone* (9)

Chapter 4 Findings (11)

- a) *AGPO Implementation* (11)
- b) *Business Knowledge Required* (13)
- c) *AGPO members participating* (18)
- d) *Barriers/challenges* (19)
- e) *Structures at county level* (20)
- f) *Counties visited* (22)

Chapter 5 Conclusions (38)

- a) *AGPO programme* (38)
- b) *UN Women* (38)
- c) *Huduma Centres* (39)
- d) *Business Registration* (40)
- e) *Budget* (40)
- f) *Tendering* (41)
- g) *National Government* (41)
- h) *County Government*(42)
- i) *Maendeleo Ya Wanawake* (43)
- j) *Joyful Women Organization* (43)
- k) *Trust Funds* (44)

Chapter 6 Recommendations (48)

- a) AGPO Implementation (48)*
- b) Preference and Reservations (49)*
- c) UN Women (49)*
- d) Huduma Centre (49)*
- e) Trust Funds (49)*
- f) National & County Governments (49)*
- g) Tendering (50)*
- h) Business Development Services (50)*

Bibliography (51)

Appendix 1 Questionnaire (51)

Appendix 2 List of people interviewed (52)

Appendix 3 Revenue Sharing Formula (55)

Appendix 4 BDSs (56)

Appendix 5 Work plan (57)

Acronyms and Abbreviations

AGPO	Access to Government Procurement Opportunities
BDS	Business Development Services
CD	Country Director
GDP	Gross Domestic Product
KNBS	Kenya Bureau of Statistics
NGO	Non- Governmental Organization
PE	Procuring Entity
PPD	Public Procurement Directorate, The National Treasury
PPRA	Public Procurement Regulatory Authority
PWD	Persons Living With Disability
UNWOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
SME	Small Medium Enterprises
ToR	Terms of Reference

List of tables

Table 1: Criteria used in Selecting Counties Assessed

Table 2: Revenue Allocation per Sample County

Table 3: Numbers of Persons Registered under AGPO

Table 4: Registering Limited Business in Kenya

Table 5: Registering Sole Proprietorship in Kenya

Table 6: Registering Partnership in Kenya

Table 7: Counties Visited

Acknowledgement

The success of this assignment is a result of support and contribution of various persons. The UN Women team, through the project coordinator Ms. Arjmand Banu Khan provided timely leadership and steered the project to successful completion. The respondents from various counties under study, who took time to provide feedback for the study, made an invaluable contribution to the success of this study. Finally, special appreciation go to the consultant, Mr. Luke Obiri, who agreed to facilitate writing of this report.

Executive Summary

This report on assessment of the uptake of 30% public procurement opportunities for women, youth and PWDs at county level and availability of BDSs, covers five chapters: (1) Introduction that includes the information about AGPO, UN Women and the objectives of the study; (2) Literature review- analysis of the existing policy and legislative framework and institutional arrangements on AGPO; (3) Methods/Methodology, addresses; (i) criteria for the selection of counties (ii) methods used in collecting and compiling data; (4) Findings- Analysis/discussions, and (5) Conclusions and recommendations.

The study had the following objectives; to (a) identify existing structures at the county level that facilitate implementation of AGPO programme are explained; (b) assess the level of awareness among AGPO target groups at the county level; (c) identify factors supporting access to AGPO by target groups at the county level; (d) identify existing barriers/challenges at the county level that prevent women, youth and PWDs from utilizing AGPO opportunities optimally and make recommendations and; (e) develop county specific fact sheet on available BDSs.

UN Women commissioned this study to support the government in obtaining information on the level of awareness of AGPO programme by women, youth and PWDs and to document the available BDSs that support implementation of the programme at the county level.¹the findings will provide useful information to government to intervene through institutional strengthening to support implementation of the AGPO programme to ensure that special groups (women, youth and PWDs) participate in public procurement. The government's legislations that direct procuring entities to reserve 30% of public tenders for the special groups are explained in this chapter.

The Constitution of Kenya 2010, through Article 227, provides for an Act of parliament to prescribe a framework for categories of preference in allocation of contracts. Consequently, the Public Procurement and Asset Disposal Act, 2015 was enacted. Part XII of the Act prescribes the preference and reservation procedures in public procurement. In the absence of the Regulations to operationalise the Act, previous Regulations operationalising the repealed Act are in operation to the extent that they are not in conflict with the new Act. These Regulations include, the Public Procurement and Disposal (Preference and Reservation) Regulations 2011 and the Public Procurement and Disposal Regulations (Legal Notice 114 of 2013). The Regulations provide that, "a procuring entity shall allocate

at least 30% of its procurement spend for the purposes of procuring goods, works and services from small and micro enterprises owned by women, youth and persons with disability.

¹ Terms of Reference for the Consultancy, refer to appendix 5

The study adopted a filed survey approach and the four target counties were sampled based on a number of factors. Turkana and Uasin Gishu counties were selected based on past intervention activities for the target group, by the UN Women in these counties. Kilifi, Kiambu and Kisumu were selected to represent regions under the previous provincial administration structures. Additionally, economic activities and budgetary allocation to these counties was considered. A structured questionnaire was used to collect data from the respondents.²

The findings of the study in Turkana, Uasin Gishu, Kilifi, Kiambu and Kisumu indicate that; special groups were not participating fully in government tenders. In Turkana for example, non of the potential participant had registered and obtained AGPO certificate. Whereas in Uasin Gishu had special groups who had applied and obtained AGPO certificates- women(1,000); youth(495) and PWDs(20); Kilifi had special groups who had AGPO certificates - women(285), youth(565), and PWDs(13); Kiambu had special groups who had AGPO certificates - women(77), youth (89), and PWDs(9); and Kisumu had special groups with AGPO certificates- women(46), youth(126) and PWDs(12). Further, in Turkana it was observed that women were not keen to participate in government contracts while in Uasin Gishu women were very keen to participate in government contracting. UN Women has in the recent past had intervention programmes on uptake of 30% public procurement opportunities by the special groups in Turkana and Uasin Gishu Counties.

The study reveals that though the government has put structures and set Trust Funds for the special groups, the uptake of the 30% of the procurement business opportunities by the special groups has been slow. The government business registration processes, complex bid documents and securing loans to participate in government tendering limit many special groups from participating in the tendering process. The study recommends the following; more training and capacity building programmes for both procurement professionals and the target group on uptake and implementation of preference and reservations in counties, government to consider simplifying bidding documents for ease of understanding by the target group, county governments to consider facilitating access to financing by the target group, and UN Women to consider organising and facilitating more capacity building initiatives at the counties on preferences and reservation.

²Appendix 2

Chapter 1 Introduction

Introduction

The rapid assessment project (study) is on access to public procurement business opportunities (AGPO) by women, youth and persons with disability (PWDs) at the county level and availability of business development services (BDSs). The access to public procurement business opportunities by disadvantaged groups (women, youth and people with disability) has its genesis when the NARC government operationalized the Public Procurement and Disposal Act 2005 to assist these groups by gazetting the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 vide Legal Notice No 58 dated 8th June, 2011. The purpose of the regulations "is to promote local, national and regional industry and support socio-economic development by defining: (a) the target group and eligibility requirements for benefitting from the preference and reservations schemes; (b) the percentage margin of the preference, where applicable; (c) the goods, works and services set aside or reserved for specified target groups; (d) the regions within which to apply the scheme, and (e) the means of measuring its effectiveness in achieving the objectives."

In 2013, when the Jubilee Government came to power under His Excellency President Uhuru Kenyatta, his government went further in ensuring that the disadvantaged groups gain from the public funds spend on public procurement contracts; the Cabinet Secretary the 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) provides that a procuring entity shall allocate at least thirty percent of its procurement spend for the purposes of procuring goods, works and services from micro and small enterprises owned by youth, women and persons with disability. And Regulation (31) (2) for the purpose of paragraph (1), 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.

The aim of AGPO is well stated in the National Treasury website which states that the programme is to facilitate the women, youth, and persons with disability-owned enterprises to be able to participate in government procurement. This will be made possible through the implementation of the Presidential Directive that 30% of government procurement opportunities be set aside specifically for these enterprises. It is affirmative action aimed at empowering women, youth, and persons with disability-owned enterprises by giving them more opportunities to do business with Government".

Background to the Assessment

The Preference and Reservations Schemes was intended to enable the women, youth, and persons with disability (PWDs) groups that were marginalized in the past to participate in government contracting. The Government of Kenya spends approximately 30% of its annual budget in the acquisition of goods, works and services. The budget for the 2014/2015 financial year was KES 1.77 trillion.³ Subsequently, 30% of this budget set aside for the disadvantaged groups amount to KES 531 billion. This is a substantial amount of money if spend by the disadvantaged groups and would lead to social and economic improvement of the special groups and would reduce unemployment in the country.

3

The Preference and Reservations policy has been in place for the last three years; however, the government lacks information on (a) the level of awareness of access to government procurement opportunities (AGPO) schemes by the target groups (b) the available Business Development Services (BDS) at the county level that support the implementation of the scheme. For the government to have information on whether the special groups are aware of the AGPO schemes and the availability of the BDSs at the county level that assist the implementation of the AGPO schemes this will assist it to design appropriate interventions to encourage the groups to benefit more from the schemes.

Accordingly, and in order to document the preparedness of the target group in accessing the procurement opportunities afforded by the government under the AGPO programme that sets aside 30% of the public spending for the target entrepreneurs, the government with the assistance of UNWOMEN commissioned a study to assess the programme's uptake and to document the available Business Development Services (BDSs) at the County Level. The information obtained will assist the government in reviewing the programme and to put in place the necessary interventions to make it easier for the target groups to access Preference and Reservations Schemes' opportunities. The government's intention to empower the target groups (women, youth and PWDs) economically will lead the latter to combat poverty and promote inclusive economic growth in the country. Further this will translate into more jobs and development.

Statement of the problem

The Women, Youth, and PWDs constitute a large percentage of the population⁴. The government's plan to reserve 30% of its annual procurement budget for the financial year 2015/2016 KES 2.3 trillion for these special groups is to enable them to participate in government contracting process so as to contribute to economic and social development of the country and for the special groups to benefit from income and jobs.⁵

However, sufficient information has not been documented on the level of awareness on AGPO programme, especially at the county level. This leads to lack of evidence generation that can support various intervention towards the accessibility and friendly environment for the women, youth and persons with disability to access AGPO opportunities.

The special groups face challenges in accessing the government procurement opportunities. In the past, well established businessmen dominated the public procurement contracting. Men are aggressive in seeking business opportunities and are conversant with the requirements of establishing and running businesses. Traditions have always supported men to seek business opportunities. This is not the case with women, youth and PWDs. The special groups came to the government attentions recently and in particular in the last three years when the government enacted legislations that established the preference and reservation scheme.

Accordingly, the special groups face challenges in registering and running businesses. The requirements for registering and running business are cumbersome; the government procurement tendering process is lengthy, complex, involve voluminous documents; and in most cases the government does not pay its suppliers and contractors on time. These issues discourage the special groups from participating in the public procurement process. Consequently, access and uptake of the public procurement opportunities

⁴The National Population Survey 2009

⁵Annual Budget 2015/2016

by the target group is low. Subsequently, the government has to intervene in order to ensure its policy of encouraging the special groups participate and gain from public procurement opportunities takes root. This will be the sure way of to gain from these special groups in contributing their share in economic and social development. Further, this will lead to job creation and reduction in unemployment in the country.

UN Women

The UN Women supports women's economic empowerment because it believes that gender equality can contribute to advancing economies and sustainable development. In Kenya, UN Women has been playing a great role in reaching women who need support to contribute to the social and economic development. For example, the UN Women has invested in both Turkana and Uasin Gishu counties and to some extent in counties from the coast region. UN Women has successfully organized capacity building workshops in selected counties on how the special groups can access and participate in government tenders. For example in Uasin Gishu county members of JOYWO- a women organization- have benefited from the capacity building workshops organized by UN Women. Some of women who have participated in these workshops are running successful businesses and are now participating in government contracting. However, documentation of the current status, gains and challenges arising from this processes was never documented and codified in a report, the very purpose of this study.

Objectives

The objectives of the assessment are:

- a) The identification of the existing structures at the county level that facilitate implementation of AGPO programme.
- b) To assess the level of awareness among AGPO target groups at the county level (the five counties selected as a sample- Turkana, Uasin Gishu, Kisumu, Kilifi and Kiambu).
- c) To identify the factors supporting access to AGPO by target groups at the county level.
- d) To identify existing barriers/challenges at the county level that prevent youth, women and PWDs from utilizing AGPO opportunities fully and make recommendations.
- e) To develop county specific fact sheet on available BDSs.

Scope

The Public Procurement and Assets Disposal Act, 2015 is an act of Parliament that give effect to Article 227 of the Constitution; to provide procedures for efficient public procurement and for assets disposal by public entities. It covers both national and county governments. The Public Procurement and Disposal Regulations, 2006 also covers both the national and county governments. The National Treasury is currently developing the Regulations to operationalize the Public Procurement and Asset Disposal Act, 2015.

Due to time and resource constrain, the following five counties were sampled, as a fair representation of the status of implementation of the preference and reservation scheme at the counties, across the country.

Table 1: Criteria used in selecting counties to be assessed.

No	County	Population	GOK Revenue Allocation/year	Economic Activity	UN Women Invested
1	Turkana	855,399	10,479,033,426	Nomadic, pastoralist, and fishing	Invested
2	Uasin Gishu	894,179	5,190,879,968	Agriculture	Invested
3	Kilifi	1,109,735	7,441,216,645	Tourism, agriculture	None
4	Kisumu	968,909	5,681,265,569	Fishing, agriculture	None
5	Kiambu	1,623,282.	7,463,541,789	Agriculture, Services sector	None

Source: (a) County allocation of Revenue Act 2016.

The first criteria for selecting Turkana and Uasin Gishu is the fact that the UN Women has initiated various interventions in these counties.

The second reason for selecting the above counties is based on the revenue allocated to each, in this connection counties were picked from those given high allocation to those given small revenue allocation in order to determine how much business is allocated to the AGPO. The revenue allocation is based on the following factors: *Population, Basic Equal Share, Poverty, Land area, Fiscal Responsibility and Development Factor.*

The third criteria for selecting the above counties is based on the economic activities performed by each, hence the easy with which they can access the AGPO Project benefits provided by the government in the way of preferences and reservations. For example, it can be determined how easy it is for the pastoralist to leave their normal economic activities and participate in government tenders.

The fourth reason for selecting the above counties is the disparities in distances the beneficiaries are in accessing major commercial centres in the country. The easy with which to reach the above counties' commercial centres without involving complex logistics travel mode was another factor was taken into consideration.

The fifth reason Kisumu was picked to be representative of Kenya cities.

The amount of revenue allocated to each of the selected five counties is extracted from the County Allocation of Revenue Act, 2016:

Table 2: Revenue Allocation per Sample County

No	County	FY2015/2016		FY 2016/2017	
		Allocation Ratio	KES	Allocation Ratio	KES
		Column A	Column B	Column C	Column D
13	Kiambu	2.87%	7,463,541,789	2.87%	8,053,256,819
14	Kilifi	2.86%	7,441,216,645	2.86%	8,029,167,703
17	Kisumu	2.19%	5,681,265,569	2.19%	6,130,158,037
43	Turkana	4.03%	10,479,033,426	4.03%	11,307,010,771
44	Uasin Gishu	2.00%	5,190,879,968	2.00%	5,601,025,717

Source: County Allocation of Revenue Act, 2016

It can be noted that each of the five counties selected has a sizeable allocation of funds. Out of these funds each county is to set aside 30% for the special groups' participation in public procurement.

Chapter 2 Literature Review

Legal Framework

The literature review focused on the relevant policies, regulations and best practices on entrepreneurship development. In particular, to appreciate the legal framework the government of Kenya has put in place to ensure that the AGPO schemes are implemented to the advantage of the special groups.

In the past, the government did not give priority to the special groups in harnessing their contributions to the economic and social development. The NARC government put in place mechanisms that would prioritize the contributions of the marginalized groups. This was captured in the Kenya Vision 2030 under (3.3) "Enhanced Equity and Wealth Creation Opportunities for the Poor" which states that no society can gain the social cohesion predicted in Vision 2030 if significant sections of the population live in abject poverty. To that extent, Kenya Vision 2030 includes equity as a recurrent principle in economic social and political programmes. Special attention has been given to investment in arid and semi-arid districts, communities with high incidence of poverty, unemployment, youth, women and vulnerable groups. Under Vision 2030 "devolved funds" deployed in a more efficient and transparent manner, is expected to play a key and enhance role in correcting existing economic and social inequalities.]

The forgoing gave direction for the government to focus more on the disadvantaged groups and to tap from the capabilities to participate in the nation building.

In addition, the Kenya Constitution 2010 Article (27) "Equality and freedom from discrimination" gives rights to the disadvantaged groups to participate in economic and social development subsequently the need to include women, youth and people with disability to participate in government contracting without discrimination.

Further, Article (227) (2) (a) &(b) of the Constitution, 2010 instructs that "An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following:(i) Categories of preference in the allocation of contracts;and (b) The protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination"

Consequent to Article 227 of the Constitution, the Public Procurement and Asset Disposal Act, 2015 was enacted and took effect on 7th January 2016, where all procuring entities, including counties, are required to adhere to its provisions. The Act provides for the Preferences and Reservation, stipulated in Part VII Preferences and Reservation (156-158). The law requires each procuring entity to submit quarterly reports to the Public Procurement and Regulatory Authority all tenders secured by the special groups and the list of those registered and issued with the AGPO certificates.

However, in the absence of the Regulations to operationalize the new Act, the previous regulations are still in operation, to the extent that they are consistent with the Act. They include the Public Procurement and Disposal (Preference and Reservation) Regulation 2011 and the Legal Notice 114 of 18th June, 2013.

The majority of these special groups are located away from the commercial centres and to get information on such regulation took time. The intention of the government was to have the Directorate of Public

Procurement to sensitize the special groups to take up the initiative of the preference and reservations. These Regulations were issued at the start of the financial year 2013/2014 when the central government and county governments had already prepared and had in place approved budgets. This meant that resources to sensitize the special groups were not cater for and the sensitization could not take place.

International Perspective

In order to appreciate further how on the international scale such schemes are conceived and implemented the following literature was reviewed and experiences noted:

- a) **The Sustainable Development Goals**, specifically Goal one, to eradicate poverty in all its forms everywhere by 2030. This is to ensure every man and woman, particularly those in poverty, have equal rights to access and participate in economic activities
- b) **Business Development SMEs - Preliminary Guideline for Donor-Funded Interventions 1997-** this document informed on how donors intervene in assisting the SMEs thrive so as to play a crucial role for the achievement of broader development objectives, including poverty alleviation, economic development and the promotion of more democratic and pluralist societies.
- c) **Empowering Women through Public Procurement (1964-2014)** a document prepared by ITC. Gained knowledge from this publication and selected those aspects which can be replicated in the AGPO programme. For example, the document quotes that investing in women-owned businesses pays dividends in terms of creating jobs and development. Small and medium-sized enterprises (SMEs) are the engines for job growth in the world economy, accounting for nearly 80% of jobs worldwide. Increasing their competitiveness increases their likelihood of success, expansion and job creation. Women entrepreneurs tend to reinvest up to 90% of their earnings in their families and communities, which links inclusive economic growth directly to development.
- d) **Promoting women's entrepreneurship development based on good practice programmes: some experiences from the North to the South.** SEED Working Paper No. 9 - Series on women's entrepreneurship development and gender in enterprises (WEDGE) ILO publication by Paula Kantor 2001. Obtained information on how women can run enterprises economically and profitably.

Chapter 3 Methodology

Method/Methodology

The methods used in collecting data were (a) administering face -to- structured questionnaire to respondents and (b) administering questionnaire using telephone interviews.

The designed questionnaire⁶ was used to collect primary data. The questionnaire is constructed based on the assignment objectives. The use of a questionnaire is selected because it is convenient in obtaining the answers from a large number of respondents.

The people who were interviewed were those involved in the implementation of the AGPO schemes. These people included those working in government institution PPOA, PPD, UN Women, and Public Service and Youth and Gender Affairs, county and sub-county youth officers, social development officers, Women Fund and Youth Enterprise Development Fund Officers at the county level. Others interviewed were County Executive Committee in charge of Gender affairs from each of the selected counties. The Gender department is involved with gender – youth, women and PWDs- at the county level. In addition, interviews were carried out with beneficiaries, BDSs providers and partners (private sector, CSOs, NGO etc). The list of people who were interviewed are as per (**Appendix 2**)

The questionnaire had sixteen questions that dealt with specific aspects of the AGPO programme.

- i. Questions (1- 8) sought to obtain information such as qualification to met by AGPO special groups, business skills required in running a business, number of those registered with AGPO scheme and barriers faced by special groups among others. These questions are summarised in the findings section of this report.
- ii. Question (9) addressed the legal framework relating to AGPO programme- the mechanism the government has put in place to assist the implementation of the AGPO schemes.
- iii. Question (10) considered the preference and reservations schemes- how the schemes are administered by procuring entities.
- iv. Questions (11-13) addressed the role of Public Procurement Regulatory Authority in the administration of AGPO programme -their role involves obtaining information on AGPO fromprocuring entities and ensuring that the programme is being implemented as envisioned by the public procurement law.
- v. Question (14) addressed the structures the government has put in place at the county level that help in the implementation of the AGPO programme.
- vi. And questions (15-16) delt with BDSs that support implementation of the programmeme at the county level. The BDSs involve the non-financial institutions that assist the AGPO proqramme beneficiaries for example in providing entrepreneurship education and training; access to information; counselling and advise.

⁶Appendix 1

Data was collected from the respondents, analysed and the findings are presented in the subsequent chapter.

Chapter 4 Findings

Implementation of AGPO

In order to determine how effective the implementation of AGPO schemes have been in the selected sample counties (Turkana, Uasin Gishu, Kisumu, Kiambu and Kilifi) a structured questionnaire was administered to county, Huduma, and NGOs officials and their responses captured.

Questions (1-8) dealt with the following aspects of the AGPO schemes:

- 1) Explain your understanding of what Access to Government Procurement Opportunities (AGPO) by Youth, Women and Persons with disability mean (County Official/Huduma Center Official). This question meant to establish if the staff concerned do understand the purpose of the AGPO schemes. Further, to determine if there is any communication from PPRA on the requirement of submitting quarterly reports on the tenders awarded to the AGPO schemes recipients.
- 2) What qualifications are AGPO special groups required to meet in order to qualify for consideration and registration? (County Official/Huduma Center Official). The AGPO schemes that the people apply for registration to be issued with AGPO certificates. There are set requirements in the law that a potential applicant must satisfy before being registered and issued with AGPO certificate. If the staff are not aware of the required qualifications, then it becomes hard for them to explain to the applicant what he may require apart from the documents submitted in order to qualify for registration and issuance of certificate.
- 3) Explain the business knowledge and skills AGPO special groups require in order participating effectively in government contracting (County Official). This question determined if the potential AGPO scheme special groups understood how to register a company in Kenya and run it according to the law.
- 4) Provide a breakdown of the numbers of Youth, Women and People with Disability you have registered? (Huduma Center Official/Procurement Official). This question meant to determine how many potential applicants have applied successfully and obtained AGPO certificates. It is an indicator if, depending on the numbers registered under AGPO, people are actually participating in government contracting.
- 5) How many in each category above participate in government tendering process? (Procurement Official). This question meant to determine how many in each category i.e. women, youth and persons with disability, do participate in government contracting. If they are registered and have AGPO certificates, what hinders them from parting in the tendering process?
- 6) How many of those participating in the tendering process have succeeded in getting contracts? (Procurement Official). The question seeks to establish if those AGPO registered contractors who

participate in government contracting ever become successful and are awarded tenders. This intends to establish if the government policy of reserving the 30% is being achieved.

- 7) What are the barriers/challenges AGPO special groups faces at the County Level which prevents them from participating effectively in government contracting opportunities? (County Official). The question sought to determine the bottlenecks that hinder those registered AGPO scheme from participating effectively in government contracting.
- 8) How can the barriers/challenges faced by AGPO special groups be minimized so that the special groups can fully access government contracting opportunities? (County Official). The procurement staff are involved in processing tenders. They are able to point out why the AGPO recipients fail to be awarded tenders. These barriers can then be addressed so as to assist in the uptake of the AGPO schemes.

During the interviews, it was noted that out of the nine (9) Turkana county officials, only (2) were able to answer less than six questions above. The two officials working in Huduma centre in Turkana County revealed that they did not have the knowledge of AGPO. It is useful to note that those intending to register under the AGPO programme in the County do so through the Huduma centre. It is clear that the two officials may not give accurate guidance on how to fill their applications. Their lack of knowledge was confirmed by the officials themselves. The two are seconded by the national government to Turkana County. The national government staff are sensitized on the how the AGPO schemes operate and what are the requirements marginalized groups need to meet before being registered. The National Treasury obligation is to assist the seconded staff by sensitizing them on the steps required in the implementation of AGPO.

The procurement staff working in the other four sample counties (Kiambu, Kilifi, Uasin Gishu and Kisumu) have been seconded from the national government. They are trained and qualified staff who manage to guide the AGPO schemes potential applicants to submit the right documents required for registration for AGPO schemes. The study found that this was the reason why the four counties have managed to register people who have obtained AGPO certificates. The numbers registered in these counties are: Kiambu (175), Kilifi (863), Uasin Gishu (1,695) and Kisumu (184).

Table 3: People Registered and Issued with AGPO Certificates: June 2015- June 2016

No	County	Women	Youth	PWDs	Total
13	Kiambu	77	89	9	175
14	Kilifi	285	565	13	863
17	Kisumu	46	126	12	184
43	Turkana	0	0	0	0
44	Uasin Gishu	200	95	5	300
44*	Uasin Gishu* County Registration	800	400	15	1215

* Note that Uasin Gishu has two centres for registering and issuing AGPO certificates. This is the reason the numbers registered in this County are large.

* Note that the record of the potential AGPO schemes applicants were not provided by the Huduma Centres visited during the study. This is a crucial information and the centres must make it a point to keep a register of all those apply for registration.

Source: Huduma Centres Registers.

Business Knowledge Required by AGPO special groups

The women, youth, and PWDs require knowledge and skills on how to establish and run a business. The respondents were of the opinion that the specials groups lacked business skills and knowledge on how to establish and run a business successful.

It clearly stipulated in the Public Procurement and Disposal Regulations (Amended) 2011 the requirement an applicant must meet in order to register a business and apply for AGPO certification. The officials who process applications and tenders noted that the special groups lack knowledge on how to obtain tax compliance certificates, prepare a business balance sheet, obtain National Construction Authority Certificates among others. Lack of filling tender documents as required in the tender documents leads to the tender being rejected by a procuring entity. The officials confirmed that most special groups bidders fail to proceed beyond the preliminary stage of the bidding process.

As can be noted from (a, b, and c) below the process of registering a company in Kenya takes time and money. For example if an entrepreneur wants to incorporate and register a firm in Kenya s/he will take, according to the World Bank Group Study (27) days in following eleven steps and spend more than KES 100, 000 (to obtain license, permits etc. while an entrepreneur who wants to register a firm as a sole proprietor will take (9) steps and nine days(9) to complete the process of registration and will be required to pay KES 6,150; on the other hand an entrepreneur who wants to register a firm as a Partnership will be required to go through (15) steps in (15) days and make payment of KES 43,000.

Table 4: (a) Registering a Limited Company (Incorporation) in Kenya

No			
1	<p>Reserve a unique company name at the Huduma Center or the Companies Registry.</p> <p>Agency: Huduma Center</p> <p>The procedure begins by reservation of the company name pursuant to company's provision which is a counter service provided by both companies registry and Huduma Centres. The name is reserved for 30 days but can be extended for a similar period upon application. Once the name is reserved, one is required to present the memorandum and articles of association and the statement of nominal capital for stamping.</p>	1 day on average	KES 100 per name reservation
2	<p>Receive stamp duty assessment on the memorandum and articles of association and the statement of the nominal capital.</p> <p>Agency: Huduma Center</p> <p>As of January 2005, the Kenya Revenue Authority (KRA) took over the stamp duty collection from the Ministry of Lands and Housing. As an administrative requirement, the KRA now requires the Personal Identification Numbers (PINs) of all parties on whose behalf duty stamped documents are submitted. Documents are first assessed by the Stamp Duty Office before payment can be made at the KRA designated banks. The process has initially lengthened to about 2 weeks because the Stamp Duty Office waited to receive confirmation of bank payment after clearance of funds. However, the time was reduced to 5-10 days in 2008 as a result of better communication between the Ministry of Lands and Housing and the Kenya Revenue Authority (KRA). A fee of KES 100 is payable as Bank handling charges.</p> <p>Under the Stamp Duty Act (Cap. 480), the stamp duty on the nominal capital of the company is KES 20 for every KES 2,000 or part thereof. The stamp duty on the memorandum and articles of association is KES 2,000.</p> <p>Stamp duty can now be assessed at Huduma Centres. Huduma centres are Government service centres located in major town in Kenya. These centres were first launched November 2013.</p>	1 day	1% of nominal capital (KES 20 for every KES 2,000 or part thereof capital) +KES 2,000 for stamp duty on Memorandum and Articles of Association.
3	<p>Pay stamp duty at the Huduma Center</p> <p>The entrepreneurs pay the stamp duty at the Huduma Centres, if it does not exceed KES 80,000. Alternatively, it can be paid at the</p>	1 day	KES110

	National Bank of Kenya or the Kenya Commercial Bank which are the designated Banks for the collection of stamp duty revenue on behalf of Kenya Revenue Authority.		
4	<p>Stamp the memorandum and articles of association, and a statement of the nominal capital.</p> <p>Agency: Huduma Center</p> <p>After the stamp duty assessment and payment are completed, the company founders return to get the memorandum and articles of association stamped.</p>	1 day	no charges
5	<p>Sign the Declaration of Compliance before a commissioner of oaths or a notary public.</p> <p>Agency: Commissioner of Oaths/notary public</p> <p>According to the Companies Act (Cap. 486), an advocate engaged in the formation of the company or a director or company secretary named in the articles of association must sign the declaration of compliance (FORM 208). This form is submitted to the Registrar of Companies along with the registration documents.</p>	1 day	KES 200
6	<p>Register with the Registrar of Companies at the Attorney General Chambers in Nairobi.</p> <p>Agency: Registrar of Companies at the Attorney General's Chambers</p> <p>The entrepreneur must submit the incorporation deed and the following to the Registrar of Companies.</p> <ul style="list-style-type: none"> • Stamped memorandum and articles of association • Statement of capital • Notice of Situation of Registered Office(Form 201) • Particulars of Directors and Secretary(Form 203) • Declaration of compliance with the Companies Act(Form 208) • Copy of the company name approved. <p>Fee schedule for registration under the Companies Act (Cap. 486):</p> <ul style="list-style-type: none"> • For the first KES 100,000: KES 2,200 • For every KES 20,000 after the first KES 100,000 or thereof: KES 120, subject to a maximum of KES 60,000 • Filing fee for three forms: KES 600 (KES 200 each) 	12 days on average	KES 9,280
7	<p>Register for taxes at the Kenya Revenue Authority</p> <p>Agency: Tax Department</p> <p>The personal identification number (PIN) and the company tax identification number are required to register for VAT, local service tax, and the Pay-As-You-Earn (PAYE) tax. The PIN certificates of at least two signatories (2 directors or 2 shareholders or a director and the secretary) of the company are required. To register for taxes, the entrepreneur must also file the certificate of incorporation and a copy of the memorandum and articles of association.</p> <p>Due to new online reforms, the application for a PIN number and the registration for VAT registration can now be done online.</p>	1 day	no charges

	Unless the KRA has already received confirmation of the company incorporation from the Companies Registry, the entrepreneur must submit the certificate of incorporation and receive log-in details to proceed with online tax registration.		
8	<p>Apply for a business permit Agency: Nairobi County or any other county Applicable permit fees fall within the following scales:</p> <ul style="list-style-type: none"> • Large trader, shop, or retail service with 21-50 employees and premises of 300-3,000 square meters(or at a prime location):KES 30,000 • Medium trader, shop, or retail service with 5-20 employees and premises of 50-3,000 square meters (fair location): KES 15,000 	5 days	KES 15,000
9	<p>Register with the National Social Security Fund(NSSF) Agency: National Social Security Fund</p> <p>The National Social Security Fund provides the employee with a lump-sum retirement benefit. Historically, the rate of return paid by the state is considerably less than that achieved by private schemes but participation is mandatory. The employer pays a standard contribution of about 1% of salary, subject to a maximum of KES 400 per month. Half of the contribution deductible from the employee's salary. The precise amount of the contribution (less than the maximum) is determined by reference to salary bands. As of June 2014, following the enactment of the new National Social Security Fund Act (2013), the pension contribution is 12% of the pensionable wages made up of two equal portions of 6% from the employee and 6% from the employer subject to an upper limit of KES 2,160.</p>	1 day	no charges
10	<p>Register with the National Hospital Insurance Fund(NHIF) Agency: National Hospital Insurance Fund The employee contributes a fixed sum to the National Hospital Insurance Fund (NHIF), which must be deducted by the employer from the employees' salary. The maximum contribution is KES 320 per month. The contributions are used to offset the costs of medical treatment, but they only cover a fraction of actual costs. Hence, most companies provide employees with medical insurance.</p>	1 day	no charge
11*	<p>Make a company seal Agency: Seal maker</p> <p>Seal makers request a copy of the certificate of incorporation in order to make a company seal.</p>	2 days simultaneous with previous procedure	Between KES 2,500 and KES 3,500

* Takes place simultaneously with another procedure.

Source: World Bank Group "Doing Business Project" June 2015

Ken Invest - Promoting Investment in Kenya, has also researched on the procedures for registering both the Sole Proprietorship and Partnership in Kenya. The findings are presented as (b) registering a sole

proprietorship and (c) registering a partnership. It is clear from the data produced that it takes a shorter procedure (nine steps) and the overall cost is KES 6,150 to register a sole proprietorship than it takes in registering a partnership. To register a partnership, it takes fifteen steps and costs KES 43,300.

Table 5: (b) Registering A Sole Proprietorship (9 Steps)

No	Steps	Cost
A	Reserve a business name(2) 1. Pay for business name reservation 2. Obtain name approval	KES 100 2
B	Business name registration(3) 3. Assessment of application 4. Pay for business name registration 5. Obtain certificate of registration	KES 600 KES 200 (+ KES 50 for postal processing)
C	Obtain business permit (4) 6. Verification of business permit application form 7. Assessment of business license fee 8. Obtain invoice for business license fees 9. Pay for license fees and obtain business permit (KES 200 KES 5,000
	Cost of the procedure	KES 6,150

Source: Ken Invest - Promoting Investment in Kenya

Table 6: (c) Registering a Partnership (15- Steps)

No	Steps	Cost
A	Reserve a business name(2)1 1. Pay for business name reservation 2. Obtain name approval	KES 100
B	Partnership registration (3) 3 3. Verification of partnership registration application 4 4. Submission of Partnership registration application and payment of fees 5 5. Obtain certificate of registration	KES 25,000
C	Obtain business permit (4) 6 6. Apply for business permit 7 7. Obtain approval of the director trade licensing 8 8. Obtain invoice for business license fees 9 9. Pay for license fees and obtain business permit	KES 200 KES 15,000
D	Common seal (2) 10 10. Apply and pay for a common seal 11 11. Obtain common seal	KES 3,000
E	Social security registration(2) 12 12. Apply for NSSF employer registration 13 13. Obtain NSSF certificate of registration	
	Cost of the procedure	KES 43,300

Source: Ken Invest - Promoting Investment in Kenya

Interviews with the Huduma Center Managers from the five counties confirmed that the procedures for business registration in Kenya were lengthy and costly thus discouraged the women, youth, and people with disability who may have wanted to register a business and be able apply for the AGPO certificate so that they can participate in public tendering.

Entrepreneurs are now preferring to register sole proprietorship and partnerships as opposed to incorporating a company due to shorter timelines and lesser cost.

Accordingly, if the women, youth, and persons with disability had this information, they would desist from going for Incorporation of a company which is costly. The procurement staff within counties do not assist them to decide the best model of business to register. Accordingly, the special groups confirmed

during interviews that the time and cost that incur to register a company discourage them from registering new firms, subsequently cease to participate in the preference and reservations schemes.

AGPO special groups participating

The numbers of disadvantaged people who have applied and successfully registered and obtained AGPO certificates are one thousand six hundred and ninety-five (1,695) in the sample counties as at June 2016.

During the financial year 2015/2016 the number of special groups who participated in public tenders in the four counties that have registered AGPO schemes people are as follow:

- In Kiambu county (20) special groups participated in public tendering. Six women(group) won tenders valued KES 1.5 million to supply Uji (porridge); one disabled person won a tender for road construction valued KES 1.5million.
- In Uasin Gishu county, (60) special groups participated in public tendering. Fifteen women won to supply seedlings worth KES 6 million each; ten women won a tender to supply vegetables to institutions worth KES 2 million each and three women won road construction tenders worth KES 2 million each.
- In Kilifi county twenty special groups participated in public tender. Three women won road construction contracts worth KES 3 million each. However, they not able to serve the contracts and the tenders had to be re-advertised.
- TurkanaCounty is not included because at the time of the study it had not registered and issued AGPO certificates to any special groups.

The respondents confirmed that very few numbers of the special groups participate in the tendering process, although, when advertising for goods, services and works some tenders are reserved for them. The high values of tenders discourage them from participating because they find it hard to raise funds to service the tenders. This point was emphasized by the Kisumu CEC Finance and the Kisumu County Director of Procurement. The same sentiment was expressed by both the Kilifi County Secretary and his Director of Procurement. In Uasin Gishu, the Director of Procurement confirmed the same sentiment and explained that the special groups participate is small value tenders such as supply of seedlings, vegetables and maize and firewood to institutions.

It is clear that the special groups because of the financial limitations and lack of collateral to assist them in getting bank loans,are discouraged from participating in large and complex tenders. Accordingly, the special groups are not able to fully utilize the opportunities the government has afforded them under the AGPO initiative.

Barriers/Challenges Faced by AGPO special groups

The challenges are captured under each sample county in detail.

The Women, Youth and PWDs face a number of challenges/barriers as was explained by the officials interviewed across the sample counties.

The question (7) was on the barriers/challenges special groupsunder AGPO face at the County Level which prevents them from participating effectively in government contracting opportunities? The officials enumerated the following: the process of registering a business in Kenya is complex and

expensive; the Trust Funds - (a) Uwezo Funds, b) Women Trust Fund and (c) Youth Enterprise Trust Funds are not providing the necessary assistance to women, youth and people with disability as was anticipated. This is because the requirement to obtain funds from these institutions are rigid and require one to meet the set conditions in order to benefit from the fund.

As mentioned above, and specifically relating to the Turkana County, the staff at Huduma centre are not aware of the requirements under AGPO to facilitate successful registration by the target group. It was explained that the centre staff on receiving applications for AGPO registration, they forward them to the National Treasury for verification and issuance of certificates. This may take up to nine months. It should be noted that the registration of AGPO certification can be done in Turkana County at the Ministry of Finance. This is not being done. It will ease the problem of special groups seeking registration to have their applications processed at the county level as is done in Uasin Gishu County.

The officials interviewed noted that the special groups complained that they lack information on available procurement opportunities at the county level; when they participate in the prequalification exercise they hardly succeed because the pre-qualification documents are voluminous to comprehend; the specifications of goods, services and works are complex and are of high value for them to meet because of limited resources; the tendering process for goods, services and works is complex for them to comprehend; standard tender documents are complex; the evaluation process does not take into account the preference and reservations indicated in the Public Procurement and Disposal Regulations (Amended) 2011, and those involved in procurement activities are not transparent.

Structures at County Level that facilitate Implementation of AGPO Programme

The Public Procurement and Asset Disposal Act, 2015 makes provisions on preference and reservation. The Public Procurement and Disposal (Preference and Reservations) Regulations 2011 and the Legal Notice 114 of 2013, lends legal support for the implementation of the preference and reservations by public entities. Among the key highlight of these regulations were the definitions of the various terms relevant to the preference and reservations scheme, for example the definition of "disadvantaged group" means persons perceived to be denied, by mainstream society access to resources and tools which are useful for their survival in a way that disadvantages them, or individuals who have been subjected to prejudice or cultural bias because of their identities as special groups of groups without regard to their individual qualities, and includes enterprises owned by women, the youth and persons with disability". Further and another term "local preference" means the right or opportunity to select a person from an identified target group that is considered more desirable than another in a constituency, local authority or county.

The following structures are set by the government to facilitate the implementation of the AGP programme.

(a) County Government

Procuring entities- (i) procurement department (ii) county ministries. The department and county ministries are involving in the acquisition of goods, services and works. It is their duty to ensure that when tendering for good, works and services, they have in place their annual approved budgets, work plans and procurement plans. The procurement plans must clearly specify the goods, works and services reserved for the special groups. This directive is spelt in regulation (28) which states that the procuring

entities shall integrate preference and reservations schemes in their procurement plans. Further, the Public Procurement and Assets Disposal Act 2015 stipulates in Section 53(6) that the procuring entities shall reserve at least 30% of their procurement spend in their procurement plans. (2) The procuring entity shall submit to the Authority the part in its procurement plan demonstrating application of preference and reservation schemes in relation to procurement budget within sixty days after commencement of the financial year. All procurement awards by procuring entities where a preference or reservation scheme was applied shall be reported with disaggregated data to the Authority on a quarterly basis

(b) Ministry of Youth and Gender Affairs provides leadership, coordinates and creates enabling environment for transforming public service delivery, empowering youth and women, and promoting gender equity and equality. In effect the following Funds fall under this Ministry: (a) Uwezo Fund (b) Women Fund (c) Youth Fund. The Huduma Center which provide services to the public include the registrations and issuance of AGPO programme certificate fall under this Ministry. Other institutions falling under this Ministry are National Youth Service, CARPS and Anti-FGM. Subsequently, this Ministry plays a great role in empowering the women and youth in the county. As noted above, the three Funds provide some funding to the disadvantage groups, while Huduma Centres provides the registration and issuance of AGPO programme certificates.

(c) Non- governmental organizations such as Maendeleo ya Wanawake, provide women with assistance in both training guidance on how to accessing loans for their businesses. Another NGO that has provide assistance to women through table banking in JOYWO. This women organization has mobilized women especially in Uasin Gishu and Turkana and provided training to them on how to start and establish businesses. Most of the women in JOYWO have benefited economically and socially.

(d) The National Treasury

In Section (157) and (17) of the Public Procurement Act,, the National Treasury has a responsibility to operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for –

- registration, prequalification and certification of the persons, categories of persons or groups as provided for in under Part XII;
- training and capacity building of the above target groups;
- providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and
- monitoring and evaluating the implementation of the preferences and reservations under this Act.

And in Section(157) (18) the National Treasury shall provide adequate staff and resources for the operations of the secretariat

(e) The Public ProcurementRegulatory Authority

The role of the Public Procurement Regulatory Authority in the management of the preference and reservations schemes, it is required under article (9) to monitor the implementation of the preference and reservation schemes by procuring entities; and further monitor and evaluate the preference and reservations provided for under this Act and provide quarterly public reports.

During the interviews with officials involved with the implementation of AGPO programme it was revealed that though the government has put in place the structures right from the County Level to National Level, there is disconnect among the bodies concerned. For example, the procurement officers involved in the administration of the preference and reservations schemes were not aware of their responsibility of preparing procurement plans that included tenders reserved for the special groups. During the study it was noted that no procurement plans were not in place in some counties e.g. Kisumu, Kiambu and Turkana. There was no evidence during the field interviews that procurement plans were being submitted to the Public Procurement Regulatory Authority as the law demands. On the other hand the Authority appears to be taking any action to demand that such reports are submitted for their analysis.

Counties Visited

The following section is on the sample counties visited, (a) findings in each county (b) recommendations (c) way forward. The table below shows the dates when each of the sample counties was visited:

Table 7: Counties Visited

No	County	County classification Number	Visit Dates
1	Turkana	43	25 May - 27 May, 2016
2	Uasin Gishu	44	29 May- 31May, 2016
3	Kisumu	17	15 June - 17 June, 2016
4	Kilifi	14	20June - 22 June, 2016
5	Kiambu	33	28 June - 29 June, 2016

FINDINGS

1) Turkana County

Budget

It should be noted that the figures indicated in the budget section of each county have been extracted from the County Allocation of Revenue Act, 2016. The Act provides for the equitable allocation of revenue raised nationally among the county governments for the 2016/2017 financial year and the responsibilities of national and county governments pursuant to such allocation and for connected purposes.

Turkana County has a population of 855,399. According to the Government of Kenya Revenue Allocation for the FY 2015/2016 Turkana county was allocated KES 10,479,033,426.

Kenya government allocates 70% of its budget for procurement spend. Out of 70% budget allocation for procurement spend 30% is allocated to women, youth and people with disability. The county governments similarly allocate 70% of its budget to procurement spend and by law requires that 30% of this allocation is reserved for women, youth and people with disability. Accordingly and for Turkana this translates to KES 7,333,323,398.2 set aside for procurement of goods, works and services for the county. Subsequently, the county government is required by law to reserve 30% of the funds for women, youth and people with disability (PWDs). This implies that the county set aside KES 2,199,970,194 for the special groups during the financial year 2014/2015.

For the FY 2016/2017 the Government of Kenya has allocated Turkana county KES 11,307,010,771. The county sets aside 70% of this allocation for procurement of goods, works and services which translates to KES 7,914,907,539. This implies that county will allocate 30% for special groups which amounts to KES2,374,472,261.70.

Due to the high budget allocation to Turkana, which must have been informed by the fact that the county needed to develop more in comparison with other counties in Kenya that are more developed.

However, the numbers of special groups registered and have AGPO certificate is zero. This implies that the special groups in Turkana have not benefited from the reserved funds (30%) the government set aside to enable them to participate in public tendering which would have enable them to develop socially and economically and to create more jobs.

Consequently, and it was confirmed by field work interviews that businessmen and women from outside Turkana county are doing most procurements within the county. This does not benefit the locals at all. It should be noted that the outsiders have AGPO certificates that have been issued in Uasin Gishu or Nairobi.

The National Government and County government must as a matter of urgency address this short coming if they want assist the marginalized groups from Turkana County.

Findings

The findings below are based on the interviews with a) Government Institutions i.e. County Government Ministries of Finance and Planning, Ministry of Trade, Industrialization, Co-operative Development, Tourism and Wildlife; Department of Gender; Social Development Officers; County Youth Officers; b) Huduma Centre Officers; c) Women and Youth Enterprise Development Officers d) beneficiaries, BDS providers and partners; Joyful Women Organization; and Maendeleo Ya Wanawake.

The areas of focus included to identify structures at the County Level that facilitate implementation of AGPO programme; to assess the level of awareness among AGPO target groups at the County Level; to identify factors supporting access to AGPO by target groups at the County Level; to identify existing barriers/challenges at the County Level that prevent Women, Youth and PWDs from utilizing AGPO opportunities fully and make recommendations and to develop County Specific Fact Sheet on available BDS services.

The Central Government has put in place structures that assist in the implementation of the AGPO programme at the county level. These have been explained above in this report. However, at the Turkana County Level, the structures in place include all ministries. The department charged with handling and processing the procurement for goods, works and services is the Supply Chain Management Services Department headed by the Director of Supply Chain Management Services.

(a) The Supply Chain Management Services in Turkana County is not staffed with procurement professionals as stipulated by the law. The department is also understaffed. Section(47) (1) of the Public Procurement and Asset Disposal Act 2015 states that a procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya. (2) The head of the procurement function shall among other functions under this Act, be responsible for rendering procurement professional advice to the accounting officer. It is clear from the foregoing that Department

cannot adequately handle the billions of shillings set aside for procurement of goods, works and services on behalf of the county. It is important that the National Treasury- Directorate of Public Procurement to carry an audit of the department and assist in staffing it with professional procurement staff who will provided effective and efficient services in the county government.

(b) Each of the Turkana County Ministries prepares annual budget, work plans and procurement plans. It is a government requirement that the Ministries reserve 30% of their budgets for the women, youth and PWDs to enable them participate in public tendering. The amount of money that Turkana County reserved in the FY2015/2016 and FY2016/2017 are shown under the heading of budget. The amount is huge. It means that if the women, youth and people with disability were to take up the initiative, they would increase social and economic development in the county. Many persons within the special groups will be become self-employed and cut down the unemployment rate in the county.

(c) Turkana County government has published the "Turkana Financial Bill 2015" which has included the framework for people with disability. This is a county initiative to assist PWDs so that they can participate in the social and economic development of the county.

(d) Majority of residents in Turkana do not have registered businesses. The locals complain of lack of finances and the processes of registering a business is both tedious and expensive. The expenses incurred under each category of businesses has been explained under registering business in Kenya above where it has been demonstrated that to register a) a sole proprietorship a prospective businessman must incur KES 6,150 b) partnership a prospective businessman will incur KES 43,300 and c) registering an incorporated company one incurs more than KES 200,000. These amounts are prohibitive for the Turkana pastoralists. This is one of the reason why no one local Turkana has succeeded in registering a business and apply for the AGPO certificate.

(e) As noted in this report, there are many barriers that discourage the special groups from participating in the programme. The public procurement procedures from the initiation stage to tender award and signing of a contract is complex, burdensome and costly which normally discourage women, youth and PWDs from participating in the process. Further, the public procurement contracts involve greater bid, proposal and compliance costs. All these factors inhibit women, youth and PWDs because they have no knowledge and skills to tender for government contracts. Further, the special groups do not have sufficient capital to engage in that type of contracting. Each stage of the tendering process is explained below to demonstrate areas where women, youth and people with disability find difficulty as was explained during the field interviews by the officials who were interviewed.

- Advertisements are normally placed on local newspapers or county website. These advertisements are not easily accessed by the local Turkana because most of them do not buy newspapers on regular basis. Further, they do not possess computers nor have access to internet facilities. In addition most of them do not have (IFMIS) ICT knowledge and skills. All these serve to cut them from participating in public procurement.
- The evaluation process is not transparent. The procurement officials interviewed confirmed that they never use preference and reservations procedures to favor the local Turkana as the law requires. This is well documented in the Public Procurement and Disposal (Preference and Reservations) Regulations 2011 regulation (10) which states that local preference and reservations shall be applicable in the constituencies, local authorities and counties where citizen contractors

are based and operate. Instead the Turkana County treat all those participating in open tendering on equal basis.

- Payments for the goods, works and services supplied take long to be effected. For example small traders who supply the sub-county hospitals wait for a long time to be paid by the county government and this destroys the businesses because they lack funds to continue with the business.

(f) Turkana Huduma Centre, though in operation since June 2015, it has not succeeded in registering a business that has been successful in obtaining AGPO programme certificate. The applications received by the centre from the prospective businesswomen or men who want to be registered and eventually have AGPO programme registration fail because they submit documents that are not verified by the centre. These applications are forwarded to the National Treasury where they are reviewed and are rejected due to errors noted. The errors in applications could have been detected at the centre and corrective action taken. There is need for the centre to be proactive in this respect and ensure they submit applications to the National Treasury that meet the requirements for registration and issuance of the AGPO certificates.

(g) The staff at the Huduma Centre were deployed after recruitment without being inducted on the nature of the jobs. In particular the official manning the AGPO desk confirmed that they did not receive training on how they can assist applicants applying for AGPO certificates. There is need to have such staff sensitized on how they can assist those business people who are applying for AGPO certificates. This is the responsibility of the Ministry of Public Service, Youth and Gender Affairs and the Public Procurement Regulatory Authority. The Ministry should undertake an audit of Huduma Centres to ensure that they are manned by well trained staff who can survive the public efficiently.

(h)The local Turkana people fear to do business with the county government, because they lack clear information on how to trade with the government. This is a natural tendency among the Turkana the officials confirmed. The locals are used to getting NGOs money for consumption for a long time and not for business. Consequently, the Turkana see no need to do business when the NGOs can provide them with money to meet their daily needs.

(i)The Ministries at the county level who are involved with assisting women, youth and PWDs include:

- **The Ministry of Tourism, Trade and Industrialization** deals with Enterprise Development (Biashara Fund Office). It provides loans to women, youth, and people with disability. The loans the Ministry provides is for SMEs and mainly to people who have retail shops and those selling second hand clothes. The number of women who have so far applied for loans from this Ministry are 300 while the number of youth who have applied for loans are 500. Only one blind person has applied for a loan of KES. 50,000.00 and was given to enable him run a stall for second hand clothes and other small items like sugar, tea leaves etc. It is clear, that the loans the Ministry gives to the applicants are small in value and cannot assist an entrepreneur to adequately participate in 30% preference and reservation initiative.
- The other Ministry which is involved with the special groups is **Labour and Social Services** whose mandate is the formulation, review and implementation of social security, employment, programme for persons with disability, national human resource planning and development, national labour productivity, child labour and regulation management, facilitating and tracking employment creation, co-ordination of national employment, internship and volunteers for

public service, community development, protection and advocacy of needs of persons with disability, social assistance programme, workplace inspection and workman's compensation. Interviews with the staff of the Ministry confirmed that the Ministry does not handle AGPO registration and issuance of certificates, but it registers women, youth and self-help groups. After, these groups get their registration, they are able then to go and seek registration under the AGPO programme. Further, the Ministry does not fund the groups. However, they provide business training to the registered groups and issue them with certificates to indicate that they have some basic business training. The groups pay KES 1,000.00 for registration. The Ministry also guides the groups in opening bank accounts. However, the Ministry does not provide loans that would enable the special groups to participate in public procurement. It is clear that this Ministry provides business development services to potential entrepreneurs, especially, women, youth and people with disability.

- **The Ministry of Health and Sanitation** has been in the forefront in assisting the special groups who without formally registered business are allowed to participate in public procurement especially at the sub-counties. The Ministry does this to empower the women, by giving them quotations for water, refreshments, charcoal, firewood, cereals, food, vegetables etc to supply to sub-hospitals. The quotations are advertised locally and the women who apply compete among themselves. This is contrary to laid down public procurement law that stipulate that any one dealing with the government departments must be behaving legally running a business. It will be better for the Ministry to sensitize the local Turkana citizens of the need to open and register a business in order to participate in public tendering.
- When the Ministry of Health and Sanitation advertises open tenders, most of the local Turkana who participate fail at the preliminary stage because they submit wrong paper work. This can be attributed to their inability to interpret the bidding documents and have no AGPO certificate.

(j) The agencies that are involved with women affairs are JOYWO and Maendeleo ya Wanawake.

JOYWO is a women's organization as described above in this report. The group deals with Table Banking and empowers women financially. The organization comprises about 30% men and 70% women. The association provides two types of loans: a) short term (1-3 months) and b) long term, more than three months. The loans provided by JOYWO are mainly for agriculture, chicken rearing, bees, etc. 2% of the members in the group have so far obtained AGPO certificates. Initially, women did not know how to access AGPO certificates. After the training provided by UNWomen, the number of women applying for AGPO certificates has increased to 20%. The Leader of Maendeleo ya Wanawake, who attended the same training was challenged to ensure that the process of obtaining the AGPO certificates is shortened. The main challenge barring women from participating in government contracting is the fact that the government does not pay on time for the services provided.

Currently, there are 200 groups and 350 special groups under JOYWO. The challenges the JOYWO face include: bidding documents are complex and difficult to interpret so as to fill them correctly; competition is stiff with well-established firms for example women are given construction contracts that are based in remote areas e.g. Kapendo and Kibishi where security is not guaranteed and therefore the women are at security risk. It was not clear from the interviews why procurement evaluation committees were giving tenders to women to execute tenders in high security risk areas. The special groups who participate in such tenders compete with the rest of the society.

The 30 women who have been given loans up to 200,000.00 are not able to participate in AGPO or tender for government contracts, because the value of contracts are much higher than the loans of KES 200,000.00 provides. The benefits women get from the JOYWOLoans is that they become independent and responsible.

(k) Maendeleo Ya Wanawake is mainly assisting and guiding women how to start and register businesses. Once the registration of businesses is completed, then they are able to apply for AGPO programme registration. The Leader of Maendeleo is constantly liaising with the Huduma Center in Lodwar in this respect.

Challenges

From the forgoing, it is clear that Turkana County women, youth and people with disability face a number of challenges in participating in the in public procurement:

(a) The Supply Chain Services Management department in Turkana County is not staffed with procurement professionals as required by law, and is also inadequately staffed. Article (47) (1) of the Public Procurement and Asset Disposal Act 2015 states that a procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya. This impacts how the department discharges its roles and responsibilities. From the interviews in field work, the department discharges its mandate without considering the requirements of the special groups. The department releases procurement opportunities information to a few select business men. This approach shuts off the women, youth and PWDs who are unable to facilitate the department to provide the requisite information.

It should be noted that the huge amount of funds set aside for procurement at the county cannot be adequately used before any financial year.

(b) Registering a business and operating it effectively within the Turkana County is difficult. It was observed that the cost and time taken to go through the procedure is costly thus discouraging potential women, youth and PWDs who may have wished to register businesses. This is why no one from the special groups has been able to obtain AGPO certificate. It is important that the Central Government simplify the procedure for the special groups to encourage them to register businesses so that they can be able to participate in the 30% initiative. The government can go as far as translating all documents related to business registration and standard bid documents into Swahili language that most Kenyans read and understand. The Attorney General should consider the issue of translating business document into Swahili language.

(c) The public procurement procedures from the initiation stage to tender award and signing of a contract are complex, burdensome and costly which normally discourage women, youth and PWDs from participating in the process. Further, the public procurement contracts involve greater bid, proposal and compliance costs. The law has encouraged procuring entities to unbundle procurement as per regulations (19) which states that for the purpose of ensuring maximum participation of disadvantaged groups, small and micro-enterprises in public procurement, procuring entities may unbundle goods, works and services in practicable quantities pursuant to the requirements of the procurement Act. Turkana County is not adhering to this regulation, because most tenders advertised involve greater bid, proposals and compliance costs.

It is important that the Public Procurement and Regulatory Authority aim at sensitizing procuring entities staff to adhere to the regulation mentioned above in order to encourage more women, youth and PWDs to participate in public tendering.

(d) The application of preference and reservations regulation (10) cited above should be implemented to the latter to give an upper hand to the special groups. This can be enforced by both the Public Procurement and Regulatory Authority and the National Treasury- Directorate of Public Procurement.

(e) The county government delays in paying for services provided on timely basis. The county government should ensure they prioritize in paying the special groups on time because they do not have sufficient resources of funds to sustain them in doing new business. If they are paid on time then they can use the payments in supplying other requirements to the county. Delays in paying the special groups leads to closure of their businesses.

(f) The Huduma Centre needs to be staffed with knowledgeable and skilled staff or arrangements should be made to train the existing staff in the acquisition of the right skills in serving the public in particular those seeking to be registered with AGPO program. This is the responsibility of the Ministry of Public Service, Youth and Gender Affairs and the Public Procurement and Regulatory Authority.

(g) The other Ministries at the county level which provide services to women, youth and people with disability need to be restructured so that they can provide financial assistance that can enable these special groups to participate in public procurement since the budget allocation the 30% constitute billions of shillings that can transform the county if the women, youth and people with disability participate in public tendering.

Uasin Gishu County

Budget

The population of Uasin Gishu is 894,179. The allocation it received during the FY 2015/2016 was 5,190,879,968, while during the current FY 2016/2017 it has an allocation of KES 5,601,025,717.

In the past FY 2015/2016, the county was allocated KES 5,190,879,968. Out of this amount 70% was allocated the acquisition of goods, works and services. This translates to KES 3,633,615,977.6. Out of this allocation on procurement, the county had to set aside 30% for special groups which translates into KES 1,090,084,793.1. In this FY 2016/2017 the allocation for the county is KES 5,601,025,717. The 30% allocation of the procurement budget for the women, youth and PWDs translates into KES 1,176,215,400.3.

As can be seen, the budget allocated the women, youth and persons' with disability is high and in billions. However, the number of the special groups who have managed to register and obtain AGPO certificates in Uasin Gishu is 1515 comprising of (1000 women, 495 youth and 20 PWDs). These numbers cannot absorb the budget allocated them.

The government needs to find ways in particular sensitizing the special groups on the need to take up the procurement opportunities. Otherwise the allocation of 30% appears to be a public relations exercise by the government. The 30% procurement opportunities programme is not working. It should be noted that the observations are based on the sample counties visited. Much more can be deducted if the rest of the remaining county are visited and obtain firsthand information on the implementation of the AGPO

programme in those counties. This will require resources being made available to undertake such an assessment.

Findings

(a) Uasin Gishu is a good example of a county that has strived to assist the special groups. This is demonstrated from the high number of AGPO certificate holders participating in the 30% initiative. To date, the county has the highest number (1515) of registered AGPO certificate holders. More needs to be done to encourage more special groups to participate in public tendering.

(b) In addition to having Huduma Centre in Uasin Gishu, the County government is currently constructing an office block that will have staff dedicate to AGPO programme participants. This is providing specialized services under one roof.

(c) The success the county has had in registering and issuing AGPO certificates to the special groups is attributed to the fact that AGPO certificate are issued at the County Level rather sending applications to the National Treasury for verification and approval to issue certificates. Further, the Huduma Centre in Uasin Gishu is concurrently issuing the AGPO certificates to successful applicants. The process of registering and issuing AGPO certificates is continuous.

(d) Women are aggressive in opening and operating businesses in Uasin Gishu County. This may be attributed that they have been sensitized in the operation of businesses.

Challenges

(a) The special groups also face the problems of registering businesses, because of the time and expenses involve. As mentioned earlier it will serve these groups if the Central Government were to reduce the fees paid by these groups. Most of these groups do not have enough financial resources.

(b) The other challenges like the tender process is complex, the tender documents are complex to be interpreted by the special groups, information on tendering opportunities is not readily available to the special groups, late payments, need to have collateral security to obtain loans from financial institutions were always echoed by the officials who were interviewed at the county.

(e) There is fraudulent aspects normally perpetuated by the special groups where they connive with well established businesses who use their special category to win tenders. This is not achieving the objectives of the AGO initiative. It is important for the Supply Chain Services Department to vet the special groups before awarding tenders to them to ensure that they are running genuine business rather than allow them to be use by the well established businesses. If and when the special groups are found to be operating such curtails, then they should be deregistered.

(f) The special groups and staff involved in the administration of the schemes need training. The training should be provided by the National Treasury-Directorate of Public Procurement who are mandated to provide such training.

(g) The special groups have a tendency of registering many firms with the hope of one them being successful when they bid. If a woman has registered more than five firms and obtained AGPO certificate

for each, the problem arising when she uses one certificate which is not related to the category of goods she bidding for. This made her to fail to be awarded a tender.

Kisumu County

Budget

The county has a population of 968,909. Kisumu County received during the past FY 2015/2016 an allocation of KES 5,681,265,569. While in the current FY 2016/2017 it has been allocated KES: 6,130,158,037.

In FY2015/2016 Kisumu was allocated KES5, 681,265,569, out of this allocation it committed 70% to procurement of goods, works and services. This means it set aside 30% as the law requires for the special groups. This translates to KES 1,193,065,769.4. While in the current FY2016/2017 it has been allocated KES 6,130,158,037. The amount allocated to procurement of goods, works and services is 70% which translates to KES 4,291,110,625.9. Out this allocation it must set aside 30% to special groups. This translates to KES 1,287,333.187.5 for this financial year.

The budget allocation for special groups is colossal and the few people who have qualifies to participate in the schemes is small. The number of women, youth and PWDs is 184 made up of (46 women, 126 youth and 12 PWDs).

Findings

(a) Kisumu is a city. It has a lot of economic activities taking place there. However, the AGPO programme has not taken root, because only 184 special groups have managed to register and obtain AGPO certificates. This is because most special groups lack information on the existence AGPO programme.

(b) The official interviewed confirmed that most special groups hardly interpret the standard bid documents when they participate in the tender process. Most of the times they get disqualified at the mandatory stage when they participate in public tenders because they fill the bid documents as is required in the instructions to bidders.

(c) The women, youth and PWDs hardly visit the Supply Chain Management Services Department to seek information of the available procurement opportunities. In this way they do not get to know when quotations are floated and hence miss the opportunity to participate in the process. An accomplished business woman must seek opportunities where they are, however, in case of the Kisumu County special groups never make an initiative to find the necessary information.

(e) Those in special groups who participate in the tender process and succeed in being awarded the tenders, end up selling them to well established businesswomen or men at a fee which is at a throw away. They are "used" by the well established businesses. However, it must be noted that these special groups may not have enough funds to service the tenders and the reason for selling the tenders they win to well established firms.

(f) The officials who were interviewed confirmed that the procedure for registering a business is both expensive and takes time. This normally discourages the special groups from seeking to register their

business and seek the AGPO certification. However, there is need to sensitize the special groups to start as sole proprietorship which attracts the lowest fee.

(g) The issue of late payment to suppliers by the county arose during the interviews. The late payments affects the financial liquid of any business. And since special groups do not have reservoir of funds, they get affected adversely when not paid on time. The trend of not paying government contractors on time was noted in the sample counties. All of them never pay their suppliers on time. At times money for payment would be available, but only a few chosen are paid because of the special relations with the county managers. It was noted that when payment is not done on time, the special groups face auctioning by the banks because they fail to service the loans they have obtained from the banks.

(h) The officials interviewed see the programme as unworkable because the government has not put in place proper mechanism that would make loans available to the special groups at discounted rates or revolving through UWEZO Trust Fund.

(i) The special groups who participate in public tenders and are successful are required to sign contracts, they cannot be reached because the addresses they give in the bid documents either by phone or e-mail is not genuine.. This make them to lose the opportunity of being awarded the tenders.

(j) The special groups also complain that in as much as they submit bid documents which are evaluated as successful, they are denied the opportunity because they do not give bribes to county officials because they themselves lack the money.

(k) Most of the groups registered hail from the environ of Kisumu city. It should be noted that most special groups are based at the sub-counties. It is important that the county seeks to sensitize them to take up the AGPO initiative that set aside 30% procurement opportunities for them.

Challenges

(a) The AGPO initiative has not taken root within Kisumu County because of various challenges that the recipients were facing for example the recipients do not have information on the existence of the AGPO programme.

(b) The registration process to obtain AGPO certificate is long for one has to start with registering a business entity and then apply for AGPO certificate. As noted elsewhere in the report registering a business takes time and money. This discourage the potential applicants because most of them are poor.

(c) As with all counties, it was noted that the standard tender documents used by the government are cumbersome and are not easy to interpret in order for them to participate in the bid process successfully.

(d) The youth, women and PWDs are not proactive to seek information on the procurement opportunities from the County procurement unit. This hinder them from participating in public tendering.

(e) The special groups who manage to participate in the tender process and are awarded tenders end up selling them to well established business men at a fee, which normally is at a throw away. Further some of those who win tenders and sign contracts fail to execute the contracts because they lack finance that will enable them to execute them.

- (f) The special groups fail to complete the tender documents as required, subsequently, when they are submitted, the documents are rejected at the preliminary stage. This challenge can be addressed by simplifying the bid documents and or translating them into Swahili language.
- (g) The special groups who manage to execute the tenders successfully are not paid on time which cause the problem of having the securities with banks being auctioned. The government needs to address this challenge in to ensure that the special contribute to the economic development of the economy.
- (h) The criteria for sharing the 30% among the special groups is not applied by the county government, hence disadvantaging the special groups.
- (i) The PWDs are required to be registered with the National Disability Council. The process of registration takes long, thence discouraging this special group from participating in public tenders.
- (j) The contact addresses and phone numbers provided by some special groups who participate in the tender process are not accessible. The procurement unit can never reach them when they need to clarify some information. This make the tenders not responsive.
- (k) Information on procurement opportunities, especially those within the threshold of quotations are not disseminated widely for the enable the special groups to participate in tender process. It appears that there is a clique of suppliers who always participate in the quotation process due to the special relationship with the procurement unit.
- (l) Where the special groups' bids are successful, they are denied the opportunity to be awarded the tenders because they are not able to compromise the procurement unit.
- (m) Most of the special groups are poor. The meager finance they may have is utilized in feeding their families, subsequently have no extra finance to enable them to participate in the tendering process.

Kilifi County

Budget

The county has a population of 1,109,735. Kilifi County received an allocation in the past FY 2015/2016 KES: 7,441,216,645. In the current FY 2016/2017 it has been allocated KES 8,029,167,703.

In the FY2015/2016 out of the allocation of KES 7,441,216,645 the county set aside 70% to procurement of goods, works and services which translates to KES 5,208,851,651.5. The county then had to set aside 30% of the procurement budget for women, youth and people with disability which translates to KES 1,562,655,495.3. In this FY2016/2017 the county has been allocated KES 8,029,167,703, out of this allocation it sets aside 70% on procurement of goods, works and services. Out of the procurement budget, it must reserve 30% for special groups. This entails that the special groups would have a budget of KES 1,686,125,217.6 reserved for them to participate in public procurement.

Kilifi County with huge amount of money set aside for the special groups cannot be utilized effectively by the groups. The registered and qualified persons with AGPO certificates are 863 made up of (285 women, 565 youth and 13PWDs).

Findings

(a) Huduma Centre has not been established in Kilifi County. This inconveniences the public who would have benefited from the services it is supposed to provide. However, the county government is currently constructing an office block that will house the Huduma Centre.

(b) The exercise of registering the AGPO programme special groups is handled by the Office of the County Secretary. The Personal Assistant of the County Secretary has the delegated responsibility of receiving and processing applications of the special groups and those whose application meet the set criteria are registered and issued certificates that are signed by the County Secretary. So far the office has issued 863 AGPO certificates comprising of 285 women, 565 youth and 13 PWDs.

(c) The AGPO programme special groups do not have enough capital to participate fully in the tendering process. The county advertises for opportunities and reserves some tenders for the groups. Those who successfully win and sign contracts to execute the projects are unable to implement them because banks or financial institutions never give the required financial assistance to undertake the projects.

(d) The special groups because of lack funds are unable to execute tenders awarded. This disadvantages the County Government in providing optimal services to its people. The county government is forced to re-advertise such works.

(e) The Uwezo Fund, Youth Development Fund, Women Enterprise Trust Fund all who can provide assistance to the special groups, however, the process of accessing the funds from these institutions is complex and discourage the special groups from seeking assistance from them. Further, the loans provided by these Trust Funds are not enough to enable special groups to participate in big government tenders. Normally government tender require high capital outlay.

(f) The officials interviewed confirmed that most groups' life span is short. They form for a specific purpose and once they have fulfilled that need the wind up the group and start another group with the same members. There is not much progress in this respect because the funds obtained from Trust Funds are used for personal consumption.

(g) The most aggressive groups in county tendering process are the women and youth. They form 90% of the AGPO beneficiaries. Rarely do PWDs participate in the county tendering process because they lack interest. While the greatest hindrance for the women, youth, and PWDs to participate in the tender process is lack of collateral security they could use to obtain bank loans.

(h) The groups lack training in the use of e-Procurement and IFMIS. The government should provide such training to these groups to enable them to submit tenders through IFMIS. Further, IFMIS should be decentralized to enable counties to process locally payments so as not to cause delays currently experienced because all counties must submit their transactions to the National Treasury for processing.

(i) The Department of Gender Affairs registers groups, empowers them through training on business, leadership, tendering etc. To date the department has trained more that 40% of the groups registered. The department links the groups with the financial institutions such as Women Enterprise Fund, Uwezo Fund and Youth Enterprise Development Fund. The officials interviewed confirmed that the groups which benefit from the Uwezo Trust Fund are legally registered businesses, however, in their own assessment the groups are dormant or are "ghost" groups or are groups that politically favored. The latter receive more allocation whereas other groups which are active are not considered by the Constituency

Development Committee (managing the fund). The money received by the category of groups are not used for participation in government contracting but are used for their own consumption.

Challenges

(a) The County Supply Chain Management Services Departments needs to vet special groups who participate in the procurement process to ensure they meet the criteria for participating in the procurement before awarding them contracts. It was pointed out during the interviews with county officials that a bidder from the special category has been awarded a contract, the execution of it become difficult because of lack funds.

(b)The Trust Funds set to assist the special groups need to be reexamined so that they are able to provide finance which can enable the groups to participate in public procurement more effectively. This will enable to access the funds set aside under the 30% initiative.

(c)The special groups are faced with the problem of using IFMIS or e-Procurement in participating in the government procurement process. The government should consider training the special groups on how to use the e-Procurement or IFMIS. It should be noted that it is not only the special groups that need this type of training, but the staff manning procurement units.

(d) The officials interviewed confirmed there are the BDSs that are in place and intended to assist the women, youth and PWDs. First, the Uwezo Enterprise Development Trust Fund which was set up to assist the year following the presidential elections of 2013 has not really benefited the women and youth at the constituency level. The process of registering under the Uwezo initiative so as to qualify for the funds is long. There is the requirement that the group mainly made of 5-15 special groups must register with the Department of Social Services or the Registrar of Societies. To benefit from the fund the group must have been operational for at least six months. The group must make monthly contributions to the fund, and have an account in the name of the group. The loans offered range from 50,000 to 500,000 which sum is not adequate fund say a tender more than one million shillings. The loans attracts 3% administrative fee. The bureaucracy involved discourages the special groups from seeking loans from the Trust Fund. So far, less than one million youths have benefited from the Fund yet the number of youths within the country is more than15 million.

(e) Similar challenges experienced in other four sample counties are also experienced at Kilifi County. For example, there is need to train the Huduma Centre staff manning the AGPO desk on how to verify the applications and assist the applicants were necessary, the standard bid documents are complex and hard to interpret, the tendering process is complex, payments are delayed by the county government, training is required for staff working in the procurement department etc.

Kiambu County

Budget

The county has a population of 1,623,282.Kiambu County received an allocation in the past FY 2015/2016 of KES 7,463,541,789. In this FY 2016/2017 it has been allocated KES 8,053,256,819.

Kiambu County was allocate in FY2015/2016 KES 7,463,541,789. The county set aside from this allocation 70% to procurement of goods, works and services. Then out of the procurement budget, it is expected to

set aside 30% of the procurement budget for the special groups. The 30% reserved equals KES 1,567,343,775.6.

In the current FY2016/2017 the county has been allocated KES 8,053,256,819. Out of this allocation, it has set aside 70% on procurement of goods, works and service which translates to KES 5,637,278,773, the 30% reserved for the special groups from the procurement budget translates to KES 1,691,183,931.9

It is surprising that Kiambu which is near Nairobi City cannot attract many special groups to participate in public procurement. The numbers are negligible. There are 175 registered AGPO programme issued with certificates. This number is made up of (77 women, 89 youth and 9 PWDs). 175 persons cannot possibly be able to utilize the large allocation for the special groups. The allocations run into billions.

Findings

(a) The officials interviewed explained that most people falling under the categories of women, youth and people with disability are not sensitized on how to register a business and then apply for AGPO certificate. The applications submitted by these special groups usually lack compliance certificates, are past the age of 35 years to qualify under the youth category, lack NCA certificates in case they want to tender for construction projects and if they are people with disability- they lack the national disability certificates. As mentioned in this report, the process of registering a business in Kenya is long and requires one to incur expenses. This discourages many would-be AGPO programme participants to register a business firm. In effect, only 175 special groups have managed to obtain AGPO certificates yet Kiambu is near Nairobi and has potential for a lot of business.

(b) The special groups who managed to register and obtain AGPO certificates are unable to participate in the county tendering process because they lack capital that will enable them to execute tenders in case they are successful.

(c) It emerged during one of the interviews that some women fear to compete with men in business because men are more aggressive and tend to intimidate them. This discourages many Kiambu county women from participating in the tender process.

(d) Some of the officials interviewed see county procurement staff as engaging in inappropriate practices because they demand favors before awarding tenders. This attitude discourages special groups from participating in the tendering process.

(e) It also emerged that when either women or youths form into groups they do so as to get business certificates to access Women Trustee Funds or Uwezo Trust Funds and never last. They form to gain finance to satisfy a pressing need they have and then disintegrate as groups. They then emerge with another group formed by the same special groups who destroyed an earlier group.

(f) Most of the PWDs are not aware of the existence of the 30% government initiative to empower them. This is because they hardly visit government offices to seek information. They tend to seek sympathy from the able people - they have dependency culture. This inhibits them from participating in the county contracting process. In addition, they fear to take bank loans because they may not be able to repay them.

(g) It emerged that some PWDs are ignored by the public, for example, the deaf and dumb people. These hardly participate in public procurement. The government must design a way of involving these special groups.

(h) There is only one PWD who has successfully managed to participate in the construction of roads because he has the resources. He became disabled as a result of an accident when he already had thriving business.

Challenges

(a) The tender for the supply of Uji (porridge) to ECD schools was reserved for the local Kiambu women who have AGPO certificates. The Kiambu county government issued letter to financial institutions to finance the women who had won the tender. The financial institutions agreed and provided credit to those women. The women have been supplying the ECD schools for the past two years. This is a good example where the county has collaborated with the financial institutions to enable the women participate in the public procurement process. However, it not so with other types of contracts that women participate in for example in construction contracts. The financial institutions deny them credit because the county takes long to pay the women so that they can repay the bank loans. The government if indeed wants to assist these special groups should be in agreement on how they can be finance these groups and must pay promptly for the services rendered.

(b) The officials who were interviewed explained that the special groups found the prequalification of suppliers and contractors cumbersome and discourage them to participate in it. The pre-qualification criteria does not discriminate from well-established firms and the special groups. The government should simplify the process of pre-qualification so as to make it flexible to enable the special groups to participate separately from well-established firms under their special criteria.

(c) The procedure for registering a business hinders many more special groups from attempting to register a business because of the cost and time involved. This concern cuts across all the sample counties. The government should simplify the procedure for registration to attract more special groups to participate in government tendering.

(d) Most women participate in organizing events and air ticketing while most youths prefer to deal in ICT items. This is restrictive and may not assist these groups from growing their businesses. The profit margins in the categories selected by both the women and youth are low.

(e) The women and youth who manage to get small works worth KES 150,000- KES 200,000 normally request the county to give them an advance of payment, which the county cannot do because of the government regulations. However, the county provides such firms letters of guarantee to the banks to seek loans to service their contracts. Where the banks advance loans to such special groups they require an interest of 30% which is high for these small businesses. Their profit margins will be reduced exceedingly.

(e) The issue of special groups selling tenders they have been awarded goes against the objective of the AGPO programme which was meant to advance the social and economic aspects of the groups. Instead the groups auction their rights to well established firms.

(f) All sample counties do not pay on time. Payment to all contractor's delay. This disrupts their businesses and some are forced into bankruptcy. It appears that the government while trying to encourage the special groups to participate in government contracting in effect they run those businesses down by not paying them on time. The government should rethink how payments to special groups can be made to fend off such firms going into bankruptcy.

(g) It is not clear why the special groups have a tendency to register so many firms. This attitude can be changed by being sensitized that owning one business can be more profitable than owning so many which attract more taxes.

(h) Many officials who were interviewed had issues on how the county procurement department evaluates tenders. They consider the evaluation process not being transparent and tend to favour specific well established firms. The evaluation committee should be above reproach to create confidence in the special groups.

(i) The submission of wrong business addresses and phone numbers complicate how the special groups can be reached when they are required by the procurement department. This issue should not arise if the procurement department were to verify the information on place of business, addresses and phone numbers before awarding such firms contracts. This is the responsibility of the procurement staff that they have neglected.

Chapter 5 Conclusions

Below is a summary of the study and the conclusions drawn, from each area of focus.

UN Women

UN Women have been assisting the disadvantaged groups commissioned the study by funding it. In the past, UN Women have been involved in providing training to the disadvantaged groups in the area of establishing and running business so as to empower them economically, socially and create more jobs at the county level. Some of the counties which have benefited from the UN Women support include Turkana, Uasin Gishu, and Mombasa County.

The UN Women contribution is confirmed from the various capacity building workshops it has held in Uasin Gishu on public procurement that targeted the special groups. The report notes that the highest county among the five sampled which has registered special groups with AGPO certificates is Uasin Gishu. In particular, the JOYWO group has benefited from the workshops and put into practice what they have learned from the public procurement workshops which have been provided by the UN Women. Some of the members have participated in government tendering and have been successful in being awarded tenders that they successfully serviced. The tenders they have participated in include road construction, cleaning services, supply of vegetables and food to government institutions such as hospitals and universities among others.

The UN Women should set aside more funds to train more disadvantaged groups in other counties where they have noted been. It has been demonstrated that the workshops they run yields results.

Huduma Centres

Huduma centres were set up by the government to bring services offered in Nairobi closer to the people at the county level. The services offered by Huduma Centre include AGPO registration, licenses, passports, police abstracts, and business registration, among others.

Each of the forty-seven counties is supposed to have Huduma Centre. However, by the time of undertaking the study, nine counties (Kilifi, Tana River, Garissa, Muranga, West Pokot, Elgeyo Markwet, Nandi and Bomet) had not established these centres.

At the time of the study, Kilifi County was in the process of building an office block to house the Huduma Centre. Uasin Gishu County, though has Huduma Centre, the county government is building an office block that will house procurement staff dedicated in handling AGPO programme issues. This is a good development for it is an additional centre for registering AGPO recipients. Further, it demonstrates a commitment by the county government in assisting the disadvantaged groups to participating in government tendering process. The counties should be encouraged to have an office within the procurement department that is devoted to serving AGPO recipients. This will ensure that the groups get timely advice on procurement issues from the procurement department.

Interviews with the staff working in the Huduma Centres in the sample counties indicated that they were not aware of the process of registering AGPO programme recipients. In this connection, the staff did not

provide advice to the disadvantaged groups on how to apply and fill the required documents to enable them get AGPO certificates.

The staff need to be trained in all aspects relating to the business registration and application for the AGPO certificates. This responsibility is under the parent Ministry of Public Service, Youth and Gender Development. The Public Procurement Regulatory Authority and Public Procurement Directorate should work jointly in sensitizing the Huduma Centre on the procurement requirements relating to the AGPO and business registration.

Business Registration

Registering a business in Kenya is complex, costly and time consuming. Kenya stands number (108) in the ease of doing business out of (189) countries in the world. The World Bank Group produced a study report on "Doing Business Data Base" 2016 that ranked countries on the ease of doing business. It is clear from the ranking that Kenya needs to introduce more reforms which can attract more businesses being established in the country.

As noted in the study in order to participate in the AGPO schemes one must register and operate a business before applying for AGPO certificate. There are three options a potential business woman or man can register in Kenya, namely sole proprietorship, partnership or incorporation.

The time and money required to register and operate a business depends on the type of business an individual would like. As noted in the study, to register as a sole proprietor requires one to spend KES(6,150) and take(9)days; the partnership business registration requires KES (43,000) and takes (15) days while incorporation one spends KES(+100,000) and takes (27) days.

Since, the special groups start without much resources, starting with a sole proprietorship will minimize the amount spent in time and registering the business. However as noted in the report some of the disadvantaged groups register more than one firm with the hope when bidding for government tenders one of their firms will succeed. The disadvantaged groups need being sensitized that registering more firms is not a sure guarantee to being successful in government tenders.

The government through reforms can reduce the number of days taken in registering a business in Kenya so that it encourages more people especially the special groups to register in more numbers so that they can be able to gain from the business opportunities the government has reserved for this groups.

Budget

The budget figures indicate that the county governments reserve billions in shillings for the special groups in line with the law. (a) Turkana county reserved KES 2,199,970,194 in FY2015/2016; and KES 2,374,472,261.7 in FY 2016/2017; (b) Uasin Gishu county reserved KES 1,090,084,793.1 in FY 2015/2016; and KES 1,176,215,400.3 in FY 2016/2017; (c) Kisumu county reserved KES 1,193,065,769.4 in FY 2015/2016; and KES 1,287,333,187.5 in FY 2016/2017; (d) Kilifi county reserve KES 1,562,655,495.3 in FY 2015/2016; and KES 1,686,125,217.6 in FY 2016/2017; and (e) Kiambu county reserved ES 1,567,343,775.6 in FY 2015/2016 and KES 1,691,183,931.9 in FY 2016/2017.

It is noted that the county governments reserved large sums of money for the special groups to participate in government tendering. Due to the numbers of special groups registered, the few could not

have absorbed the funds in a financial year. The challenges noted in the report hindered the recipients from accessing the funds reserved for them. For example, the process of business and AGPO registration is complex, costly and time consuming. In addition, the tender procedures and documentation discourage potential beneficiaries from participating in the process. The processes need to be simplified by the government to encourage the AGPO programme recipients to take up the opportunities.

Tendering

The government tendering process from need identification to contract award is long. The process is not well understood by the special groups. They need to be sensitized how the process functions. The tenders are normally advertised in the local newspapers or county websites. The special groups have no access to newspapers since they cost money which they not have. So they miss many procurement opportunities advertised in the newspapers. Further, the special groups have not been exposed to the IFMIS system used by the county governments in advertising their tenders and processing contractors' payments. This hinders them from participating effectively in the tendering procedures.

The specifications for the services to be provided, sometimes they require technical interpretation. The special group's inability to comprehend service specifications discourage them from bidding. Further, even when they participate in the tendering process, they fail to fill the bid documents as required. This led them to being disqualified from participating in the tendering process.

As mentioned above, it is important the government seek to simplify the process of tendering.

National Government

The central government has done its part by issuing the necessary legislation in ensuring that the special groups participate in the government tendering process. Further, government has instructed the procuring entities to reserve annually tenders worthy 30% of their respective budget for the special groups. This is positive from the government's perspective since the tenders set aside are mainly competed by the special groups on the same footing.

Apart from providing an enabling environment for the operation of the AGPO programme, the government needs to intensify its oversight role to ensure that the special groups participate by review the quarterly reports on the tenders issued the groups to determine if the tenders obtained are of high value rather than low values which may not assist the groups from developing economically. The study found out that the government through the Public Procurement Regulatory Authority is not carrying their functions of oversight. This is informed of the fact that the counties under study were not submitting the quarterly reports as required.

The Public Procurement Regulatory Authority is having about fifty (50) staff. Five of the staff are involved in monitoring implementation by procuring entities to ensure that they are implementing the preference and reservation scheme as required. However, the five are few to cover the large numbers of procuring entities countrywide.

The Public Procurement and Assets Disposal Act, 2015 is in place as from 7th January, 2015. The Public Procurement and Disposal Regulations, 2006 have not been reviewed to be in line with the Act. Implementation of the Act without the accompanying regulations pose problems in the implementation of the procedures. The law published is complex to be interpreted by the special groups. The government

should seek to simplify it and with the option of translating the act into Swahili language to enable for the special groups use. The tender documents should also be considered to be translated into Swahili language.

The government has in place a policy on how to effect payment for the services provided by contractors. The procuring entity when unable to pay on time for the services rendered, it can facilitate local purchase or service order by authenticating notifications of tender awards by entering into agreement with the relevant financial institutions with conditions that include paying the contracted through their account opened with the financier. The procuring entity can where payment delays are inevitable make at least 50% part-payment and give reasons for the delay to the contractor.

Despite the mechanisms for payment are in place, the government take time some time six months or more to effect contractors' payments. This affect the contractors especially the special groups who have no reserve funds to use for more trading.

County Government

The county governments are required by law to reserve 30% of their annual procurement budget for the special groups. Three counties namely Turkana, Kisumu and Kiambu did not show evidence if they do have annual procurement plan that include the goods, works and services reserved for the special groups.

Under the budget section above, the allocation of funds reserved for the special groups is large. If well utilized, the counties' will be transformed economically and socially. The county governments should endeavor to sensitize the groups on the need to participate in the development of the counties. Further, they must ensure that the groups utilize their reserved funds before end of any financial year.

The county government are required by law to unbundle the goods, works and services to be procured. This is provided for in the Public Procurement and Disposal (Amendment) Regulations, 2011 clause (19) that state for the purpose of ensuring maximum participation by the disadvantaged groups, small and micro-enterprises in public procurement, procurement entities may unbundle goods, works and services in practicable quantities. This serves to ensure that the disadvantaged groups can participate in bundles that they are capable to service.

The whole range of standard bid documents must be maintained by the county government to ensure that a right standard bid document is used. The standard bid documents number more than forty, a number that is large for the special groups to digest. For example, county governments bid for insurance tenders which require a special bid document that is distinctly different from the tender document for construction of roads.

Maendeleo Ya Wanawake Organization (MYWO)

MYWO an organization of women that seeks to unify, nurture and empower women socially, economically and politically to be able to deal with the unique challenges that face them in society. Foremost, women have challenges in establishing businesses because of lack of information. This organization assist women is obtaining such information from the workshops the organization run throughout the country.

The study noted that women had difficulties in completing business registration documents and lacked information on how to register and obtain certificates on AGPO programme. However, the MYWO leader in Turkana is in constant communication with the county procurement department in ensuring that women register and obtain AGPO certificates. Further, UN Women has conducted workshops on business registration and public procurement. The information obtained from the workshops has enlightened Turkana women to seek for registration of businesses and AGPO programme.

The country requires more of such training to reach more women at rural areas. The work currently done by the UN Women is commendable and the institution should continue investing in the country to assist the women. The government should work closely with the UN Women in order to reach most women of the county.

Joyful Women Organization

The Joyful Women Organization is involved with women activities in Uasin Gishu County. It supports the women involvement in sustainable livelihood activities so as to empower them economically and socially through self-sustaining financial model.

The organization is supported by the UN Women especially in capacity building. The members have attended workshops organized by UN Women in public procurement. The areas covered in those workshops include:

- Public procurement legal framework.
- Public procurement opportunities in a devolved government.
- Bidding for contracts
- Eligibility requirement for doing business with government.
- Understanding standard tender documents.
- Strengthening women owned SMEs Access to finance: Opportunities and challenges.
- Evaluation of bids and contract award.
- Contract review and implementation.
- Integrity issues in public procurement and how to deal with them.
- Complaints mechanism.
- Women access to finance opportunities.

Women who attended the above workshops were inspired to register own companies and participated in the public procurement process. The JOYWO members who have successfully managed to register the following companies:

- Jalema LTD Co.
- Daisies LTD Co.
- Floruma Enterprises Ltd Co.
- Elma Ltd Co.
- Blesses Three Ltd Co.
- MagMag Ltd Co.
- Joywo Ltd Co.
- Uniwan enterprises Ltd Co.

- Bersrich Co. Ltd
- Keiser Enterprises Ltd.

Some of the above companies have participated in county tendering process and those that have won tenders include:

- Elma Ltd Co.
- Bersrich Co. Ltd
- Uniwan Enterprises Ltd Co.
- Keiser Enterprises Ltd

The finances provided by the organization cannot enable more firms to participate in high value tenders advertised by the county government. The funding strategy of the organization is women save and borrow immediately from their savings on the table, either in short term or long term loans. Since organization has demonstrated its capability in doing business with the county government successfully, the government through the 30% initiative may consider of contributing funds to the organization to enable it loan more members. The members can repay the loans in the same way they repay loans borrowed from the organization. This will enable more women to take up procurement opportunities reserved by the government for women, youth and people with disability.

The JOYWO model can be replicated throughout the counties because it has worked in Uasin Gishu County.

Trust Funds

The government has set up three separate trust funds with the aim of assisting the various special groups in participating in public procurement and general economic and social development.

(a) Youth Enterprise Development Fund (YEDF)

The sole purpose of the (YEDF) is to reduce unemployment among the youth. The government conceived the idea of institutional financing as a way of addressing unemployment which essentially is a youth problem. The concept is based on the premise that micro, small, and medium enterprise development initiatives are likely to have the biggest impact on job creation. Young people who constitute the largest segment of our society, is the future of any economy and a key driver of employment growth and economic activities.

The Fund's strategic focus is on enterprise development as a key strategy that will increase economic opportunities for, and participation by Kenyan youth in nation building. The government has so far disbursed KES 11.48 billion and benefited over 840,000 youth. However, the number of youth who have benefited from the fund is small while the majority of the more than fifteen million (15 million) youths between the ages 18 and 35 have not benefited from the fund. This was articulated by the Cabinet Secretary of the Ministry of Public Service, Youth and Gender affairs when she launched a newly established Trust after disbanding the previous one.

The initial fund was disbanded by His Excellence President Uhuru Kenya recently and new Fund officials were appointed to manage the fund. The new youth fund was launched because the previous one was not benefiting the youth as was anticipated.

The interviews which were administered to various officials during the field work verified that the youth were not getting assistance from the fund to enable them to participate in the public tendering. One of the hindrances in obtaining loans from the fund is the bureaucracy and complex paper work needed to be completed by an applicant. Further, the registration centres were in urban centers and not at constituency level. Traveling expenses required to visits the registration centers was prohibitive for most youths. Subsequently, the objectives for which the funds were set for example provide loans for on-lending to youth enterprises have not been achieved. Consequently, the government clearly needs to rethink the policy on the fund to enable the youth benefit from it.

b) The Uwezo Fund

This fund is meant to provide youth and women access to grants and interest-free loans, as well as mentorship opportunities to enable them take advantage of the 30% government procurement preference for youth, women and persons with disabilities through its capacity building program.

The eligibility criteria set by the government to be met by the applicants is deterrent for potential applicants. For an applicant to qualify for the fund loan one must meet the following criteria:

(a) For a group:

- a) Is registered with the department of social services, cooperatives or the registrar of societies.
- b) Has members aged between 18 and 35 years whereas, the women's groups shall be made up of women aged eighteen years and above.
- c) Is based and operational at the constituency it seeks to make an application for consideration
- d) Operates a table banking structure or any other group funds structure where members make monthly contributions according to the groups internal guidelines (evidence of monthly contributions shall be a requirement)
- e) Hold bank account in the name of the group.

(b) For an institution:

- a) Is a registered entity
- b) Has listed youth and women groups within it.

The eligible amounts of loan is three times the groups' savings but it shall not be:

- a) Bellow KES 50,000(minimum)
- b) More than the amount applied for in the application form and
- c) More that KES 500,000 (maximum)

During the field work, the officials who were interviewed confirmed that the Uwezo Fund is unable to assist the special groups it intended to assist in obtaining loans to participate in public tendering. This is

because of the stringent procedures explained above, one must go through to access the Funds. In addition it was revealed that, once a group obtains the loan, it disbands because it needed funds to meet its special needs and not for public tendering which requires large funds to be able to participate successfully.

c) Women Enterprise Fund

Women Enterprise Fund is a Semi-Autonomous Government Agency in the Ministry of Public Service, Youth & Gender Affairs established in August 2007, to provide accessible and affordable credit to support women start and/or expand business for wealth and employment creation.

The notable features of the Women Enterprise Fund that have relevant to financing/providing loans to assisting the groups aspiring to participate in public procured are the follows:

(i) LPO Financing

This is a product tailored to serve women by increasing their capacity to respond and adequately service tenders thus meeting supply requirements. The loan will be available to individual women owning enterprises or women owned companies. The process of registering and running businesses is complex as has been noted in this report.

(ii) Bid Bond Financing

This is a product tailored to serve women by increasing their capacity to respond and adequately service tenders thus meeting supply requirements. The loan will be available to individual women owning enterprises or women owned companies.

(iii) Tuinuke Loan

This is a loan product at the constituency level or otherwise known as **Constituency Women Enterprise Scheme (CWES)**. The Tuinuke loan product is given out through registered women groups interested in expanding or starting new businesses.

It clear from the above that the procedures for accessing funds from the Women Enterprise Fund are elaborate and do require one to have security in form of collateral. In many instances, women do not have the scurrilities required. This was informed by the Kilifi County official's interviews who confirmed that not many women in the county are able to participate in public procurement because of the many requirements the Fund requires before a group is eligible to obtain a loan. The government needs to rethink how best it restructure the Fund to benefit more groups.

Further it should be noted that the amounts of loans disbursed are not sufficient to enable a group participate in works contracts which require huge outlay of cash.

The bid bond financing may not be hindrance for the women groups to participate in the public procurement for they have been exempt from submitting bid bonds as per Public Procurement and Asset Disposal Act, 2015. See also Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 which states in section (21) (1) no tender securities shall be required from small and micro enterprises or enterprises owned by disadvantaged groups participating in procurement proceedings.

Chapter 6 Recommendations

The following recommendations if implemented will assist the AGPO programme to grow from its current level.

1) Implementation of AGPO programme

a) Training

The women, youth and people with disability came into focus when the government realized that the groups constitute a large segment in the society. The government to harness their contributions will assist in the socio and economic development of the country.

The initiation and development of the AGPO programme has encouraged many in the special groups to venture into business. In order to assist the groups, the government and non-governmental partners should train those who are keen to do business with the government.

It has been demonstrated that YOYWO through focused training has assisted its members in participating in government contracting and have won tenders.

The special groups need to train on how to select a business to register this is because the types available, that is, sole proprietorship, partnership and incorporation have different procedures and costs to be incurred. Many of the special groups are ignorant of the procedures to be followed in registering a business in Kenya. This training can be done by the National Treasury- Directorate of Public Procurement

The training to be provided to the special groups should be relevant to registering and running a business. And in order to benefit from the AGPO programme initiative, the training should aim in assisting the recipients in appreciating the functioning of the government contracting process.

The following topics should be included in the curriculum:

(i) Public Procurement

The objective of this training is to induct the participants in appreciating the government procurement process and should include- public procurement legal framework, standard tender documents, bidding process, evaluation process, award and contract signing, and payment processing among others.

(ii) Business Registration

The objective of this program is to enable the participants to select the type of business concern to register, the legal requirement of registering a business, tax filing, financial statements preparation and interpretation.

(iii) Banking

The objective is to introduce the participants on the role of banks in business, how to access and repay loans.

2) Preference and Reservations

The Preference and Reservation procedures as set in the Public Procurement and Asset Disposal Act, 2015 are not friendly to the special groups to easily follow. The government needs to simplify these procedures to enable the special groups to benefit from them. For example the provision of evidence of eligibility discourages many members of the special groups from participating in public procurement.

3) UN Women

UN Women should set aside more funds to provide training to the rest of the counties that they have not managed to provide training, especially in the area of public procurement and entrepreneurship. This will bear fruits as it has been demonstrated by the Uasin Gishu county special groups who received such training organized by the UN Women.

4) Huduma Centres

County and Huduma Centers officials need to be sensitized on how the AGPO program works. The sensitization training should be undertaken by the National Treasury- Directorate of Public Procurement since it is their responsibility. The Ministry of Public Service, Youth and Gender Affairs should also be involved, since the Huduma Centers fall under this Ministry. The trained staff will then be able to assist potential special groups who would like to register and apply for AGPO certificates. This will lead to an increase in number of people from the current low numbers who get AGPO certificates.

5) Trust Funds

There is need to simplify the Trust Funds procedures in accessing funds from them. Currently and as the Trust Funds are constituted and operates denies the special chance to access funds from them. The government should re-examine the way the Trust Funds are run and ensure that the managers who operate them do not abuse their responsibilities. The credit afforded to special groups should be sufficient to enable the special groups participate in large government tenders. This is the responsibility of the Ministry of Public Service, Youth and Gender Affairs in consultation with the National Treasury and the Attorney General's Office.

6) National Government and County Government

- a) All the forty seven counties should be encouraged to issue AGPO certificates at the local level rather than passing applications for potential AGPO special groups to the National Treasury for verification, approval and issuance of certificates.
- b) Both the National Government and County level should make concerted efforts in encouraging especially the PWDs to participate more in the AGPO program through counseling and training. Currently the numbers obtaining the certificates are negligible. Further, the governments should encourage the special groups to use the procurement budget reserved for the special groups is used more effectively. In addition, both governments should determine what happens to the amount of money reserved for the special groups if not used and the governments can use the balance to give to the Trust Funds who in turn will loan the special groups.
- c) The requirement that all procuring entities prepare annual budgets, annual work plans and procurement plans must be adhered to. These plans were not seen during the field work. It is the duty of the Public Procurement Regulatory Authority to enforce these requirements for all the counties. In this way it will be easy to determine if the counties allocate 30% of procurement spend to the special groups.
- d) Governance and ethical standards must be enforced in all the counties because when there is no transparency in the award of contracts, most special groups get discouraged from participating in the process. There is need to audit procurement done by counties to determine if the awards done as required. This is because, there are cases where tenders are split to favor the well-established firms to the detriment of the special groups. This aspect can be enforced by the both the Public Procurement Regulatory Authority and the Ethics and Anti-corruption commission.
- e) The government should ensure that they pay the special groups on time this is because they do not have sufficient capital to plough back into their businesses. Most of the special groups end up being auctioned when they take bank loans and are unable to repay them on time.
- f) Supply Chain Services Management Departments must be staffed with professionals. The five counties sampled did not have staff who are certified as procurement professionals. Consequently, their abilities to provide professional advice to the Accounting officer when it comes to tender awards is limited. Kenya Institute of Supplies Management should audit all counties' procurement departments to ensure that they are staffed by qualified professionals.
- g) The other forty-two counties need to be assessed in order to have the overall view of what interventions the government would need to put in place to ensure that the AGPO program uptake increases.
- h) The government should reform the business registration process to attract more participants in opening and running businesses in Kenya. Currently, the country is ranked number 108 worldwide the ease with which register a business.

7) Tendering

- a) The government should simplify the tendering process to enable the special groups to participate more effectively.
- b) The current procedures are complex for most special groups who would have wished to participate in the contracting process.
- c) The standard bid documents should be simplified to enable the special groups comprehend them. Equally, the government can translate them into Swahili language that is commonly understood by the special groups. The special groups operate in the rural setting where English language is not commonly spoken.

- d) The prequalification process undertaken by the counties should be simplified. Otherwise the criteria to be qualified as set by the counties are stringent and unattainable by most special groups who participate in them.

8) Business Development Services

The facilitation provided by the various ministries involved with the women, youth and PWDs should be enhanced to provide more business development services to the special groups. It is important to note that the special groups are on average poor and therefore they operate simple businesses with little scope for BDSs to help them develop their businesses to higher levels. Some of the groups that help the special groups include the UN Women, Non- Governmental Institutions, Government Ministries, Maendeleo Ya Wanawake, JOYWO among others. (**Appendix 4**)

Bibliography

1. Business Development Services for SMEs: Preliminary Guideline for Donor Funded Interventions - First Revision 1997. A Report by Donor Community on Small Enterprise Development- First Revision 1997.
2. Doing Business 2016 Measuring Regulatory Quality and Efficiency- A World Bank Flagship Report.
3. Empowering Women through Public Procurement (1964-2014). ILO Publication.
4. Measuring Change in Women Entrepreneurs" Economic Development: A Literature Review DCED Working Paper, September 2013 by Diana Wu.
5. Public Procurement and Disposal Act, 2005.
6. Public Procurement and Disposal Regulations, 2006.
7. Public Procurement and Disposal (Preference and Reservations) Regulations, 2011.
8. Public Procurement and Disposal (County Governments) Regulations, 2013.
9. Public Procurement and Disposal (Preference and Reservations) (amendment) Regulations, 2013.
10. Public Procurement and Assets Disposal Act, 2015.
11. Promoting women's entrepreneurship development based on good practice programmes: some experiences from the North to the South. SEED Working Paper No. 9.

Appendix (1)

a) Questionnaire used at the County Level

- 1) Explain your understanding of what Access to Government Procurement Opportunities (AGPO) by Youth, Women and Persons with disability mean.(County Official/Huduma Center Official)
- 2) What qualifications are AGPO special groups required to meet in order to qualify for consideration and registration?(County Official/Huduma Center Official)
- 3) Explain the business knowledge and skills AGPO special groups require in order participating effectively in government contracting.(County Official)
- 4) Provide a breakdown of the numbers of Youth, Women and People with Disability you have registered? (Huduma Center Official/Procurement Official)
- 5) How many in each category above participate in government tendering process? (Procurement Official).
- 6) How many of those participating in the tendering process succeed in getting contracts?(Procurement Official)
- 7) What are the barriers/challenges AGPO special groups faces at the County Level which prevents them from participating effectively in government contracting opportunities?(County Official)
- 8) How can the barriers/challenges faced by AGPO special groups be minimized so that the special groups can fully access government contracting opportunities?(County Official)
- 9) What legal framework has the government put in place to ensure that AGPO special groups legally obtain government contracts? (Procurement Official)
- 10) Explain what is Preferences and Reservations Scheme as articulated in the Public Procurement and Assets Disposal Act 2015? (County Official/Huduma Center official)
- 11) Explain the role of the Public Procurement Regulatory Authority (PPOA) in the implementation of Access to Government Procurement Opportunities (AGPO) programme.(County Official)
- 12) The (PPOA) Authority maintains and updates a register of all small and micro enterprises and disadvantaged groups qualified to benefit from the scheme and post it in its website or dedicated portal. How does the Authority use this information in ensuring that the AGPO special groups gain access to government contracting opportunities?(Procurement Official)
- 13) Does your County submit to PPOA details AGPO registered special groups who have participate in the public procurement contracting on quarterly basis? (Procurement Official)

- 14) What structures has the government put in place at County level to facilitate the implementation of AGPO programme? (County official)
- 15) Are there available Business Development Services the government partners have put in place to assist AGPO special groups to access government contracting opportunities? Please name them and briefly explain their roles.(County official)
- 16) What is the role of each BDS identified in the question above at your County that assists AGPO special groups to fully utilize the scheme? (County official)

Appendix 2 List of People Interviewed

Turkana County

- 1) Mr. Julius Ekal- Mr. Julius Ekal (Phone No. 0705615150) who works with the Economic Advisor
- 2) Ms. Jennifer Tioko - Maendeleo Ya Wanawake Leader
- 3) Mr. Daudi Wilfred (Phone; 0724837058), the Huduma Centre Manager.
- 4) Ms Vivian Lobari (Phone No. 0717580324
- 5) Ms. Rose Muhidi (Phone: 0713035827) the Officer Administrator(Trade+ Industrialization)
- 6) Ms. Zillah Mwaloyo (Trade+ Industrialization) (Phone: 0712309164).
- 7) Mr. Joseph Ekiru (Phone. No 075264185) who is in charge of Turkana East and South,(Social Services)
- 8) Mr. Nyaberi Vincent (Phone No. 0722459016) who is charge of Turkana Central, Social Services)
- 9) Mr. Orinda Shadract (Phone No. 07145585303) who is charge of Turkana South, Social Services)
- 10) Mr. Ruga Rono (Phone. No. 0713443763) who is in charge of Turkana West, Social Services)
- 11) Mr. Mudhune Dennis (Phone No. 0726254378) who is the County Cordinator, Social Services)
- 12) Mr. Anthony Kiprop (phone 0721976770) who is charge of Turkana North and West. Social Services)
- 13) Ms. Frida Lorithae, the accountant (Phone No. 0714004471) Joywo
- 14) Mr. Robert Lotaruk (Phone No 0702981715, rob_ekai@yahoo.com) Senior Procurement Officer, Ministry of Health and Sanitation

Uasin Gishu County

- 1) Mr. Hillary Kemboi (Phone No 0725790243). Deputy Director of Procurement(Uasin Gishu)
 - 2) Mr. Vincent Kemei (Phone 0728846981) Manager Uasin Gishu Huduma Centre
 - 3) Ms. Nancy Tarus (Huduma Centre- Uasin Gishu)
-

Kisumu County

- 1) Mr. Alex O. Ayatta Director Supply Chain Management Kisumu - (Phone +25473339333797)
 - 2) Ms. Mactilda A. Onyait - County Director of Trade Kisumu County(Phone + 254723345154)
 - 3) Mr. George Ongaya Okoth. tCEC Finance,Kisumu County
 - 4) Mr. Harun Owuor (Phone 0728412111; harunkenneth@yahoo.com).Kisumu Huduma Centre Manager.
 - 5) Ms. Lillian Abok (on 0727211455, akinyililianabok@yahoo.com) in-charge of the AGPO dessk
-

Kilifi County

- 1) Mr. Owen Yaa Baya (Phone: +254722537381/ +542739375290; owenbaya@gmail.com; countysecretary@kilifi.go.ke; kilificountygovernment@gmail.com) Kilifi County Secretary.
 - 2) Ms Francisca Dhahabu (phone 07209473810).(AGPO desk) Kilifi County.
 - 3) Said Ali Said (phone: 0724696410; amoody.said@yahoo.com) Director (Co-op Dev) Kilifi
 - 4) Elijah Kuta Mung'aya(Phone: +254720576683; elijahkuta2012@gmail.com)Administrator(Cop Dev) Kilifi
 - 5) Jacktone Mahagayu (Phone: 0708935505; jmahagayu@gmail.com)(Co-op + Trade)Kilifi
 - 6) William Kalume Itta (Phone 0725388032; williamkalume@gmail.com)(Trade) Kilifi
 - 7) Adrian Baya (Phone: 0729867511; baya.adrian@yahoo.com)(Trade) Kilifi
-

Kiambu County

- 1) Ms. Josephine N. Mwengi - Centre Manager (Phone: +254714924065; e-mail: jnmwengi@gmail.com)-Kiambu
- 2) Ms. Veronica Wairimu Chiuri _ Manning AGPO Desk at the Centre(Phone: 0720963847; e-mail. vwachiuri@yahoo.com) -Kiambu
- 3) Mr. George Wanyoike(Welfare Officer: Phone: 0720218523) (Ministry of Education, ICT, Culture and Social Services)-Kiambu
- 4) Mr. John Gicaci - Chief Officer: Fiance & Economic Planning (Phone: 067 5858167/171; 0703664/072799766):Kiambu.

Appendix 3 Revenue Sharing Formula

Table 1: Revenue Sharing Formula

No	Parameter	Current Formula	CRA Revised Recommendation
1	Population	45%	45%
2	Basic Equal Share	25%	26%
3	Poverty	20%	18%
4	Land Area	8%	8%
5	Fiscal Responsibility	2%	2%
6	Development Factor	-	1%
	TOTAL	100%	100%

Source CRA 2016

Revenue Allocation Formula

$$Ca_{in} = P_i + PV_i + A_i + BS_i + FR_i$$

Where:

Ca=Revenue allocated to county

i =1,2,.....47.

P_i =Revenue allocated to a county on the basis of population parameter.

PV_i = Revenue allocated to a county on the basis of poverty gap parameter.

A_i= Revenue allocated to a county on the basis of land area.

BS_i = Revenue allocated to a county on the basis of basic equal share parameter. This is share equally among the 47 counties.

FR_i = Revenue allocated to a given county on the basis of fiscal responsibility. This is shared equally among the 47 counties.

Appendix 4 Business Development Fact Sheets

No	County	BDSs	Role
1	Turkana	Chamber of Commerce	Advise of entrepreneurship
		UN Women	Capacity building
		Joywo	Capacity building and entrepreneurship
		Huduma Centre	Advise on business registration, tax filing, AGPO registration(minimal)
		Trust Funds	Advise on loan management and entrepreneurship
		Ministries	Capacity building
2	Uasin Gishu	Chamber of Commerce	Advise of entrepreneurship
		UN Women	Capacity building
		Joywo	Capacity building and entrepreneurship
		Huduma Centre	Advise of business registration, tax filing, AGPO registration(doen well)
		Trust Funds	Advise on loan management and entrepreneurship
		Ministries	Capacity building
3	Kisumu	Chamber of Commerce	Advise on entrepreneurship
		Huduma Centre	Advise on business registration, tax filing, AGP registration
		Trust Funds	Advise on loan management and entrepreneurship
		Ministries	Capacity building
4	Kilifi	Chamber of Commerce	Advise on entrepreneurship
		Governor's office	AGPO registration
		Trust Funds	Advise on loan management and entrepreneurship
		Ministries	Capacity building
5	Kiambu	Chamber of Commerce	Advise on entrepreneurship
		Huduma Centre	Advise on business registration, tax filing, AGPO registration
		Trust Funds	Advise on loan management and entrepreneurship
		Ministries	Capacity building

Appendix 5 WorkPlan (UN Women Assignment Summary)

No	Assignment	Methodology	Timelines	Expected outcomes
1	<ul style="list-style-type: none"> a) Constitution of Kenya, 2010 b) Public Procurement and Disposal Act, 2005. c) Public Procurement and Disposal Regulations (Preference and Reservations) Regulations 2011. d) County Governments Act, 2012 e) MSE Act, 2012 f) Public Procurement and Disposal (County Governments) Regulations, 2013. g) Public Procurement and Disposal (Preference and Reservations) Regulations, 2013 h) Public Procurement and Assets Disposal Act, 2015. i) Business Development SMEs – Preliminary Guideline for Donor-Funded Interventions 1997- j) Empowering Women through Public Procurement (1964-2014) k) Promoting women’s entrepreneurship development based on good practice programmes: some experiences from the North to the South. SEED Working Paper No. 9 	Use of secondary data and internet information	1 week	To understand the legal framework governing the preference and reservations policy enacted by the government of Kenya
2	Turkana county visit	To administer questionnaires and obtain primary data	25-27 May,2016	To assess the uptake of 30% public procurement opportunities for women, youth and PWDs at the county level and availability of BDSs.
3	Uasin Gishu county visit	To administer questionnaires and obtain primary data	29-31May, 2016	To assess the uptake of 30% public procurement opportunities for women, youth and PWDs at the county level and availability

				of BDSs
4	Kisumu county visit	To administer questionnaires and obtain primary data	15 -17 June2016	To assess the uptake of 30% public procurement opportunities for women, youth and PWDs at the county level and availability of BDSs
5	Kilifi county visit	To administer questionnaires and obtain primary data	20-22 June 2016	To assess the uptake of 30% public procurement opportunities for women, youth and PWDs at the county level and availability of BDSs
6	Kiambu county visit	To administer questionnaires and obtain primary data	28-29 June 2016	To assess the uptake of 30% public procurement opportunities for women, youth and PWDs at the county level and availability of BDSs
7	Prepare draft report	Compiling and drafting the report	1 week	Draft Report produced