

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF ELGEYO MARAKWET



**CONTRACTORS/SUPPLIERS CONSULTATIVE FORUM HELD AT ITEN
POLYTECHNIC ON 24TH JANUARY, 2020**

REPORT

**COMPILED BY DIRECTORATE OF COMMUNICATIONS
FOR DIRECTORATE OF SUPPLY CHAIN MANAGEMENT**

Background

The contractors'/suppliers forum is an annual meeting bringing together County officials and representatives of companies doing business with the County Government of Elgeyo Marakwet.

It was initiated by the County Government as part of its commitments to the Open Government Partnership (OGP). The County committed to open contracting, and hence the forum accords contractors and suppliers a platform to raise issues, complaints, suggestions for improvement on the County's contracting practices.

The forum also affords the County Government a medium through which it remains accountable in public contracting and gauge whether its practices are fair, just and lawful.

Introduction

The second contractors/suppliers meeting began with a word of prayer from the Director Supply Chain Management, Mr. Robert Chelagat, at 10 am.

The meeting was presided over by Governor Alex Tolgos and moderated by County Chair Complaints and Compliments Committee, Mr. Michael Sengech.

In attendance were Members of County Assembly, CECs, County Technical Team, Ward Administrators, Officials of Contractors Association and various contractors.

Introductions were done and ground rules set. Contractors were identified as per their category as follows:

| No. | Category | In Attendance |
|------------|--|----------------------|
| 1. | Women Contractors | 15 |
| 2. | Youth Contractors | 19 |
| 3. | Persons Living With Disability Contractors | 2 |
| 4. | General Contractors | 19 |
| | Total Companies represented | 56 |

Statements by Senior County Officials

Remarks by Director Procurement – Mr. Robert Chelagat

Welcomed participants and said it was the second meeting since a last one held in 2019. He noted the annual forum was initiated by the County Government and was one of its kind, saying Elgeyo Marakwet was a trail blazer in organizing such a

forum. He said the County Government recognized that contractors are partners in development because it is their work that is evidence of the development across various sectors.

He said the forums are meant for continuous improvement adding that it was another chance to enhance accountability and transparency under the County's Open Governance programme.

He noted that the forum was meant to improve service delivery in the County and not for blame games adding that no one would be victimized for airing out their views.

Remarks by CEC Finance and Economic Planning Mr. Isaac Kamar

He appreciated the turn out by all stakeholders, including Members of the County Assembly. He said the County was working to execute prompt and efficient financial management of County resources. He said reforms in the department were ongoing to ensure that it serves all stakeholders and contractors alike efficiently.

Noting that IFMIS (Integrated Financial Management Information System) is an integral part in day to day operations of the County, he disclosed that accountants were devolved to the departments so that payment processes are seamless.

He told the forum about the budget stalemate for the 2019/2020 Financial Year (19/20 FY) both at the national government and at the County thus delaying implementation of the 19/20 FY projects. However, he said processing of payments for past projects was ongoing.

The CEC said the meeting was a reflection of past procurement processes and was to generate ideas to further improve the processes of procurement. He reiterated that the forum was part of commitments to OGP which the County is a signatory.

He further disclosed that there were many reforms at the national government, specifically at the National Treasury and Controller of Budget offices, which are statutory in nature and have to be complied with. He asked the contractors to abide by the reforms as communicated to them from time to time.

On the issue of funds rolling over after the end of a financial year in July of every year, the CEC said in 18/19 FY projects worth Ksh 1 billion were rolled over and asked contractors to speed up implementation of projects annually to minimize roll over.

The CEC also said his department was working to ensure payment for contractors takes only one week to process from the time a certificate of payment is raised by the contractor. He asked contractors not to follow up payments at the County treasury saying this breeds corruption and other malpractices.

Remarks by CEC Sports, Youth & Social Services Ms Anita Kimwatan

She appreciated the composition of female contractors in the forum and asked them to encourage more women to do business with the County. She said her department mainly handles supplies and said most of the departmental suppliers have done a commendable job in the contracts. She cited two well done projects and one which has issues.

Good projects – Youth Driving Impartation Skills - Neema Institute have gone beyond their contracts to offer additional training to beneficiaries. Basket ball pitch project at Lawich Secondary in Marakwet West which was done satisfactorily.

Problematic projects- Embobut – St Michaels School sports field that has experienced a 3 year delay in completion.

Remarks by CEC Roads and Infrastructure Mr Kevin Biwott

The CEC said the most challenging projects in the County are road works adding that most road works are terminated due to poor workmanship. He wondered why this was so, yet companies declare competent technical personnel working for them when they bid for road contracts.

He asked contractors to adhere to project timelines saying this has been a major problem in his department. He asked contractors to respect the contracts they get from the County. The CEC also said that part payments to contractors should be used to complete projects and asked contractors to avoid the allure of diverting the money to other purposes.

He however noted that there were other contractors who do good projects for the County. He further asked contractors to take instructions from County technical staff and also said contractors should apply for jobs they are capable of undertaking, both with requisite resources and qualified personnel.

He went further to read a list of problematic projects & good ones;

Problematic projects - Chesewew VTC, Kapchesil/Chepsongol, Kamariny culverts – to terminate, Maron/Mungwa – to terminate

Good projects – Kapkoi/Kipkalwa, Chemoibon/Kiptabach, Metipso/Chesewew and Salaba/Kobulwo roads.

Remarks by CEC Education & Vocational Training Mr. Edwin Kisang

Complained that some contractors had abandoned site despite getting contracts in previous financial years. He said contractors who don't finish their contracts should not apply for other contracts.

The CEC said those building ECDs should be cognizant of the welfare of children and finish their contracts in time to allow children get access to good learning environments. He went on to cite good and bad projects in his department;

Good Projects – Wewwo ECD, Stoton ECD, Sangurur & Chemarkach ECDs, Iten Twin workshop VTC.

Problematic projects – Kitonget ECD (Marakwet West), Chop ECD (Keiyo South) Koitui ECD, Kapkessum ECD.

Remarks by CEC Public Service Management Ms Pamela Rono

She said project implementation was now being handled by the Ward Development Committees. He asked for support towards the WDCs. She appreciated the support by contractors in construction of Ward and Sub County offices.

She said youth contractors were doing a good job when it came to supplies. She said majority of projects in her department were done satisfactorily save for;

Problematic projects – Chepkorio Sub County Office 16/17 FY – project delayed and Chesoi Sub County office 16/17 FY – project delayed.

Remarks by CEC Tourism & Trade Mr. Shadrach Yatich

He said the major challenge facing project implementation is contractors disappearing from project sites after award of contracts. He added that when legal termination of the contracts is initiated, the contractors come up with a lot of excuses. The CEC said contractors facing challenges in implementing their contracts should promptly report any challenges they experience to forestall delays.

He added that the purge on corruption and poor projects had been intensified and County staff would be strict to ensure only completed projects are paid for.

The CEC asked contractors to prepare to fast track 19/20 FY projects since implementation delayed due to budgetary issues.

He noted that projects in Tourism have generally been done well.

Remarks by CEC Health & Sanitation Mr. Kiprono Chepkok

He said the department primary focus is timely completion and quality of projects. In health, he said majority are good and have few problematic projects. He noted challenges with design of projects due to limited capacity by contractors in designing of projects i.e Kamwosor, Chebiemit and Tot health facilities.

Good projects – Kokwongoi Maternity, Kamwosor mortuary

Problematic projects – Msekekwa Renovation, Anin Staff house, Kapteren Maternity

Remarks by CEC Livestock representative, Director Mr. Joseph Chepkwony

He disclosed that the department has had challenges with some contractors who delay in supplying livestock to County farmers, saying they have experienced a lot of delays. He also noted challenges from contractors getting jobs from the County and Sub Contracting.

Good Projects- Chemulany cattle dip

Problematic projects - Kapsait Cooler

Remarks by CEC Agriculture representative, Ms Rael Kipyego

She said irrigation takes a lot funds in the department and is labour intensive adding that the location of the irrigation projects is a great challenge when it comes to implementation. Despite the challenges, she said contractors given the jobs have been able to complete them in time.

On procurement of seeds and seedlings for County farmers, she noted that suppliers had complied with timelines, especially due time required for distribution which is normally during the rainy seasons.

Ms Kipyego however said the department has had some uncooperative contractors who get contracts and then abandon them midway and cited one of them.

Problematic project - Kapchemutwa Passion factory – delayed

Remarks by CEC Water & Environment Mr. Abraham Barsosio

He said his department is implementing over 400 projects in the current 2019/20 FY. He appreciated the absorption of funds in the department due to co-operation by contractors.

Good projects – Kipchiloi water, Nyaru borehole, Kipiriria water project, Sabor, Kapsowar water supply, Arror ward, Nerkwo project.

Problematic projects -Kombatich Borehole – no water, Tairop – poor workmanship, Kiptanyi water project, 11 water projects that don't have water (no source of water)

Remarks by County Secretary Mr. Paul Chemmutut

He said the forum is part of the roadmap to implement the vision of the County. The CS said contractors should cooperate with County technical staff and view them as co-implementers of development in the County.

He said there were numerous complaints surrounding project implementation. He said such complaints were even heading to the Ethics & Anti-Corruption Commission which is investigating some stalled projects.

The CS told contractors to be wary of a countrywide crackdown on irregularities in project implementation to avoid being found in breach of the law.

Remarks by Deputy Governor H.E Wisley Rotich

He said challenges that existed previously in contracting in the County were now reduced, thanks to continued dialogue with contractors and suppliers. The DG however cited challenges in personnel who are few to implement the numerous projects in the County.

The other challenges he cited was shoddy works and delayed completion of projects. He said the County had fast tracked payment processes and asked contractors to finish their jobs by June 31st to ensure projects are not rolled over and payments delayed.

The DG also asked contractors to be careful with tax remittances saying the noose is being tightened to nab tax defaulters. He asked them to be tax compliant to avoid run-ins with the Kenya Revenue Authority (KRA). He said KRA was now changing tact and would recover unpaid taxes through accounts in banks.

He said the County was willing to facilitate training of contractors on tax compliance in conjunction with KRA.

Remarks by Deputy Speaker Mr. Christopher Chemosong

Gave apologies from the Speaker, Mr Kiplagat Sabulei whom he represented.

He said the County Assembly resolved to attend the forum to establish where challenges facing implementation of projects in the County emanated from. He said the forum should come up with a way forward on the challenges aimed at improved service delivery to citizens.

The Aror Ward MCA also said the problem of roll over funds should be discussed so that it is avoided.

He also proposed that the accountability forums held in 2017 should be reinstated in the wards to give citizens a chance to identify projects that are poorly done.

The Deputy Speaker asked the County executive to weed out corruption in payment of projects citing cases where staff ask for inducements to facilitate payments.

Remarks by County Assembly Majority Leader Mr. Nathan Chelanga

He expressed appreciation with the continued holding of the contractors/suppliers forums. He hoped that issues raised during previous forums had been resolved.

The Sambirir Ward MCA recounted his past job as a contractor in the County saying he experienced challenges of project documents getting lost as well as spending a lot of time at the County treasury following up payments.

He said County contractors are law abiding and cooperative but were being let down by some County staff who delay their payments.

The Majority Leader also cited site visits saying the delay emanates from County staff who claim that they don't have fuel to travel to project sites for project inspections.

He said this problem should be investigated and addressed, while appreciating project visits by CECs who tour the wards to inspect quality of work and completion.

The MCA cited Mogil water project in his ward, implemented at a cost of sh 4.4 million. He said it was completed but works not worth the amount spent. He asked contractors to visit other counties and compare the quality of projects.

He hailed the payment process in the County saying contractors from other counties were preferring the County because of prompt payments. He also appreciated fast implementation of end to end procurement.

Remarks by Governor H.E Eng. Alex Tolgos

He expressed his commitment to the contractors/suppliers meeting and thanked them for honoring invitation by the procurement department.

The Governor said citizens were appreciating the work of devolution because of the work done by contractors. He said going forward, the County executive will be highlighting both best and worst projects as part of efforts to improve project implementation.

He said the forum is part of commitment to the OGP to open procurement/contracting. He added that as the county implements open procurement, the County would enhance civic education campaigns so that citizens get to know how procurement is undertaken.

He also cited another forum, the Governor's Roundtable which is an accountability forum where CSOs also report on project implementation to ensure improved service delivery.

The Governor asked contractors to avoid doing shoddy works because it would be expensive in the long run correcting poor works done. He added that shoddy works had run some contractors out of business.

He said he had directed the County Finance team to ensure that contractors are paid promptly to ensure they remain afloat in their businesses.

The County Chief further said that the County had opened a booth at Huduma Centre in Iten to assist contractors bid for projects through end to end contracting.

The Governor also said the executive had faced audit queries from Auditor General's Office for poor and incomplete projects, saying contractors will be equally to blame. He asked for cooperation to avoid such occurrences.

He warned against briefcase contractors who get contracts and sub-let the projects. He instructed the procurement department to ensure fairness in the distribution of projects to all contractors saying there should not be any favouritism.

He also asked contractors to desist from paying bribes to facilitate inspections, payments of projects. He further asked contractors not to resort to complaining in social media but to escalate any complaints to higher offices in the County.

The Governor added that the County had made progress in avoiding pending bills and was now focused on addressing roll over funds. He said as the County's Chief Executive, he was keen to ensure faster absorption of funds.

The Governor further directed that contractors register with the Kenya Chamber of Commerce and Industry (KNCCI) in the County to assist in building the trade environment in the County and attract investments to the County.

He also said the contractors should build their profiles in the County by doing good jobs to attract other opportunities beyond the County and nationally.

The Governor also said the County is facing challenges accessing funds from the national treasury and thus delays in payment to contractors and asked for their patience. He however said the County has been fast tracking payments.

He expressed concern that contractors do not attend Finance Bill public participations and hence their input is not factored in. He told them that the finance bill also affects them and called on them to give constant feedback in matters project implementation.

The Governor further asked contractors to interact with County departments to understand technical requirements of projects to avoid undertaking white elephant projects like water projects that don't have sufficient water supply.

He warned County staff against frustrating contractors as they implement projects. He asked all parties to do things procedurally even if projects are emergency in nature. He said Ward Administrators should be cooperative and speak one language with departments in matters project implementation. He warned them from frustrating contractors.

The Governor said projects for the 2019/20 FY were behind schedule and asked for proper procedures be done in implementing them even though it is necessary to hasten them.

He called on MCAs to carry out oversight in the conduct of contractors and project implementation and bring to account those who mess up project implementation. He concurred with the Deputy Speaker that ward accountability forums be reinstated.

The Governor said he would establish a suggestion box at his office for contractors to drop anonymous complaints.

PLENARY SESSION

Remarks by Chairman Contractors' Association Mr. Andrew Cheboi

He appreciated the presence of Governor in the forums so far held.

Mr Cheboi concurred that there are contractors that should be blacklisted for doing shoddy works and stalling project completion. He said some of them are briefcase contractors who have no capacity and bribe staff to get contractors. He said Elgeyo Marakwet should follow the direction taken by West Pokot County and had blacklisted contractors.

He complained that retention money for contractors is withheld as a conduit for corruption.

On Project Management (PM) fees, he said there is need for clarity in its usage and demanded that the fees should not be put in the Bills of Quantities (BQs) as the fees have been used as a carrot and stick strategy before contracts are awarded.

He also said money allocated to projects and BQs have variances saying public works staff should refer to the money allocated to projects before coming up with BQs. He said the BQs should factor in taxes, PM fees and contractors' profits. BQs should also take into consideration that construction costs had gone up i.e artisans costs, he added.

Mr Cheboi further called for a review of evaluation processes at procurement. He said the process should not only pick the lowest bidder, but issues of capacity should be considered.

On project delays, he said some contractors target 1st payment where they get profits and flee project sites leaving incomplete projects. i.e ICT office in Chesoi Marakwet East. He asked procurement staff to desist using dubious means to put conditions that favour such briefcase contractors.

Mr Cheboi also said there was need to build the capacity of youthful contractors and mentor them while noting that procurement team had tried to be fair in distributing contracts to contractors in various categories.

Remarks by Contractor Mr. Joseph Kibiwott – Midways Company

He said the County Government should appreciate the role of contractors. He however said the situation was changing unlike the 1st term of the County Government. He said there was no fairness in distribution of contracts but currently, it was fair.

He however regretted that complaints from contractors have been channeled to the higher offices in the County but there is slow redress of the complaints.

Representative of Youth Contractors Mr. Moses Kiplagat

He said youthful contractors were facing challenges in financing. He asked for a revolving fund provided by the County Government to help youth access capital to do county contracts. He also said senior contractors should cede small projects to youth, worth Ksh 2 million and below.

Representative of Women Contractors Ms. Monica Saniak

She requested that County makes the 30 percent provision of contracts to women a reality saying women have more needs than men and should be allocated more projects.. She added that BQs should take into consideration location of projects. Ms Saniak complained that BQs are same for projects within the County headquarters and in faraway wards in the County and called for fairness in drafting of BQs.

Representative of PWDs Mr Kibowen

He reiterated calls for PM fees to be removed. He reminded PWD contractors that they are only exempted from income tax but taxes for project implementation should be paid.

General Contractors Representative Mr. Philip Taimet

He said there should be scrutiny in names of directors of companies to avoid double allocation of jobs to contractors with different companies but with same directors.

Mr Taimet said staff conflict of interest is evident in tendering processes and should be avoided. He claimed some contractors do jobs on behalf of senior County officials.

He also added to calls for PM fees to be scrapped due to corruption in its administration. The contractor further said CECs signing payments for contractors

is not right and causes delays. He demanded that only accounting officers be responsible for signing off payments to avoid kickbacks demands.

Mr Taimet added that sub-letting contracts should be discouraged as well as brief case contractors who get contracts and go round hawking them at the expense of genuine, capable contractors.

He said BQs should be commensurate with budgeted amounts factoring in all the contractors obligations.

Mr Taimet also asked the County Assembly to assist in addressing the challenges facing contractors. He asked contractors to avoid resorting to litigation when issues arise in project implementation. He said they should resort to dialogue and escalation of their grievances to higher offices in the County.

He congratulated the Directorate of Procurement for being fair in distribution of contracts and not engaging in corruption and demand for kickbacks. He also commended departmental staff for assisting contractors during project implementation.

Contractor Mr. Kiprono Tarik

He raised a complaint about a department of Agriculture project he did and completed in 2015 and had no received payment. He said he completed it, was approved by Public Works and had not been paid todate.

Mr Tarik said he had raised the matter with relevant staff and specifically at Sub county agriculture office where his case lies. He regretted that delayed payments affects many contractors.

Contractor Mr. Elijah Kanda

Lamented that there is a lot of competition for contractors' money. He said staff demand a share in payments to contractors adding that some staff including senior staff hawk tenders while favouring some contractors.

He said contractors should not handle many projects at once to ensure fairness and commended the County for prompt payments for completed projects.

Contractor Mr. Biwott – Youth Category

He said banks are shying away from financing County LPOs due to delayed payments and asked the Governor to take up issue with banks and the President to intervene to restore the sanctity of LPOs.

He commended the County for adhering to 30 percent provision of tenders going to youth.

Contractor Mr. Kitum

He complained that BQs are estimations and not based on actual costs of project implementation. He said transport costs should be factored in the BQs because most construction materials are sourced from Eldoret. Murram is also sought from locations far from project sites.

He lamented that he was given a tender for a road and was supposed to do a 3km road and required to supply 180 lorries of murram, which he found expensive compared with the contract sum.

The contractor said BQs should take into consideration the environment around the project site given the County terrain which pushes the cost of projects upwards.

Contractor Mr. Chemwaka

He asked the CEC Finance to give a rundown of payment process once a contractor raises a certificate of payment.

Contractor Mr. Chichi

He commended the procurement and finance department for fair distribution of contracts and said there is need to recognize staff who perform their duties diligently. He further said the County government should have substantive staff and avoid staff acting in positions for too long.

He added that retention funds should be released to contractors due to them, complaining that he was one of aggrieved contractors whose retention fees had been withheld by the County government.

MCA Endo Hon John Lochaa

He asked contractors to be sincere when bidding for contracts to ensure they quote realistic prices for projects, saying scaling up of projects costs was an impediment to development progress.

Lelan Ward MCA Hon Priscillah Tanui

Project designs should be done well to avoid hampering completion of projects due to unforeseen challenges such as topography. She cited a project in her ward where a water project was implemented with water flowing in the opposite direction.

She said the Environment and Agriculture departments should demand that tenders for afforestation and crop seedlings be implemented when rains are about to set in to avoid loss of seedlings supplied during dry seasons.

The MCA further told contractors to inform MCAs and Ward Administrators about project commencement and completion to ensure all stakeholders are on the same page in the project implementation process.

MCA Emsoo Ward Hon Yator Kiplagat

He said contractors should work with the County Assembly whenever they face challenges in project implementation and added that the County should distribute contracts fairly.

Soy South MCA Hon Zacharia Magut – Chairman Roads Committee, County Assembly

He called on the contractors to attend public participation forums to hear concerns raised by citizens. He added that the Finance department should inform contractors when funds are available for payment so that they can begin processing their payments.

The MCA recommended that BQs be re-evaluated especially for road construction to cater for gravel costs so as not to disadvantage contractors.

WAY FORWARD

The Governor, who was the chair of the meeting, then led the meeting into coming up with proposed solutions to issues raised as follows:

Resolutions

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| 1. | All contractors with claims for project retention money and pending bills should be channeled to Chairman Contractors' Association and the County Government will go through all of them and pay genuine ones. If funds are unavailable, the bills can be re-budgeted and paid. |
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| 2. | Contractors should attend quarterly Governor's Roundtable with Civil Society Organisations (CSOs) to get information on social audits done on their projects by the CSOs. |
| 3. | Accountability Forums will resume in March 2020 with inclusion of contractors. |
| 4. | The Contractors' forum should be held twice a year. |
| 5. | BQs should be re-evaluated to factor costs associated with distance of project location and other considerations. |
| 6. | PM fees will be relooked at, ahead of next 2020/2021 FY. The roles of PMC and WDCs to be clearly defined. MCAs and Executive to sit and come with a way forward. |
| 7. | Blacklisting of rogue contractors to be enforced. |
| 8. | Tender sub-contracting has been outlawed. |
| 9. | The 30 percent of overall contracts preserved for Women, Youth, PWDs should only be given to genuine contractors in these categories. |
| 10. | Affirmative action be done by the County Government to empower upcoming contractors. |
| 11. | Both County and Contractors should comply in tax remittances. |
| 12. | Conflict of interest by staff in tendering, demand for upfront PM fees and bribes should be reported for action to be taken. Contractors to report staff demanding bribes with evidence for action. |
| 13. | CECs to continue approving payments for executed contracts to ensure due diligence and avoid malpractices before payments are done. |
| 14. | Complaints from contractors to be channeled through their association leadership. |
| 15. | Contractors to resort to alternative dispute resolution and only resort to court when dialogue completely fails. |
| 16. | County to establish a procedure and timeline for payment to discourage contractors always following up payments at the County Treasury. |
| 17. | County Government to have discussions with local banks to facilitate resumption of LPO financing to contractors. |
| 18. | Projects savings and reallocation of the money should be properly communicated to citizens by the County to avoid suspicions on misuse of the savings. |
| 19. | Follow up of complaints raised should be done to ensure they are resolved before the next Contractors' forum. |

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| 20. | Any anonymous complaints, especially sensitive ones, should be dropped at the complaints box outside the office of the Governor for necessary action. |
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Meeting Adjourned

The meeting was then adjourned at 4.30 pm and the directorate of procurement left with the responsibility of convening the next forum and following up with the issues raised to ensure they are addressed before the next meeting.