



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Transforming Procurement

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PPOA CIRCULAR NO. 4/2009

24th June 2009

TO: All Accounting Officers
All CEO's State Corporations
All Vice Chancellors, Public Universities
All Managers, Co-operative Societies
All Clerks, Local Authorities
All Principals, Public Colleges/Schools
All Chairpersons, CDF Committee's

**RE: REPORTING REQUIREMENTS AND PROCUREMENT
PLANNING**

As you are aware, the Public Procurement and Disposal Act, 2005 came into force on 1st January 2007 upon gazettelement of the Public Procurement and Disposal Regulations, 2006 by the Minister for Finance vide Legal Notice No. 174 of 29th December 2006. The Act seeks to Maximize economy and efficiency; Promote competition and ensure fair treatment for all competitors; Promote integrity and fairness; Increase transparency and accountability; Increase public confidence; and promote local industry and economic development.

In addition, the Minister for Finance has recently gazetted the Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009 vide Legal Notice No. 38 of 10th March 2009 to guide the process of entering into PPP's pursuant to Section 140 of the Act.

Among other institutions, the Act established the Public Procurement Oversight Authority (PPOA) an autonomous body charged with the general mandate of overseeing public procurement in Kenya. In light of recent occurrences, PPOA has found it necessary to remind procuring entities of their statutory obligations as provided in the Act.

I. MANDATORY REPORTING REQUIREMENTS

In an effort to increase transparency and accountability on spending public funds to tax payers, the Act contains provisions that seek to avail information to the public at large on procurement issues. Specifically, Section 46 of the Act states that, "*The Authority shall publish notices of the contracts awarded by procuring entities together with such other information as may be prescribed*".

To facilitate publication of procurement contracts, PPOA recently issued Circular No. 3/2008 dated 26th August 2008 requiring Procuring Entities to submit reports on a prescribed format in specified time frames. To that end, Procuring Entities are reminded that they should report to PPOA on the following four instances: -

1. Termination of procurement proceedings.
2. Direct procurement of a value exceeding Kshs. 500,000/=.
3. Disposal to employees.
4. Contract awards (for contracts valued at Kshs. 5,000,000/= and above).

In situations where no such contracts of Kshs. 5,000,000/= and above have been awarded within the reporting quarter, Procuring Entities are still reminded that the report must be made to the Authority indicating that fact.

It is mandatory that the reports must be submitted in accordance with the format and time lines prescribed in the Procurement Act and its attendant Regulations and the PPOA circular referred to above. Consequently, Accounting Officers are reminded that the reports should be submitted as required since they are primarily responsible for ensuring that the Act, the Regulations and directions of PPOA are complied with.

In this regard, Accounting Officers must ensure that the reports in the four instances cited above are submitted to PPOA including the 1st, 2nd, 3rd and 4th quarterly reports for contracts exceeding Kshs. 5 million which are due by 30th June 2009. The formats for reporting may be downloaded from our website, www.ppoa.go.ke or collected from our offices as indicated below. The format for reporting contracts valued at Kshs. 5 million and above has since been revised.

The reports may be sent to us by post, hand delivered or scanned and sent electronically to reports@ppoa.go.ke.

II. PROCUREMENT PLANNING

In a departure from the past dispensation, Part III of the current Act recognized the need for procurement planning and provided that "*all procurement shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan*" in Section 26 (3) (a). Previously, the country was dotted by many stalled projects due to lack of proper planning for funds thereby denying deserving Kenyans services from the Government. The requirement for procurement planning was aimed at ensuring efficient acquisition of supplies and implementation of projects/service delivery as well as eliminating pending bills.

Urgent purchases at the end of the financial year have become a common feature raising questions as to whether the items are necessary or whether any procurement plans are prepared, and if so, how they are implemented. This practice of procuring without due regard to the procurement plan must stop. All procurements must be carried out within the confines of the Act and its attendant Regulations.

Procuring Entities are reminded of the statutory requirement to plan all procurements through an annual procurement plan. Accounting Officers must ensure that procurement plans are prepared and implemented and Public Officials shall be subjected to penalties prescribed in the Act and the Regulations including payment to the procuring entity for the loss resulting from their actions/inaction. The format for the procurement plan derived from Regulation 21 may be downloaded from the PPOA website, www.ppoa.go.ke, or collected from PPOA offices as indicated below.

Responsibility for Accounting Officers for complying with the Act is clearly stated in Section 27 of the Act. PPOA shall not hesitate to use powers conferred to it in Part VIII of the Act to ensure that full compliance is achieved. Further, Section 137 provides for general penalties for offences committed under the Act.

Attached hereto is a copy of the mandatory reporting requirements and the procurement planning formats.



M. J. O. JUMA
Ag. INTERIM DIRECTOR GENERAL

Encls.

cc. Attorney General
Nairobi

Controller and Auditor General
Nairobi

CONTRACT REPORTING REQUIREMENTS FOR PROCURING ENTITIES

The Public Procurement and Disposal Act, 2005 came into force on 1st January 2007 vide legal notice No. 171 and the Regulations were gazetted vide legal notice No. 174 of 29th December 2006 and are now operational. In accordance with the Act and Regulations, procuring entities are required to submit several reports to the Public Procurement Oversight Authority (PPOA).

Procuring Entity's should report to PPOA in the following four instances: -

1. Termination of procurement proceedings.
2. Direct procurement of a value exceeding Kshs. 500,000/=.
3. Disposal to employees.
4. Contract awards (for contracts valued at Kshs. 5,000,000/= and above).

Whereas the content for some of the reports is contained in the Act and Regulations, this is not so for others. Arising from that, for each of the four instances where PE's should report, PPOA has identified the content, format and duration within which each report should be submitted to ensure uniformity in reporting as follows: -

1. Sec 36(7) - Termination of procurement proceedings.

The report shall be submitted to PPOA within 14 days of the termination of procurement proceedings and shall contain the following details;

- (a) Tender number.
- (b) Title of the tender.
- (c) Chronology of events including the dates from the time of requisition to the time of termination. This should include those who bought the tender documents, those that were opened, preliminary evaluation results, and any other minutes of those procurement proceedings.
- (d) Reason for termination and supporting documentation, e.g. tender committee minutes of the meeting that terminated the tender.

Check list for reporting termination of procurement	
Name of procuring entity	
Tender No.	
Title	
Chronology of events of the procurement (up to the step preceding termination backed up by enough documentation)	
Reasons for termination	
*Attach copy of signed procurement plan as evidence that the procurement was planned for	
*Attach minutes that allowed for the termination and copies of termination letters sent to bidders/participants	

2. Reg 62 (3) – report any direct procurement of a value exceeding Kshs. 500,000/- to the Authority within 14 days.

The report shall be made up of the following contents;

- (a) Tender number.
- (b) Title of the tender.
- (c) Value of the tender.
- (d) Reasons for direct procurement.
- (e) Proof that the conditions for the use of that procurement procedure were met as stipulated by the Act and Regulations (tender committee minutes that approved the use of direct procurement).
- (f) Negotiation report if any.

Check list for reporting direct procurement above Kshs. 500,000/=	
Name of procuring entity	
Tender No.	
Title	
Value of the tender (Kshs.) (more than Kshs. 500,000/=)	
Reasons for direct procurement	
*Attach tender committee minutes to show that conditions for use of procedure have been fulfilled	

3. Reg 93(2) – report disposal to employees within 14 days of the disposal.

- (a) The report must clearly demonstrate that the conditions to be met for disposal to employees have been met. This should include the recommendation of the disposal committee and the Accounting officer's approval.
- (b) The report should include details of the item being disposed, year of purchase and the reason why it was recommended for disposal (whether unserviceable, surplus or obsolete).

Check list for reporting disposal to employees						
Name of procuring entity						
Tender/Lot No.						
Title:						
	Name and description of items disposed to employees	Year of purchase	Value of items at time of purchase	Recommended disposal value (Reserve Price)	Actual Disposal Value	Reasons for disposal
1.						
2.						
3.						
4.						
Etc.						
*Attach disposal committee minutes						
* Attach proof that conditions for disposing to employees have been met (must be in line with supporting documentation)						

4. Contracts awarded by PE's – circular.

Section 46(1) of the Act provides that the Authority shall publish notices of the contracts awarded by procuring entities together with such other information as may be prescribed.

It is envisaged that PPOA will come up with a simple and user friendly electronic method for filing and posting contract awards. However, as we progress to the envisioned scenario, procuring entities are required to submit the following details of contracts awarded quarterly within 14 days of the next quarter by way of reports:

- a) Tender/Contract Number -- should be serialized and have some semblance to the tender number.
- b) Tender particulars – the comprehensive description and title of the tender proceedings.
- c) Status – may vary from preparation, pre-qualification or expressions of interest, tendering, evaluation, award, execution and completion.
- d) Procurement method - method used to source for the supplier/contractor e.g. national or international tender (open or restricted), direct e.t.c.
- e) Invitation date – date pre-qualification or request for expression of interest was published.
- f) Closing/opening date – the date the submissions for pre-qualification or request for expression of interest close and are opened.
- g) Notification of applicants – the date applicants are notified of the results.
- h) Approval for contract award – the date the tender committee approves award.
- i) The name of the contractor/supplier who was awarded the contract.
- j) Date the contract is signed between the procuring entity and the contractor/supplier.
- k) Contract amount – the value of the contract in Kenya Shillings.

- l) Progress status – the progress achieved expressed as a percentage.
- m) Contract completion date – date the contractor hands over the completed project or supplier delivers the final consignment.
- n) The procurement report must be prepared by the head of the procurement unit and confirmed and signed by the accounting officer/head of procuring entity.

Publication of contracts awarded will enhance transparency in a great way and keep Kenyans updated on the Governments' achievements and the progress of public procurement reforms.

The format will be modified in the near future to be able to show contracts to which preferences and reservations have been applied, contracts awarded to SME's or the youth and such other details that can help the Government apply its procurement as a social economic tool to aid Kenyans in improving their livelihoods.

The revised format is as shown in the table below: -

PROCUREMENT REPORTING FORMAT (REVISED)

Reporting Quarter	
A: GENERAL INFORMATION	
Procuring Entity Name	
Name of Accounting / Authorised Officer	
Designation of Accounting / Authorised Officer	
Contract Award for	
Contract Value Ksh.	
Invitation/Proposal Reference No.	
Procurement Method	
B: FUNDING	
Budget and Source of Funds	
Development Partner (if applicable)	
C: SPECIFIC INFORMATION	
Project/Programme Code/Ref NO (if applicable)	
Project/Programme Name (if applicable)	
Tender/Proposal No.	
Tender/Proposal Name	
Date of Advertisement (dd/mm/yyyy)	
Date of Notification of Award (dd/mm/yyyy)	
Date of Contract Signing (dd/mm/yyyy)	
Proposed Date of Contract Completion	
No. of Tenders / Proposals Sold	
No. of Tenders / Proposals Received	
No. of Responsive Tenders / Proposals	
D: CONTRACT AWARD INFORMATION	
Brief Description of Contract	
Contract Value	
Name of Supplier / Contractor / Consultant	
Location of Supplier / Contractor / Consultant	
Location of Delivery/Works/Consultancy	
Is the Contract Signed with the same person stated in the Notification of Award?	
If No give reason why	
Was the Performance/Guarantee/ Security provided in due time?	
If No give reason why	
Was the Contract Signed in due time?	
If No give reason why	

Confirmed and Signed By The Accounting Officer/Head of Procuring Entity

Name _____ Sign _____ Date _____

**ANNUAL PROCUREMENT PLAN
& PROCUREMENT IMPLEMENTATION REPORT
(WORKS)**

Ministry/Parastatal
 Procuring Entity's Name
 Project Name (if applicable)
 Financial Year

No.	Description of Works	Unit	Quantity	Procurement Method	Source of Funds	Estimated Cost Kshs. '000	Time Process	Advertise Prequal (if applicable)	Invite/ Advertise Tender	Open Tender	Evaluate Tender	Committee Award Approval	Notification of Award	Contract Signing	Total time to contract signature	Time for completion of contract
1	2	3	4	5	6	7	8 Planned Dates Planned Days Actual Days	9	10	11	12	13	14	15	16	
1.																
2.																
3.																
4.																
	Total															

Prepared by Head of Procurement Unit: Name _____ Sign _____ Date _____

Approved by Head of Procuring Entity: Name _____ Sign _____ Date _____

Guidance notes on preparing the procurement plan as per column: -

1. Represents a number at the PE's discretion.
2. Description of the works being procured. This should be comprehensive but not go to the level of specifications.
3. Unit of purchase or issue.
4. Quantity should be expressed in universally acceptable terms, for instance, number (No.), kilogrammes (Kg), tonnes, Etc.
5. Procurement method – the methods are limited to only open tender, direct, restricted, request for quotation and low value.
6. Source of funds – could either be from GoK or a donor.
7. Estimated cost – represents the total cost at which the goods are estimated to be procured. The cost should be established through market surveys.
8. Time process – represents the planned dates for execution of the various activities, planned days those activities are expected to take and actual dates taken in each specified activity. The actual dates should be filled after the activities are concluded.
9. Advertise for prequalification of bidders to be considered if pre-qualification applicable.
10. Invite/advertise tender – this is the date when tenders are advertised in the newspapers or when bidders are invited to collect tender documents under the restricted procurement method.
11. Tender opening – this is the date when tender documents are opened.
12. Tender evaluation – is the process used to identify the most preferred bidder technically and financially. The maximum time allocated is provided in the Act.
13. Committee approval to award – this is the date that either the tender or procurement committee awards the subject procurement.
14. Notification of award – this is the date that notification of award letter is sent to the preferred bidder.
15. Signing of contract – this is the date on which the contract is signed between the PE and the supplier/contractor.
16. Total time to contract signature – this is the number of days taken between issuance of notification of award and signing of the contract.
17. Time for completion of contract – this is the time in days to be taken before the contract is completed.

**ANNUAL PROCUREMENT PLAN
& PROCUREMENT IMPLEMENTATION REPORT
(SERVICES)**

Ministry/Parastatal
 Procuring Entity's Name
 Project Name (if applicable)
 Financial Year

No.	Description of Services	Unit	Quantity	Procurement Method	Source of Funds	Estimated Cost Kshs. '000	Time Process		Advertise EOI	Issue RFP	Open Technical Proposal	Evaluate Proposal	Open Financial Proposal	Negotiation	Notification of Award	Contract Signing	Total time to contract signature	Time for completion of contract
							Planned Dates	Actual Days										
1.							Planned Dates											
2.							Planned Dates											
3.							Planned Dates											
4.							Actual Days											
	Total																	

Prepared by Head of Procurement Unit: Name _____ Sign _____ Date _____

Approved by Head of Procuring Entity: Name _____ Sign _____ Date _____

Guidance notes on preparing the procurement plan as per column: -

1. Represents a number at the PE's discretion.
2. Description of the services being procured. This should be comprehensive enough.
3. Unit of purchase or issue.
4. Quantity should be expressed in universally acceptable terms, for instance, number (No.), kilogrammes (Kg), tonnes. Etc.
5. Procurement method – the methods are limited to only open tender, direct, restricted, request for quotation and low value.
6. Source of funds – could either be from GoK or a donor.
7. Estimated cost – represents the total cost at which the goods are estimated to be procured. The cost should be established through market surveys.
8. Time process – represents the planned dates for execution of the various activities, planned days those activities are expected to take and actual dates taken in each specified activity. The actual dates should be filled after the activities are concluded.
9. Advertise Expressions of Interest.
10. Issue Request for Proposal documents to those shortlisted from the Expressions of Interest.
11. Technical Proposal opening – this is the date when proposal documents are opened.
12. Technical proposal evaluation – is the process used to identify the most preferred bidder technically. The maximum time allocated is provided in the Act.
13. Open financial proposals of those who have passed technical evaluation.
14. Negotiation with the most preferred bidder technically and financially.
15. Notification of award – this is the date that notification of award letter is sent to the preferred bidder.
16. Signing of contract – this is the date on which the contract is signed between the PE and the supplier/contractor.
17. Total time to contract signature – this is the number of days taken between issuance of notification of award and signing of the contract.
18. Time for completion of contract – this is the time in days to be taken before the contract is completed.

**ANNUAL PROCUREMENT PLAN
& PROCUREMENT IMPLEMENTATION REPORT
(GOODS)**

Ministry/Parastatal
 Procuring Entity's Name
 Project Name (if applicable)
 Financial Year

No.	Description of Goods	Unit	Quantity	Procurement Method	Source of Funds	Estimated Cost Kshs. '000	Time Process		Invited/ Advertise Tender	Open Tender	Evaluate Tender	Committee Award Approval	Notification of Award	Contract Signing	Total time to contract signature	Time for completion of contract
							Planned Dates	Actual Days								
1.							Planned Dates									
							Planned Dates									
							Actual Days									
2.							Planned Dates									
							Planned Dates									
							Actual Days									
3.																
4.																
	Total															

Prepared by Head of Procurement Unit: Name _____ Sign _____ Date _____

Approved by Head of Procuring Entity: Name _____ Sign _____ Date _____

Guidance notes on preparing the procurement plan as per column: -

1. Represents a number at the PE's discretion.
2. Description of the goods being procured. This should be comprehensive but not go to the level of specifications.
3. Unit of purchase or issue.
4. Quantity should be expressed in universally acceptable terms, for instance, number (No.), kilogrammes (Kg), tonnes. Etc.
5. Procurement method – the methods are limited to only open tender, direct, restricted, request for quotation and low value.
6. Source of funds – could either be from GoK or a donor.
7. Estimated cost – represents the total cost at which the goods are estimated to be procured. The cost should be established through market surveys.
8. Time process – represents the planned dates for execution of the various activities, planned days those activities are expected to take and actual dates taken in each specified activity. The actual dates should be filled after the activities are concluded.
9. Invite/advertise tender – this is the date when tenders are advertised in the newspapers or when bidders are invited to collect tender documents under the restricted procurement method.
10. Tender opening – this is the date when tender documents are opened.
11. Tender evaluation – is the process used to identify the most preferred bidder technically and financially. The maximum time allocated is provided in the Act.
12. Committee approval to award – this is the date that either the tender or procurement committee awards the subject procurement.
13. Notification of award – this is the date that notification of award letter is sent to the preferred bidder.
14. Signing of contract – this is the date on which the contract is signed between the PE and the supplier/contractor.
15. Total time to contract signature – this is the number of days taken between issuance of notification of award and signing of the contract.
16. Time for completion of contract – this is the time in days to be taken before the contract is completed.

