



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

PUBLIC PROCUREMENT AND DISPOSAL
GENERAL MANUAL

FIRST EDITION

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FOREWORD

1. The legal framework of Kenya's public procurement system was strengthened with the enactment of the Public Procurement and Disposal Act 2005 which came to operation on 1st January 2007 with the publication of the Public Procurement and Disposal Regulations 2006.

The Act and the Regulations were enacted for the purpose of establishing procedures for public procurement and disposal by public entities to achieve the following objectives:

- (a) Maximise economy and efficiency
 - (b) Promote competition and ensure that competitors are treated fairly
 - (c) Promote integrity and fairness of those procedures
 - (d) Increase transparency and accountability in those procedures
 - (e) Increase public confidence in those procedures and
 - (f) Facilitate the promotion of local industry and economic development
2. In a developing country like Kenya, the public procurement sector is often the largest domestic market. The public procurement system is the bridge between public procurements and the private sector providers. The government has the obligation of providing goods, works and services to meet a variety of citizen needs. These needs or requirements are obtained from either internal government organisations or external sources to the government which is the private sector through the procurement process. The necessity for public procurement law and also clearly defined procurement system arises from the fact that, unlike the private sector, public procurement is a business within a national and political system, whose pillars of strength are integrity, fairness, accountability, competition, transparency, national interest, promotion of local industry and economic development, in addition to economy.
3. The public procurement system affects many aspects of society including: -
 - (a) The procuring entities, which have needs for material support to fulfil their mandated missions.
 - (b) The business community of actual or potential suppliers, contractors and consultants who satisfy the procuring entities identified needs.
 - (c) The professional associations, academic entities and public interest groups, which have important concerns and views on how public institutions are managed and perform and
 - (d) The general public which is more likely to feel satisfied when they know that expenditures by the procuring entities made through public procurement system realise value for money.
 - (e) Development partners
4. This Public Procurement and Disposal General Manual (PPDGM) has been issued by the Public Procurement Oversight Authority (PPOA) for the purpose of: -
 - (a) Providing guidance to public officials who are responsi-

ble for the public procurement processes, Auditors, Public Finance Managers, Accountants and Administrators in their everyday work relating to public procurement.

- (b) It is also expected to be useful to all other parties participating in public procurement in one way or other and in particular the suppliers contractors and consultants.
- (c) Playing a pivotal role in development of sector specific manuals that are unique to entities that are performing specialized services with a view of enhancing the quality service delivery to their internal and external customers.

The Manual shall assist participants in public procurement in the application of the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006. It will also play a big role in the standardization of the public procurement practices across all procuring entities in Kenya.

- 5. In the preparation of this general manual, efforts have been made not to produce a sophisticated or highly technical document, but to provide balanced information and instructions which can be readily understood and followed by all users. The PPDGM has been issued under the authority of the Public Procurement and Disposal Act 2005 section 9 (c) (i). The instructions in the manual are therefore to be complied with by all participants in the public procurement process.
- 6. The PPOA shall ensure accessibility of the PPDGM to all institutions and individuals at a reasonable fee. The PPDGM shall be amended from time to time as necessary to accommodate any changes affecting the public procurement system. This being a general manual and due to the very diverse and wide range of works, goods, services and consultancy services procured by public entities, and also the various sizes and organisational structures of public entities, it is appreciated that the manual may be found inadequate by some procuring entities. Procuring entities are therefore encouraged to produce their own internal procurement and disposal manuals suiting their situations and circumstances. In doing this, they shall ensure that such internal manuals are consistent with the Public Procurement and Disposal Act 2005, the Public Procurement and Disposal Regulations 2006 and this PPDGM. The PPOA shall also be at hand to assist the procuring entities which may require assistance in the production of such internal manuals.

M.J.O. Juma
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ACRONYMS

AO	Accounting Officer
C&D	Consultancy and Design
CD	Compact Disk
CQS	Consultants Qualifications Selection
FBS	Fixed Budget Selection
FIFO	First in First Out
GDP	Gross Domestic Product
HUD	Head of User Department
HoPE	Head of Procuring Entity
IAC	Inspection and Acceptance Committee
IAPSO	Inter-Agency Procurement Services Office - UNDP
ICT	Information Communication Technology
IPR	Initial Purchase Requisition
KNBS	Kenya National Bureau of Statistics
LC	Letter of Credit
LCS	Least Cost Selection
LPO	Local Purchase Order
LSO	Local Service Order
MIR	Monthly Issue Rate
MOF	Ministry of Finance
MTEF	Midterm Expenditure Framework
NGO	Non-Governmental Organization
PAC	Public Accounts Committee
PC	Procurement Committee
PE	Procuring Entity
PEs	Procuring Entities
PFM	Public Financial Management
PPDGM	Public Procurement and Disposal General Manual
PPOA	Public Procurement Oversight Authority
PPOAB	Public Procurement Oversight Advisory Board
PS	Permanent Secretary
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request For Proposal
RFQ	Request for Quotations
SMART	Specific, Measurable, Achievable, Realistic, Time bound
SMEs	Small and Medium Enterprises
SO	Stores Officer
SSS	Single Source Selection
TC	Tender Committee
TOR	Terms of Reference
U.N.	United Nations
UNICEF	United Nations Children's Education Fund
UNOPS	United Nations Office for Purchasing & Supply
WFP	World Food Program
WHO	World Health Organization

GLOSSARY

Act	Public Procurement and Disposal Act 2005
Acceptance	refers to the acceptance of goods, works or services by the Inspection and Acceptance Committee in part or in full, qualified or not following an inspection
Aggregation	Process by which procurement requirements are aggregated together to gain economies of scale
Appeal	means a request for administrative review filed with the Administrative Review Board
Announcement	the act of announcing publicly through appropriate media the forecast or opening or results of procurement proceedings
Auction (Public)	An auction is a process of buying and selling goods or services by offering them up for bid, taking bids, and then selling the item to the winning bidder. In economic theory, an auction may refer to any mechanism or set of trading rules for exchange. There are several variations on the basic auction form, including time limits, minimum or maximum limits on bid prices, and special rules for determining the winning bidder(s) and sale price(s).
Authorisation	The act of granting an authorisation by the specified authority in the manual, regulations or the Act to validate a stage of the procurement proceedings. For example, the authorisation to initiate a purchase as recorded by the Initial Purchase Request or the authorisation to accept the goods delivered as represented by the Certificate of Receipt and Acceptance (or Goods Received Note). Authorisations for the procurement and disposal proceedings are defined in the Schedule I - the Procurement Thresholds Matrix and Schedule II - the Disposal Thresholds Matrix of the Public Procurement and Disposal Regulations.
Asset	In business and accounting, assets are everything owned by a person or company (all tangible and intangible property) that can be converted into cash. Since this includes intangible valuables such as stocks and accounts and notes receivable, whose cash value is not clear until they are sold, assets can also be defined as a probable future economic benefit obtained or controlled by a person or company as a result of a past transaction or event.
Award	The process of awarding a contract ensues from the notification to the selected vendor.
Baseline	A snapshot. A position or situation that is recorded with the specific intention of using it to compare against some future position, usually to demonstrate that change has been achieved. Although the position may be updated later, the baseline remains unchanged and available as a reminder of the original state and as a comparison against the current position. In planning, a baseline captures when the activities within the Plan were originally intended to occur. When a Plan is baselined, the currently planned start and finish dates of all Tasks and Activities within the plan are separately recorded. If the plan is subsequently updated with any changes to these dates, any slippage can be measured against the originally planned (baseline) dates. A Plan is normally baselined once it has been signed off by the Project Board. Products that have passed their quality checks and are approved are baselined products. Anything 'baselined' should be under version control in configuration management and 'frozen', i.e. no changes to that version are allowed.
Bidding documents	the standard documents elaborated by the PPOA or the procuring entity for the purpose of procuring goods, works, services or consulting services. These documents must be utilised by the procuring entities
Carbon footprint	Amount of carbon emissions produced by man in living operations.
Contract File	The file that contains all supporting documentation pertaining to a specific contract and its execution by both parties such as all correspondence, interim payments, survey reports, delivery data, inspection reports, etc. as detailed in chapter 9 of the Manual. The contract file contents are compulsory requirements for providing audit trails. See also procurement file as both files are linked.
Contract Administrator	The official nominated to manage and supervise the contract execution by the contractor on behalf of the procuring entity. The contract Administrator is the only official responsible for the contract management and is responsible for maintaining the contract file. All other functions such as accounting and payment cannot be performed by the contract administrator alone and are subject to internal controls.

Contingency Plan	A plan that provides an outline of decisions and resources to be taken if defined circumstances, outside the control of the project/programme, should occur. In risk management - a series of activities you plan in advance that you can put in place to reduce or eliminate the Impact of a Risk after it has occurred. Sometimes referred to as a Fallback Plan. A plan that identifies and defines appropriate responses to be taken when a risk occurs.
Contingent liability	includes Government guarantee for loan or foreign currency transfer by a Procuring Entity in the event that the entity defaults to service the terms of the agreement then the Government may step in
Contractor	The status of a vendor or successful bidder or candidate that has entered into a contract with a procuring entity.
Corruption	means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution in accordance with the Anti Corruption and Economic Crimes, Act 2003
Countermeasure	In risk management - a series of activities you can carry out to reduce either the Likelihood or Impact of a Risk (or both) before it occurs. Sometimes referred to as a Mitigation Strategy. Countermeasures and Contingency Plans are often managed collectively under the term Management Actions.
Direct Procurement	A method of procurement that does not requires the use of the competitive bidding. Direct procurement is strictly regulated; see chapter 7.4 of the manual.
Debarred contractor	All bidders in public procurement who are officially prevented or refused to participate in public procurement proceedings.
Disposal (Cycle)	The cycle that starts with the initiation of the process of disposing of unserviceable, obsolete or surplus stores, other assets and equipment and is considered ended when the disposal has been completed and accepted.
Disposal Plan	the document prepared by each procuring entity annually to plan all disposal decided to be necessary
Dumping, burning and burying	a method of disposal of obsolete or unserviceable of stores, assets and equipments regulated in chapter 12
Eligible	the status that means a bidder satisfies all criteria to participate to public procurement and disposal proceedings
Emergency	In relation to procurement derives from an “urgent need” as interpreted within the Public Procurement and Disposal Act. A procurement proceeding that is justified by an emergency means the need for goods, works, services or consulting in circumstances where there is an imminent or actual threat to public health, welfare, safety, or damage to property such that engaging in tendering proceedings or other procurement methods would not be practicable
Evaluation	A series of activities you carry out to ascertain whether a Project has achieved its Goal. Often evaluation activities are left until the end of a project, but they should generally be planned in from the start. This avoids the problem, for instance, of having no Baseline against which to evaluate the project.
Fake Corruption	False competition where the bid received is coming from one source.
Feasibility study	A feasibility study is an early study of a problem to assess if a solution is feasible. The study will normally scope the problem, identify and explore a number of solutions and make a recommendation on what action to take. Part of the work in developing options is to calculate an Outline Business Case for each as one aspect of comparison. The Framework includes a Feasibility Study as the first phase of a project, although it is sometimes necessary to have a large study carried out as a project in its' own right.
Force Majeure	Means an event or series of event which were not foreseeable and are not the result of dilatory conduct and result in the temporary delay or permanent stopping of the contract execution. Such cases are related to natural disasters, climatic events and wars. Force Majeure cannot unilaterally be declared and has to be approved by the Tender Committee. The PPOA may provide guidance on the cases and necessary conditions to be met to apply force Majeure. In case of Force Majeure, a contractor’s performance bond cannot be forfeited nor can the contractor make claims other than demobilisation costs if provided for under the contract.

Framework Contract	Means a contractual arrangement which allows a Procuring Entity to procure goods, works or services that are needed continuously or repeatedly at an agreed price over an agreed period of time, through placement or a number of orders which may include consortium buying.
Goods	The manual refers to “Goods” as being any item or package that can be procured through the purchase of any goods including perishables, equipments or software, off-the-self or made to design, that does not require any other works or services than necessary to ship, inspect, deliver, install and test the specifications, quality and functioning of the acquire good. Goods may include food, consumables such as stationery, fuel, computers, software, machinery, lab equipments.
Intangible	Intangibles also have different meaning depending on the context: - In business, intangibles are commonly referred to as intangible assets or intellectual capital. - In law, legally created intangibles are referred to as intellectual property and include trademarks, patents, customer lists, and copyright.
International Competition	Refers to the announcement of tender proceedings through international media and the opening of competition to all potential bidders regardless of their origin
Inspection	An inspection is, most generally, an organised examination or formal evaluation exercise. It involves the measurements, tests, and gauges applied to certain characteristics in regard to an object or activity. The results are usually compared to specified requirements and standards for determining whether the item or activity is in line with these targets. Inspections are usually non-destructive.
Inventory	Inventory is a list for goods and materials, or those goods and materials themselves, held available in stock by a business.
Knowledge Management	The explicit management of project-related information within a project or programme (or even across the Office). Knowledge, in this context, is interpreted as anything that someone else might find useful. It can therefore consist of leading practice, guidance, exemplary material, reports, and rules of thumb and so on. There are two Critical Success Factors in implementing knowledge management: A knowledge-sharing culture, in which individuals are encouraged and happy to contribute, and indeed actively do contribute, knowledge to a central knowledge base; An infrastructure that enables easy access to the knowledge and good indexing of the information held. The infrastructure supporting knowledge management is often called a “knowledgebase”. At its simplest this can be a filing cabinet full of shared documents
Linkages	relationships that exists between different components, and thus institutions, of the public financial management
Lotting	Process by which procurement requirements are divided into lots to segregate into smaller packages or packages that requires specific set of qualifications
Mitigation Strategy	See Countermeasure.
Negotiation	Negotiation is a dialogue intended to resolve disputes or to produce an agreement upon courses of action, and to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution. Negotiation occurs in business, non-profit organizations, and government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life. In this manual negotiation refers to the dialogue between a procuring entity and one or more vendors in arriving at an agreement on prices, timing and deliverables as part of procurement proceedings for the selection of a vendor and prior to the award of a contract.
Obsolete stores	Obsolescence is the state of being which occurs when an object or service is no longer wanted even though it may still be in good working order. Obsolescence frequently occurs because a replacement has become available that is superior in one or more aspects.
Open Tender	The preferred procurement method of Kenya that implies opening competition to the market with any restriction
Procurement Threshold Matrix	the Matrix established to regulate the authorisation necessary for each thresholds by type of methods and type of purchase
Payment	The transfer of monies operated from the procuring entity to the contractor following partial or full acceptance of the goods, works and services.

Procurement File	The file that contains all supporting documentation pertaining to a specific procurement requirement as detailed in chapter 6, 7, 8 and 9 of the Manual. The file contents are compulsory requirements for providing audit trails. See also contract file
Procurement Plan	The document prepared by each procuring entity annually to plan all procurement requirements necessary to perform the activity plan of the procuring entity. Procurement plan can include procurement for multi-annual delivery, multi-annual contracts, and next fiscal year delivery.
Programme	A collection of Projects which are managed together coherently (often as a major undertaking) and which all contribute to a common strategic Vision and realise benefits, which is almost always concerned with effecting change of some description. Programmes also often incorporate other 'business as usual' items of work. A programme is usually characterised by: its size - it is usually large; a focus on an overall business outcome rather than individual deliverables; its breadth - it usually cuts across organisational boundaries, involving more than one division or group; and the degree of autonomy of the individual projects - they can be managed individually, but need to be managed as a whole to deliver the goal(s) effectively.
Project Plan	A high-level plan showing the major products of the project, when they will be delivered and at what cost. The project plan should also show the key milestones of Gateway Reviews and Project Board meetings. An initial Project Plan is presented as part of the Project Initiation Document. This is revised as information on actual progress appears. It is a major control document for the Project Board to measure actual progress against expectations.
Public Financial Management	The scope of financial management includes the collection, custody and disbursement of public money; the coordination of expenditure according to a well-formulated plan; the management of public debt and financial assets; and the general control of the financial operations of the state. It also includes the preparation of the budget, its execution and the external auditing and scrutinizing of the finances of the state.
Public Property	Public property is property which is owned by a government or community, as opposed to private property, which is owned by non-government parties such as individuals, groups, or corporations. In many republican democracies, "public property" is said to be owned by the people as a commons. (In other types of state, such property is said to be owned by the "state" or the "crown".) Most public property is accessible to the general public, such as zoos, libraries, schools, and parks; some is reserved for restricted use, such as military bases and research laboratories.
Quality Assurance	Refers to planned and systematic processes that provide confidence in a product's suitability for its intended purpose. It is a set of activities intended to ensure that goods, works and/or services satisfy the requirements.
Receipt (of goods, works and services)	Corresponds to the phase of the procurement cycle when the contractors delivers to the procuring entity. At that stage the entity may accept or reject the delivery partially or fully. Once goods, works or services are received and accepted, the procuring entity takes responsible for their custody, unless otherwise specified in the contract for partial receipt of works.
Regulations	Public Procurement and Disposal Regulations 2006
Request for Proposal	A procurement method specifically applied to consulting and other intellectual services such as design.
Request for Quotation	A procurement method specifically applied below a specified threshold allowing for a faster bidding process than in the case of Open Tender.
Retroactive Approvals	Procurement approvals given by the authority's entity or person after the action approved has already taken place or has happened.
Restricted Tender	A procurement method that relies on the establishment of a list of authorised bidders who will be offered the opportunity to bid for a specific procurement package. The establishment of the list is subject to conditions defined in Chapters 6 and 7 of the manual and in the Regulations and the Act.
Reserve Price	The minimum price at which a seller is willing to sell a good or service. Reservation prices are commonly used in auctions
Review Report	the report issued by the Review Board or Review Panel

Risk (Register)	A situation which may occur in the future and which, if it were to occur, could impact on the ability of a Project or Programme to deliver one or more of its Goals or Objectives. There is commonly a great deal of confusion between risks and Issues. However, it is more important to decide whether the problem needs to be managed and, if so, what Management Actions need to be taken, than it is to spend too much time debating whether it is a risk or an issue. The simplest way of distinguishing risks from issues is to ask whether the Likelihood of the situation occurring is 100% (i.e. certain): if so (or if it has already happened!), then it is an issue; if not, it is a risk. A risk may therefore later become an issue once the uncertainty over whether or not it will happen has been removed. When considering risks you should think about what may stop you from achieving the Outcomes as well as Outputs of the project or programme as well as the extent to which Critical Success Factors are in place that will ensure success. Risks are normally recorded on a Risk Register.
Stakeholders	Any person or organisation having an interest in the progress or outcomes of a Project or Programme – usually because they are either part of it or affected by what it delivers. The process of working out which stakeholders are most and least important to successful project delivery is called Stakeholder Analysis and the processes by which input from, and communications with, them are collectively controlled is called Stakeholder Management.
Single Source - Sole Suitable Contractor	Refers to the procurement that is made through a non competitive bidding process relying on one bidder only. See the conditions pertaining to single source in chapter 7
Services - Intellectual & Consulting	Specific services requiring high content of intellectual work. C&D services are procured through specific procurement method such as Request for Proposal . C&D services are differentiated from all the other service that do not necessitate high content of intellectual work to be performed: insurances, cleaning, etc.
Services	Services are defined in these regulations as all services except those requiring a high level of intellectual work.
Specification	A specification is an explicit set of requirements to be satisfied by a material, product, or service
Standards	A technical standard is an established norm or requirement. It is usually a formal document that establishes uniform engineering or technical criteria, methods, processes and practices. A technical standard can also be a controlled artefact or similar formal means used for calibration. Reference Standards and certified reference materials have an assigned value by direct comparison with a reference base. A primary standard is usually under the jurisdiction of a national standards body. Secondary, tertiary, check standards and standard materials may be used for reference in a metrology system. A key requirement in this case is (metrological) traceability, an unbroken paper trail of calibrations back to the primary standard
Supply Chain Management	Supply Chain Management spans all movement and storage of raw materials, work-in-process inventory, and finished goods from point-of-origin to point-of-consumption
Sub-contract	A contract between the contractor (the party to a contract with a procuring entity) and another private sector agent. Sub-contracting is strictly regulated in order to ensure that the procuring entity contracts with an agent that has the capacity and ability to deliver on the procurement requirements and that takes responsibility for it.
Threshold	Reference is made by this term to the nominal amount above which a procurement method cannot be applied. It represents the highest estimated amount for applying a method, irrespective of any other considerations.
Transfer	refers to a method of disposal by which a procuring entity transfers an asset, stores or other to another procuring entity
Unserviceable	the state of being which occurs when an equipment cannot be service to be made functional or at least at a reasonable cost
Urgent Need	shall be interpreted to be applicable only where there is an imminent or actual threat to public health, welfare, safety, or damage to property such that engaging in tendering proceedings or any other procurement methods would not be practicable
Valuation	Valuation is the process of estimating the market value of an asset. Valuations can be done on assets, for example, such as stores, equipments, physical assets such as buildings, business enterprises, or intangible assets such as patents and trademarks
Vendor (Bidder)	A private or parastatal operator that is competing in a procurement proceeding or is a contractor to a procuring entity.

Chapter 1

PROCUREMENT POLICY AND PURPOSE OF THE MANUAL

1 PROCUREMENT POLICY AND PURPOSE OF THE MANUAL

Topics
1.1 Public Procurement Policy in Kenya
1.2 Purpose of the Public Procurement and Disposal General Manual (PPDGM)
1.3 Authority of the Public Procurement and Disposal General Manual
1.4 Scope and Focus of the Public Procurement and Disposal General Manual
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1.1 PUBLIC PROCUREMENT POLICY IN KENYA

It is government policy that funds budgeted and approved by parliament for the purpose of procurement are spent on the intended purposes. This applies both to development and recurrent expenditures. It is also government policy to allow open competition for procurement without discrimination in a transparent, fair and accountable manner to ensure achievement of value for money in all procurement. Government also expects public procurement to contribute to the national economic growth and poverty reduction in line with the national development goals. Public procurement plays an important role in the Kenyan economy. The total volume of public procurement in 2003-2004 was established at 3.64 billion USD or 9% of the GDP (Independent procurement review Kenya May 2005). Although the exact figure is not known 9% of the GDP is a very significant amount and can make a big impact to development if well used.

Government policy, among other things, seeks to achieve economic growth and poverty reduction and also show tangible improvements in the delivery of services to the people of Kenya. Each of these objectives shall only be achievable if public procurement in Kenya is substantially improved. It warrants a point of focus of public sector activity. The importance of procurement stems in part from its central role in budget implementation; in its role in achieving value for money through optimized resource application; and its roles in achieving and maintaining aggregate fiscal discipline through the implementation of a robust commitment control system. The best intended and most competent budget plans are brought to nought, if there is a disconnect between the budget planning process and the budget implementation process.

The mechanism by which the government delivers services to the public is by way of procurement. Whether this is the procurement of drugs and medical supplies and the distribution of such to the district hospitals, or the procurement of primary school textbooks and other instructional materials to meet the basic education programme objectives. The success in the delivery of services is predicated on the efficient allocation of resources and the timely delivery of such services.

Procurement also provides important linkages to the Private Sector. It can promote expansion of the private sector by the way of expanding commercial opportunities and emphasis on fair competition.

Key Terms

- ❖ Public Procurement Oversight Authority
- ❖ Procuring Entity
- ❖ Procurement Unit
- ❖ Public Private Partnerships
- ❖ Design Competition
- ❖ Procurement Cycle
- ❖ Disposal Cycle
- ❖ Public Disposal
- ❖ Transparency

This Manual is to Guide the User on:

- ❖ The roles and responsibilities of the procurement institutional elements;
- ❖ The creation and operating of specified procurement committees;
- ❖ How to plan procurement;
- ❖ Making judgements and applying discretion to procurement decisions;
- ❖ The implementation and management of all the steps in the procurement cycle including the selection and application of procurement methods;
- ❖ The implementation and management of all the steps in the disposal cycle including the selection and application of disposal methods
- ❖ Contract administration;
- ❖ The requisite procurement documentation, records management and filing;

1.2 PURPOSE OF THE PUBLIC PROCUREMENT AND DISPOSAL GENERAL MANUAL

The purpose of this manual is to provide guidance to public officials responsible for public procurement, auditors and other financial management specialists in their everyday business relating to public procurement. It provides a way for the user to apply the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations 2006 and facilitates the standardisation of procurement practice across all Procuring Entities across Kenya. It serves as a reference tool for guiding the practice of public procurement in Kenya and ensuring full compliance with the requirements of the Public Procurement Law and Regulations. No public procurement should be carried out without first ensuring compliance with the requirements set out in this manual.

The Procurement Manual aims at helping all participants in public procurement to comply with the legal and regulatory framework comprised of the Procurement Law, Regulations, this Manual, Standard Bidding Documents and all circulars issued by the Public Procurement Oversight Authority (PPOA). While not specifically designed to serve as a training manual, a number of pedagogical considerations were taken into account in its design, and so it should also serve as a useful tool for learning about Kenya's Public Procurement systems and procedures.

The consistent and diligent application of the guidelines and principles presented in this Manual should substantially curb both the perception and the actual occurrence of corruption in public procurement in Kenya. Further, it will increase the confidence that potential as well as active vendors have in the execution of procurement procedures. As a consequence of which will lead to a wider participation in tenders with subsequent improvements in the effectiveness of competition. The upshot of which will be a substantial positive impact on the achievement of value for money and on the overall public finance management objectives of fiscal discipline and on the efficient delivery of service.

The Manual establishes a single comprehensive reference for carrying out public procurement and in particular it provides guidance on:

(a) The Institutional Arrangements

- (i) The roles and responsibilities of the different institutions responsible for managing and overseeing procurement in Kenya;
- (ii) The creation of specified procurement committees and the assignment of responsibilities and functions within a public entity;
- (iii) The delegation of procurement authority;

(b) Planning your Procurement

Procurement planning and the linkages to the broader budget preparation and budget execution process;

(c) The Procurement and Disposal Cycles

- (i) How decisions relating to procurement and the disposal of stores, assets and equipment; the warehousing, inventory management and distribution of supplies by public entities are to be made;
- (ii) The procedures, application of controls, selections and approvals procedures to be carried out by the different procurement officers within the complete procurement cycle and also on the disposal of unserviceable, obsolete or surplus stores, assets and equipment;

(d) **Managing the Contract**

The improved contract administration and the effective application of contract variations;

(e) **Procurement Principles**

- (i) The achievement of economic efficiency and fair competition, and the discouragement of fake competition;
- (ii) The promotion of the highest ethical standards in the practice of procurement and limit and discourage corrupt practices and the promotion of integrity and fairness in procurement proceedings so as to increase public confidence in public procurement procedures;

(f) **Filing and Records Management**

The filing and record management of procurement documentation to better manage and control procurement procedures;

1.3 THE AUTHORITY OF THE PUBLIC PROCUREMENT AND DISPOSAL GENERAL MANUAL

This Public Procurement and Disposal General Manual is issued by the Public Procurement Oversight Authority (PPOA) in accordance with Section 9 (c) (i) of the Public Procurement and Disposal Act, 2005. Compliance to the instructions contained in this manual is therefore mandatory.

In the special case where and if there is a conflict between the requirements set out in this Manual or any directions of the Authority and a condition imposed by an international donor of funds, the donor condition shall prevail with respect to a procurement that uses those donor funds. Where there can be clear separation of the procurement process to effect the program or project without contributing to unreasonable delay or undue additional cost then the requirements set out in this manual must be applied to the Government's portion of the funds.

1.4 SCOPE AND FOCUS OF THE PUBLIC PROCUREMENT AND DISPOSAL GENERAL MANUAL

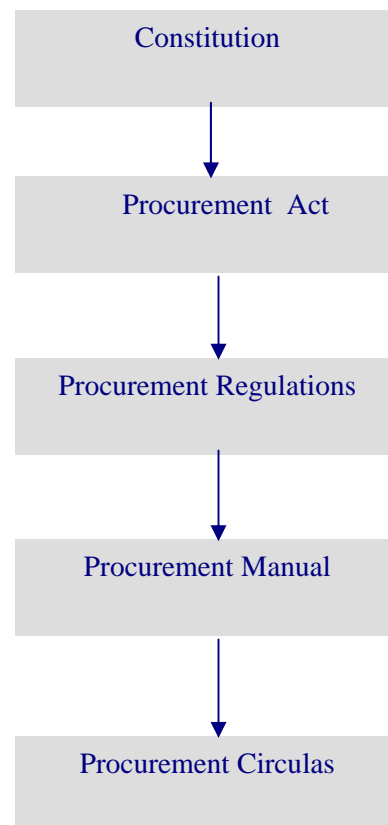
The scope and jurisdiction of this Public Procurement and Disposal General Manual includes all Procuring Entities. The scope of activities covered by the Manual includes:

- (a) The institutional arrangements for carrying out public procurement;
- (b) Procurement planning and its relationship to sound budget preparation and execution;
- (c) The procurement of goods, works, services and consultancy services;
- (d) Administration of the complete procurement cycle;
- (e) The administration of procurement contracts;
- (f) The disposal of unserviceable, obsolete or surplus stores, equipment and other assets;
- (g) The warehousing, inventory management and distribution of supplies;
- (h) Achieving transparency and accountability in public procurement and other related matters.

Consequently, this Public Procurement and Disposal General Manual applies to all procurement covered by the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

Proper and effective application of this Manual shall amongst other things lead to:

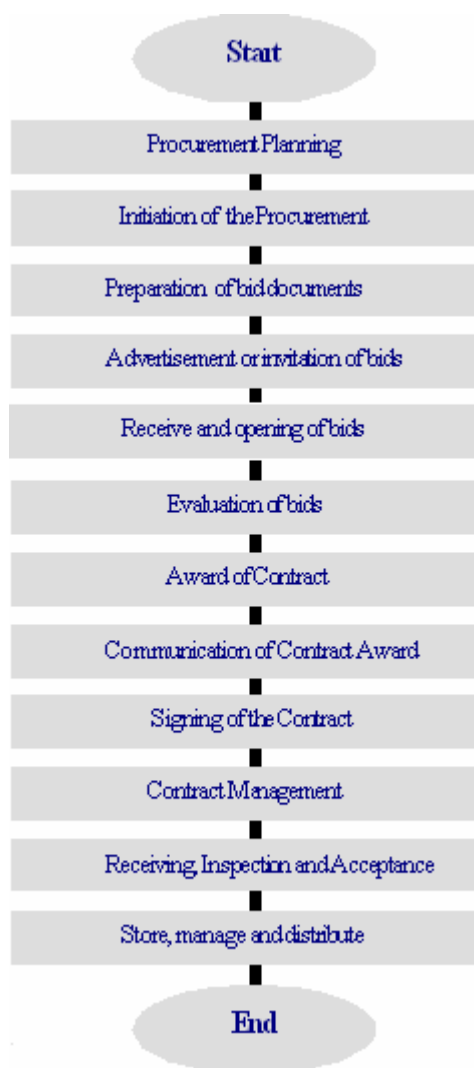
- (a) The promotion of sound public finance management in general and sound procurement practice in particular;
- (b) The facilitation of procuring entities and procurement officers to work in consonance with proper institutional arrangements in place for delivering on public procurement;



Public Entity:

- ❖ Public Entity is defined by section 3 of the Public Procurement and Disposal Act 2005

The Complete Procurement Cycle



- (c) The promotion of transparency and accountability and the reduction of corruption incidences in public procurement practice;
- (d) Sound public procurement practice arising from better management of the processes in the procurement cycle.
- (e) The embracing of planning in public procurement and the appropriate tie in to budget preparation and budget execution for the overall promotion of economy and efficiency;
- (f) Selection of the correct method of procurement for a given procurement and adherence to the requisite control procedures for each of the steps of the complete procurement cycle.

1.5 THE PROCUREMENT CYCLE

Procuring Entities are responsible for carrying out all the procedures pertaining to the complete procurement cycle. It is important to be familiar with the complete procurement cycle and to ensure that there are effective management procedures in place to properly manage each step.

The complete Procurement Cycle shall include:

- (a) Preparation of Procurement Plans
- (b) Preparation of procurement specifications and initiation of the procurement process
- (c) Preparation of Pre-qualification/Tender/Bid documents
- (d) Advertisement/initiation of bids
- (e) Receiving and Opening Bids
- (f) Evaluation of Bids
- (g) Adjudication and Contract Award
- (h) Notification of Contract Award
- (i) Negotiations (where applicable)
- (j) Preparation and Signing of Procurement Contract
- (k) Contract Administration
- (l) Receipt Inspection and Acceptance of goods, works, services and consulting services.
- (m) Storage and Inventory Management.

All steps of the procurement cycle must be properly documented with each step being approved by the designated authority. All procurement documentation shall be properly filed. Note that the complete procurement cycle may also involve administrative review where a contractor or vendor has filed a complaint.

The processing and management of the complete procurement cycle requires close coordination with the budget process, commitment control, finance and expenditure management, and audit. Heads of Procuring Entities/Accounting Officers must therefore ensure close coordination between the procurement function and the other budget functions.

1.6 LINKAGES TO THE LARGER PUBLIC FINANCE MANAGEMENT

There are important linkages between public procurement, budget preparation and budget implementation.

- (a) Without elaborate and effective procurement procedures Government Policy objectives would fail to meet their desired objectives. Poor procurement management without well managed links to the budget can totally undermine the budget process. What is the point of a well thought out budget plan, where at implementation the Procuring Entity procures pretty much what it pleases without due regard to a procurement plan which in turn is directly tied to the budget process?
- (b) The fiduciary risks typically associated with poor procurement procedures,

improper institutional arrangements, ineffective procurement controls, and too much ambiguity to apply effective audit standards undermines the objectives of the budget, and

- (c) Delivery of services to the people requires the procurement of goods, works and services, and so procurement is critical and fundamental to the basic function of Government.

There are many links between procurement and expenditure control. The vehicle for budget implementation is the procurement process. Therefore it is very important that direct links be established between Procurement and other areas of Financial Management including Budget, Finance, Accounts and Audit.

The cash budget releases, while conforming to the cash availability constraint, must maintain a rational basis. Implementing a zero deficit cash budget, as is Kenya's objective, introduces particular challenges: it introduces an element of unpredictability in the budget releases to the procuring entities. Such unpredictability greatly undermines expenditure control and can contribute to the accumulation of pending bills.

The quality of Procurement is affected by: a poor budget structure with little basis for supporting expenditure management; budget estimates that have little relationship to procurement requirements; and a weak and ineffective Internal Audit function that merely serves as a basis for unnecessary delays and other unethical practices.

Procurement in turn affects the budget preparation process. Without proper procurement plans budget preparation with a bottom up approach is unachievable. It affects Cash Management which is based on pro forma cash flows for effective commitment control which in turn should properly be based upon the approved procurement plans.

1.7 LAYOUT AND ORGANISATION OF THE PUBLIC PROCUREMENT AND DISPOSAL GENERAL MANUAL

The Manual's layout incorporates a table of contents, a main body of text laid out in separate sections, each with chapters that are preceded by a summary page of chapter topics, a glossary of terms and an index. The pages of the main body of text are arranged into six principal zones. These are the main text (right hand side panel) where the manual guidelines are detailed; the tips, tricks and examples (left hand side panel) which serve as a synonym tools to assist the user to understand and apply the principles and requirements laid out in the main text; the left hand side header that identifies the Manual section; the right hand side header that identifies the chapter; the footer that provides the page number; and the right page border that identifies the topic.

The manual is organised into four broad sections designed to simplify the use of the manual. The four sections are further segregated into twelve chapters. Each chapter has been printed separately to facilitate periodic chapter updates without the need to redo the complete manual and also to accommodate selected procuring entities that have specialized procuring requirements. This arrangement also permits some Procuring Entities to be distributed only those portions of the manual that is relevant to their respective procurement activities.

The four sections of the Manual are organised as follows:

SECTION A: This section provides the guiding principles to be adhered to by all public entities for carrying out public procurement in Kenya. It sets the foundation of all activities to ensure that the budget is executed economically, efficiently, effectively and that the processes are transparent thus rendering the Government accountable to its citizens. The aim is to work for the general interest of the nation.

SECTION B: This section sets out the institutional framework for procurement. It presents the key actors in the procurement process and how the public and the private sectors interact

Application of the Manual

This manual describes procedures and public procurement requirements that are relevant to all Procuring

Filing of Circulars

File all PPOA Circulars in sequence and maintain in a single accessible repository

through the procurement process, their respective roles and responsibilities.

SECTION C: This section serves as a practical guide to procurement work. The approach to the section is premised upon answering the user's question "*What steps must be taken to complete a procurement process that is timely, cost effective and fully compliant with the Procurement Law and Regulation?*" This section guides the user on selecting the relevant procurement method, managing the procurement cycle, properly administering the contract, recording the procurement cycle steps and filing procurement documentation.

SECTION D: This section guides the user on the disposal of public properties. It helps the user select the appropriate disposal method and to apply it in conformity to the Act and the Regulations. Disposal is a critical element of procurement as it is the basis for securing the public assets. The section guides the user on managing the disposal cycle, properly administering the disposal contract, recording the disposal cycle steps and filing disposal process documentation.

1.8 CIRCULARS AND ADMINISTRATIVE GUIDELINES

This Public Procurement and Disposal General Manual is one of several complimentary instruments employed by the PPOA to achieve sound public procurement practice that is compliant with the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006. It is complemented by a number of other instruments including Standard Tender Documents, Procurement Circulars and Guidelines issued by the Authority. It is the responsibility of each Procuring Entity to maintain within a single comprehensive repository of all Procurement Circulars and Guidelines issued by the Authority. These Circulars and Guidelines must be filed in sequence for ease of access and reference.

Chapter 2

PUBLIC PROCUREMENT LAW AND GENERAL PROCUREMENT PRINCIPLES

2. PUBLIC PROCUREMENT LAW AND GENERAL PROCUREMENT PRINCIPLES

Topics
2.1 General Principles
2.2 Consistency and Full Compliance with the Public Procurement and Disposal Law
2.3 Promotion of Economy, Efficiency and Value for Money Practices
2.4 Good Practices and Linkages with Larger Public Finance Management
2.5 Applicable Ethics in Procurement
2.6 Promotion of Transparency
2.7 Responsibility, Authority and Accountability
2.8 Addressing Alleged Procurement Irregularities
2.9 Debarment of Bidders and Contractors
2.10 Ensuring a Basis for Setting Effective Audit Standards
2.11 Authority for Procurement Decisions
2.12 Preferences and Reservations
2.13 Promoting Environmental Protection through Public Procurement

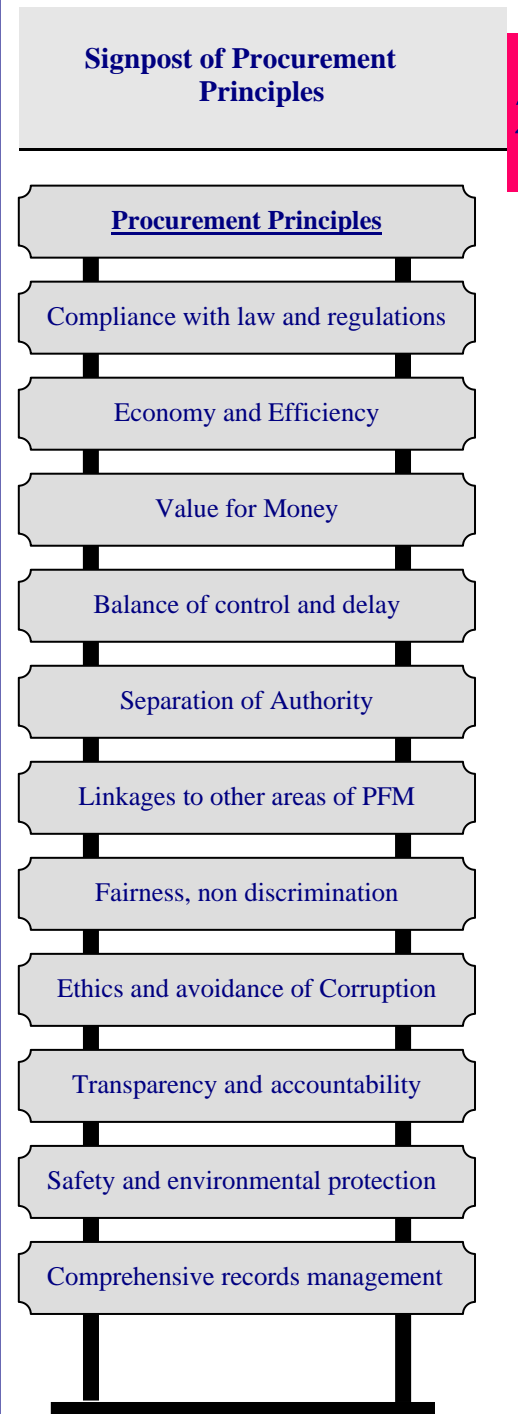
2.1 GENERAL PRINCIPLES

This chapter introduces the basic procurement principles to be applied in order to achieve sound procurement practice. The Procurement Law, the Regulations and this Manual were developed in consonance with these principles. It is important to appreciate these basic procurement principles and to apply them in those areas of procurement procedure that demand discretion and judgement if the objectives of sound procurement practice are to be achieved.

The Procuring Entity and its staff will be held responsible and accountable for non compliance with the general principles outlined in this Manual in the practice of procurement and/or in the application of discretion and judgements made in the decisions pertaining to procurement proceedings.

The procurement principles encompass:

- (a) Strict compliance to the legal and regulatory framework when effecting procurement;
- (b) Achievement of economy and efficiency in the delivery of service;
- (c) Promotion of value for money through effective competition and careful procurement planning;
- (d) Balancing between the level of control necessary to mitigate against risk of



Guidelines on Applicable Ethics:

- ❖ Avoid Collusion or appearance of it
- ❖ Avoid any real or apparent conflict of interest
- ❖ Do not discriminate on the basis of race, gender, party affiliation, religion or ethnicity
- ❖ Protect the confidentiality of all information pertaining to the content of tenders, evaluations, proposals or quotations
- ❖ Avoid all corrupt practices
- ❖ Avoid fraudulent practices
- ❖ Avoid undue delays and obstruction in procurement processing
- ❖ Do not exert inappropriate influence on any procurement procedure
- ❖ Do not open sealed bids and divulge their contents prior to public openings

loss and the size of transaction costs as it pertains to both direct costs as well as administrative burden and delay;

(e) Separation of authority between procurement initiation, vendor selection, commitment, and receipt inspection and acceptance of procurement object.

(f) Promotion of sound Public Finance Management through the appropriate recognition and management of the linkages of procurement to other areas of Public Finance Management such as budget preparation, budget execution, finance, accounts and audit.

(g) Ensuring fairness and equity, and avoiding discrimination in the invitation, evaluation and award of procurement contracts.

(h) Observance of ethics in all aspects of procurement and ensuring procurement practice is devoid of actual or perceived corruption;

(i) Promotion of transparency and accountability in the whole Procurement and Disposal Process

(j) Promotion of health and safety standards, as well as environmental protection;

(k) Strict adherence to the use of appropriate documentation for all the steps of the complete procurement and disposal cycles, and maintaining a comprehensive record of procurement transactions.

These procurement principles should be used to guide decisions pertaining to procurement practice. Where the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006 or this Manual do not provide specific guidance and discretion or judgment to be employed, these principles should **guide the discussions and decisions.**

2.2 CONSISTENCY AND FULL COMPLIANCE WITH THE PUBLIC PROCUREMENT LAW

The procurement legal and regulatory framework provides a basis for the Government of Kenya to deliver on the three main objectives of sound public finance management namely; aggregate fiscal discipline, the strategic allocation of resources and the efficient delivery of services. In order that actual procurement practice contribute to the achievement of these objectives it is crucial that Procuring Entities strictly adhere to the requirements of the legal and regulatory framework by complying to the procedures and guidelines outlined in this Manual.

The adoption of this manual and its guidelines across all Procuring Entities will have a very significant positive impact on the practice of public procurement in Kenya. A key responsibility of the Heads of Procuring Entities is to ensure that Procuring Entities and Procurement Officers fully adopt and implement the procedures outlined in this Manual.

This Manual seeks to promote the objectives of the Government to increase trade and foster economic growth.

2.3 PROMOTION OF ECONOMY, EFFICIENCY AND VALUE FOR MONEY PRACTICES

A key operating principle of the legal and regulatory framework is the promotion of value for money practices in public procurement and the maximization of economy and efficiency. Substantial savings of public funds can be achieved if Procuring Entities are diligent applying value for money and economic efficiency principles diligently. Procuring Entities must adopt practices that promote fair competition in all public procurements; discourage the use of fake competition; and use methods of aggregation where appropriate in order to take advantage of economies of scale.

Specifically, it is the responsibility of the Procuring Entity to adopt practices that should allow:

- (a) Promotion of fair competition through the selection of appropriate procurement methods, being transparent and unambiguous about evaluation criteria set out in bidding documents, and avoiding deliberate use of fake competition
- (b) Applying methods of aggregation, where appropriate, in order to take advantage of economies of scale as well more efficiently utilise the better risk of mitigation procurement methods. However in doing so consideration must be given to storage costs arising from the risk of warehouse losses due to such factors as insect, fungal and bacterial infestation, theft, water damage, and chemical decomposition. Also consideration should be given to the direct cost factors such as warehouse costs, insurance coverage, and distribution costs between the different Procuring Entities taking part in the aggregation process.
- (c) To the extent possible life cycle costs should be used in considering and selecting procurement alternatives, taking into account all elements of cost burden including operational costs, after sale service and maintenance costs, environmental degradation impact, energy conservation savings, expected operating life, and disposal value;
- (d) Taking into account, in the case of software, computer, communications and high technology procurement, scalability for easy upgrading along with both backwards and for wards compatibility to avoid the costs associated with rapid obsolescence;
- (e) Consideration of the seasonality in prices especially where it pertains to the procurement of commodities.
- (f) Discouragement of the practice of fake competition which may be easily identified by watching out for separate bids showing identical spelling errors, similar signatures, identical phone numbers etc.

This manual gives very clear guidance on the selection of specific procurement methods. In selecting a procurement method consider the following countervailing factors: the cost savings introduced by expanding competition and utilizing more effective procedure controls versus the increased transaction costs of using more highly controlled procurement methods; and the cost savings introduced by expanding competition possibly say to international markets versus the transaction costs associated with implementing an international bid process.

Great improvements in economic efficiency may be achieved through careful procurement planning. Procuring Entities should carefully plan individual procurement to ensure that precisely required quantities and accurate specifications are included to minimize the risks of contract variations.

The Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006 and this Manual set up clear and unambiguous guidelines regarding the use of particular procurement methods, the appropriate authorisations regarding the approval of steps within the procurement and disposal cycle, documentation and filing requirements for procurement and disposal of stores, equipment and other assets. The procurement methods have been specified after careful considerations of the balance between risk and administrative burden, but their effectiveness is undermined by if purchases are sliced into smaller lots as a way of bypassing the use of particular procurement methods.

Note that, there is increased competition as we go from national tender to international tender, but also increased transaction costs, administrative burden and delay. There is also greater risk with an international tender process with regards to compliance testing (legal registration of the company, tax compliance, financial status etc. of a potential vendor or contractor) than with a national tender process.

Procuring Entities must not structure procurement as two or more procurements to lower the estimated value of a given procurement for the purpose of avoiding the use of a particular procurement procedure.

Linkage with the Layer PFM

- ❖ Budget Preparation
- ❖ Budget Execution
- ❖ Commitment Control
- ❖ Maintenance of Records
- ❖ Audit

An important principle, which the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006 and this Manual emphasizes is the principle of a sound balance between procurement control, administrative burden and process delay while promoting competition and achieving value for money. When effecting procurement the user must select the most appropriate method for ensuring an effective level of competition and consequently value for money. The Public Procurement Threshold Matrix which has been designed to gear the choice to the most appropriate method of procurement should be adhered to.

2.4 GOOD PRACTICES AND LINKAGES WITH LARGER PUBLIC FINANCE MANAGEMENT

Procurement forms an integral part of the *Budget Execution* process. Procurement Planning forms a crucial input to *Budget Preparation* and the management of *Budget Releases*. The effectiveness of *Audit* is duly dependent on how effectively procurement is managed, documented and reported upon.

(a) Budget Preparation:

Procurement Planning should form the basis for budget preparation. Upon approval of the budget by Parliament, Procuring Entities may need to revise their Procurement Plans to reflect the actual budgetary allocations. Revised Procurement Plans will form the basis for preparing the cash flow projections that will inform the budgetary release process to the Procuring Entity.

(b) Budget Execution

The effectiveness of procurement along with these other areas of Public Finance Management requires that Procurement Plans be prepared by all Procuring Entities each year as part of the response to the Budget Circular. The Cash Flow submissions of Line Ministries and other budget entities to the Ministry of Finance to inform budget releases should properly be based upon procurement plans. In turn predictable and timely budget releases serve to facilitate effective commitment controls and hence more economical and efficient procurement.

(c) Commitment Control - Availability of Funds:

A procurement process should not be initiated without due consideration to the availability of funds. This underpins the effectiveness of the commitment control system which in turn is a necessary requirement for a public finance management system to deliver on aggregate fiscal discipline.

(d) Labelling and Filing of Procurement Documentation

Procurement Officers within Procurement Units must coordinate with Finance and Accounting Officers to ensure that all procurement files are clearly labelled with a unique and sequential identification code and date, along with the unique code of the corresponding expenditure file that contains the documentation reflecting the contractor claims, payment vouchers, receipts of Goods, Services, Works and Consulting services delivered. In this way it becomes possible to facilitate effective contract administration, to keep adequate records management and to ensure that the procuring entities procurements are easily auditable.

(f) Audit:

All procuring Entities shall comply strictly with the documentation, recording, minuting and filing requirements as specified in this manual. These together form a firm and sound basis for effective expenditure control and audit.

In order to meet the audit requirements Procuring Entities shall maintain all procurement files and documentation for a minimum period of six years. The documentation must be kept in

orderly, accessible and clean conditions.

2.5 APPLICABLE ETHICS IN PROCUREMENT

In order to achieve value for money and to effectively contribute to the efficient service delivery, public procurement practice must adopt a strong ethical bent. It must be practised so as to be void of leakages and loss, corruption and vendor favouritism. The way to address these concerns is by adopting a strong sense of ethics such as avoiding collusion, discouraging fake competition, removing any arbitrariness from the bid evaluation process, ensuring that the goods and services received reflect the precise quantities actually delivered, using slicing to avoid adopting the appropriate procurement method etc.. In this section a number of ethical positions applicable in procurement are presented to serve as a guideline for the ethical practice of procurement. These ethical positions are to be adopted by all procurement officers .

(a) Avoidance of Collusion: No Procuring Entity, public official, vendor or person may collude or attempt to collude with any other person to make any proposed price higher than would otherwise have been the case or to have a vendor refrain from submitting a tender, proposal or quotation or withdraw or change a tender, proposal or quotation; or to submit a tender, proposal or quotation with a specified price or with any specified inclusions or exclusions. No Procuring Entity, public official, vendor or person may collude or attempt to collude with any other person to make any vendor or contractor refrain from submitting an appeal to the Administrative Review Board.

It should be noted that if a person contravenes any of these requirements the following may apply: Both vendors and or persons referred to above may be disqualified from entering into a contract for the procurement; or if a contract has already been entered into with either person referred to above, the contract may be voidable at the option of the Procuring Entity and the vendor or person may be debarred from any future procurement.

The voiding of a contract by the Procuring Entity does not limit any other legal remedy the Procuring Entity may have.

(b) Avoidance of Conflict of Interest: A person has a conflict of interest with respect to a procurement if the person or a “relative” of the person seeks, or has a direct or indirect pecuniary interest in another person or vendor who seeks, a contract for the procurement; or owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

For the purposes of clarity a “relative” means:

- (a) a spouse ,child, parent, brother or sister
- (b) a child, parent, brother or sister of a spouse

It is imperative that all officials involved in procurement avoid at all times any conflict or perception of a conflict of interest. Any official who has a conflict of interest or potential conflict of interest with respect to a particular procurement may not take part in the procurement proceedings; and may not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract. When such an officer refrains from doing his duties pertaining to a specific procurement he or she must disclose the conflict of interest or potential conflict of interest in writing to the head of the Procuring Entity.

If a person participates in a procurement procedure despite a conflict of interest or a potential conflict of interest and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be voidable at the option of the Procuring Entity.

Note that the voiding of a contract by the Procuring Entity under such circumstances does not limit any other legal remedy the Procuring Entity may have.

For the purpose of this section, a person has a potential conflict of interest with respect to a procurement procedure if the person could benefit financially due to ongoing business relations with one of the vendors seeking a contract or the possibility of receiving sub contracts from one of the vendors seeking a contract should he or she win the contract

(c) Equal Opportunity: Any form of discrimination discourages participation in public procurement and undermines any efforts to achieve value for money through open competition. Consequently, no Procuring Entity or Procurement Officer may discriminate against any potential bidders or bidders based upon gender, ethnicity, religious affiliation, physical disability, or party affiliation in any procurement proceeding, except specifically and only where such discrimination is a direct and unavoidable consequence of a preference program instituted by the PPOA. Procuring Entities shall endeavour in developing shortlists to reach out to a broad mix of bidders that reflect the diversity in the communities within which they operate.

(d) Confidentiality and Limited Disclosure: Confidentiality is an important principle to uphold if competition is not to be undermined. It is also an area of potential abuse and so Procuring Entities must be diligent in ensuring that confidentiality of bidder information prior to a tender opening process is a principle that is upheld at all times.

During or after procurement proceedings, no Procuring Entity and no employee or agent of the Procuring Entity or member of a board, panel or committee of the Procuring Entity may disclose information relating to a procurement procedure whose disclosure would impede law enforcement or whose disclosure would not be in the public interest. Neither may any of these listed entities disclose or information relating to a procurement where such disclosure would prejudice legitimate commercial interests or inhibit fair competition.

No information may be disclosed relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or the contents of tenders, proposals or quotations prior to the bid opening. Where disclosure of the record of procurement proceedings, as may be required in debriefing bidders or in an investigation as required under Part VIII of the Public Procurement and Disposal Act, the Procuring Entity, employee or agent may not, except when ordered to do so by a competent court, and subject to the conditions of such an order, disclose any information, which would not be in the public interest, if its disclosure would be contrary to law, would impede law enforcement, would prejudice legitimate commercial interest of the parties or would inhibit fair competition.

Note that such information disclosure restrictions do not apply to information requests from the PPOA, the Auditor-General and other oversight organs authorised by the laws of Kenya. All procurement records shall be made available for inspection upon demand by the PPOA, the Auditor-General and other oversight organs authorised by the laws of Kenya.

(e) Avoidance of all Corrupt Practices in Procurement: It is a direct breach of the Procurement Law to participate in any corrupt practices and the penalties, if discovered, are severe. Pursuant to Article 40 of the Public Procurement and Disposal Law no person, agent or employee shall be involved in any corrupt practice in any procurement proceeding. If a person or an employee or agent of a person contravenes this requirement the following shall apply (1) The person may be disqualified from entering into a contract for the procurement; or (2) If a contract has already been entered into with the person, the contract shall be voidable at the option of the Procuring Entity The person may be debarred from any future procurement.

Note that the voiding of a contract by the Procuring Entity does not limit any other legal remedy the Procuring Entity may have.

(f) Avoidance of all Fraudulent Practice in Procurement: Any kind of fraudulent practice undermines the objective of value for money critical to achieving the efficient delivery of service. Pursuant to Section 41 of the Public Procurement and Disposal Act, 2005 no tenderer, contractor, person or public official shall be involved in a fraudulent practice in any procurement proceeding. If such a person contravenes this requirement the following shall apply: (1) The person shall be disqualified from entering into a contract for the procurement; or (2) If a contract has already been entered into with the person, the contract shall be voidable at the option of the Procuring Entity.

Note that the voiding of a contract by the Procuring Entity does not limit any other legal remedy

the Procuring Entity may have.

(g) Avoidance of Obstruction and Undue Delay in Procurement Processing: No person may obstruct or hinder a person carrying out a duty or function under the Procurement Law or exercising a power under the Law or knowingly lie to or mislead a person carrying out a duty or function under the or exercising a power under the Public Procurement Law. No delay without justifiable cause may be accommodated with regards to the opening or evaluation of bids or the awarding of contract beyond the prescribed period.

Any person obstructing or unduly delaying a procurement proceeding, including making payment, is breaking the law and may be sanctioned in Accordance with Section 137 of the Public Procurement and Disposal Act.

(h) Exerting Inappropriate Influence on any Procurement Procedure: No Person may unduly influence or exert pressure on any member of a Tender Committee or on any employee or agent of a Procuring Entity to take a particular action which favours or tends to favour a particular bidder. Neither may any person open any sealed bid, including such bids as may be submitted through an electronic system nor any document required to be sealed; or may he or she divulge their contents prior to the appointed time for the public opening of the bid or documents.

2.6 PROMOTION OF TRANSPARENCY

The promotion of transparency in procurement complements procedure control and serves as a particularly effective tool for confronting corruption. Promoting transparency takes a special concerted effort and requires a greater administrative burden. All Procuring Entities shall to the extent possible make transparent their procurement proceedings by making public their procurement announcements and making public the results of procurement proceedings. It falls on the procurement units to ensure that such practices are adhered to and implemented.

Developments in technology especially in respect of the Internet provides simple cost effective methods for promoting transparency by way of widely disseminated laws, regulations, procurement manuals and bidding documents, contract announcements and the results of bid evaluations. The Authority will take advantage of the developments in Internet technology to promote transparency and will support the Procuring Entities in this area.

Extensive lack of access to such technology is not an excuse for not promoting transparency. The publication of the results of RFQs on Notice Boards for example serves as effective mechanisms for promoting transparency.

Procuring Entities must carry out all procurement proceedings in a transparent way with an emphasis on ensuring that all required documentation are prepared and all procurement procedures properly authorised. To the extent possible Procuring Entities shall make public procurement announcements, the results of bidding processes and the awards of contracts. Procuring Entities shall clarify procurement procedures promptly upon requests made from potential candidates

(a) Procurement Records

Transparency and accountability is promoted through the appropriate recording of procurement procedures. The Procuring Entity shall maintain an individual file for each procurement requirement, which shall be marked with the relevant procurement reference number. The file shall contain all information, documents and communications related to that procurement proceeding, including, but not limited to:

- (i) The authorised procurement requisition, including the description of goods, works or services required;
- (ii) The procurement plan, including the justification for the use of any method other than open tendering or request for proposals;
- (iii) A copy of any invitation to pre-qualify or call for expressions of interest notice and any pre-qualification documents;

Declarations to be made by Bidders

Required Bidder Declarations

Non-Collusion

Bidder not debarred

No engagement in Corrupt Practices

2

Common Fraudulent Practices:

- ❖ Using fake receipts to claim reimbursements or justify procurement done under the low value method
- ❖ Using fake pro forma invoices
- ❖ Certifying the receipt of goods, services and works that have not been fully delivered, or differ from the contracted specification or quality
- ❖ Authorising contract variations for personal gain
- ❖ Eliminating competition through arbitrary use of compliance criteria imposed at the time of evaluation
- ❖ Disclosing the one vendor's tender or proposal submission to another prior to the public opening of these documents

- (iv) All applications to pre-qualify or expressions of interest received and the evaluation of qualifications or comparison of expressions of interest;
- (v) The invitation to bid notice or any shortlist or list of pre-qualified bidders;
- (vi) The bidding documents, request for proposals or other solicitation document issued, including any clarifications or amendments issued and minutes of any pre-bid meetings;
- (vii) The record of solicitation documents issued, bids received and all bid or proposal openings;
- (viii) All bids, proposals or quotations received, other than bids or proposals returned unopened to bidders;
- (ix) Copies of all clarifications requested and received;
- (x) The evaluation report, including any individual score sheets or other documentation;
- (xi) Records of any negotiations;
- (xii) Any notice of proposed award;
- (xiii) Any notice of bid acceptance;
- (xiv) A copy of the contract or purchase order document;
- (xv) Copies of letters rejecting and debriefing unsuccessful bidders;
- (xvi) A copy of any published notice of contract award;
- (xvii) Copies of all contract variations and modifications;
- (xviii) All documentation and correspondence relating to contract administration;
- (xix) Copies of all documentation demonstrating performance of the contract, such as inspection reports, delivery documentation and interim certificates;
- (xx) Any documentation relating to cancellation of a procurement process or termination of a contract;
- (xxi) Information relating to any applications for review; and
- (xxii) All approvals from the Procurement Committee and any other award authority;

Procurement records shall be kept for a minimum period of six years following completion or termination of the contract or cancellation of the procurement proceedings as required by section 45 (1) of the Public Procurement and Disposal Act 2005.

(b) Summary Record of Procurement Proceedings

The Procuring Entity must maintain a complete record of the procurement proceedings.

Information to be included in the record shall, to the extent applicable, include: a description of the object of the procurement; the announcement or copy (or description) of the advertisement and the media employed, a list of the participating bidders and their qualifications; bid prices; a summary of the evaluation of bids; summary of any review proceedings and the decisions taken therein; requests for clarifications, and responses thereto; statement of grounds for cancellation of procurement proceedings; statement of grounds for choice of a procurement method other than tendering or request for proposals for services; any information concerning rejection of bids.

The record shall, on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed at an earlier point in time pursuant to law or regulation, or by order of a competent court or a duly appointed arbitrator.

The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(c) Publication of Contract Awards

In compliance with Section 36 (1) of the Public Procurement and Disposal Act 2005 the Authority must publish on the PPOA website or as specified by the PPOA through circulars notices of the contracts awarded by Procuring Entities indicating the amount, the name of the winning bidder, the date, the procurement method employed, whether there was an application to administratively review the transaction and a summary of the findings.

(d) Communications

All communications between the Procuring Entity and bidders or contractors shall be in writing and communications in any other form shall be referred to and transcripts of any conversations made in writing.

2.7 RESPONSIBILITY, AUTHORITY AND ACCOUNTABILITY

It is only when individuals as well as institutions are held accountable that we can expect to achieve sound procurement that delivers on value for money and forms the basis for efficient service delivery. Lines of accountability are clarified when written declarations are made that state in unambiguous terms any circumstances that might be construed as condoning or adopting unethical practices in public procurement. This section presents those requirements that must be adopted and adhered to by the Procuring Entity and the staff to ensure accountability. In particular it identifies specific declarations that must be made when and where unethical practices may seem apparent.

(a) Conduct of Bidders and Contractors

Bidders as well as contractors shall at all times abide by their obligations under the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006, this Manual, procurement contracts, and other instruments applicable to their conduct and activities related to procurement.

A bidder, or a contractor, may not engage in or abet corrupt or fraudulent practices, including the offering or giving, directly or indirectly, of improper inducements, or the misrepresentation of facts, in order to influence a procurement process or the execution of a contract.

Bidders may not engage in collusion, prior to or after bid submission, designed to allocate procuring entities among bidders, establish bid prices at artificial non-competitive levels or otherwise to deprive the procuring entity of the benefits of free and open competition.

A Procuring Entity must reject a bid if the bidder offers, gives or agrees to give an inducement referred to above and promptly notify the rejection in writing to the bidder concerned, to the PPOA and to the relevant law enforcement authorities.

(b) Declaration of Potential Conflicts of Interest

All members of any committee, board or panel involved in procurement proceedings shall declare any potential conflicts of interest and exclude himself or herself from participating in the proceedings. All such declarations must be made in writing and kept as part of the record of the proceedings.

All members of a Procurement Unit, Evaluation Committee, Tender Committee or Procurement Committee, all staff involved in contract administration, Accounting Officers, Chief Executives and members of Boards shall, prior to commencing any procurement activities or the approval of any procurement proceeding make declaration a declaration to the effect that :

They have no:

- i. Marital or direct birth relationship with a bidder, its legal counsel or its officers;
- ii. During the last three years, has not been an employee or officer of a bidder or held a financial interest in a bidder;
- iii. Is not negotiating or has no arrangement concerning prospective employment in a bidder.

Any member of a Procurement Unit, Evaluation Committee, Tender Committee, Procurement Committee, any member of staff involved in contract administration and any Accounting Officer, Chief Executive and members of Boards or Panels who become aware that they have a relationship referred to above with a bidder shall immediately report this to their superiors and request exclusion from all activities relating to the procurement proceedings, the approval of the procurement proceedings or contract award or contract administration.

PPOA'S Help Desk

When in doubt contact the PPOA Help Desk



The Public Procurement Oversight Authority
National Bank Building
P.O. Box 58535-00200
NAIROBI, KENYA

Telephone No. +254 (020) 3244000, 3598791/4
Fax: +254 (020) 2119420, 2119410
E-Mail: info@ppoa.go.ke

(c) Declaration of Non-Collusion

A tender, proposal or quotation submitted by a bidder shall include a statement of declaration that neither the bidder nor any officer or agent engaged by it or acting on its behalf has colluded with any other bidder or public official in the preparation of the tender, proposal or quotation.

(d) Declaration that the Bidder has not been Debarred

A tender, proposal or quotation submitted by a bidder shall include a statement that neither the bidder nor any officer of the bidder has been debarred from participating in procurement proceedings under Part IX of the Public Procurement and Disposal Act 2005.

(e) Declaration that a bidder will not Engage in Corrupt Practices

A tender, proposal or quotation submitted by a bidder shall include a statement declaration that the bidder nor any officer or agent engaged by it or acting on its behalf shall engage in any corrupt practice

(f) Restriction on Participation of Public Officials as Bidders

Public officials, and their relatives, shall not participate as bidders in the public procurement of the Procuring Entity by which they are employed or over which they exercise any supervisory or oversight authority. For the purposes of clarity a "relative" means a child, Parent or sibling.

(g) Post-employment Restrictions on Public Officials

Individuals who served as procurement officers or participated in the approval of any procurement activities with respect to a procurement procedure may not:

- (i) Participate in any manner, as an officer, employee, agent or representative of a contractor, in any negotiations or technical discussions leading to the award, modification or extension of the contract for that procurement; or
- (ii) Participate personally or substantially on behalf of a contractor in the performance of the resultant contract.

This restriction shall remain in effect for the duration of the procurement proceeding and contract, if any, of that specific procurement.

(h) Inspections and Audits Relating to Procurement Proceedings

The Director General may order an investigation of any procurement proceeding for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, the Regulations, the Standard Bidding Documents, the Procurement manual or any Circulars or other written instructions of the PPOA.

2.8 ADDRESSING ALLEGED PROCUREMENT IRREGULARITIES

The Administrative Review Board has been set up to receive and review applications from vendors and Procuring Entities pertaining to alleged irregularities discerned in a procurement or disposal procedure. Upon completing a review the Administrative Review Board may do any one or more of the following:

- (i) Annul anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
- (ii) Give directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings; and
- (iii) Order the payment of costs as between parties to the review if regulated for by any of the parties.

(a) Making a Request for an Administrative Review

Subject to the provisions of this Part, any person who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a Procuring Entity by the Public Procure-

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ment and Disposal Act or the Regulations, may seek an administrative review of the proceedings.

The following matters shall not be subject to an Administrative Review:

- (i) The choice of a procurement method provided it is compliant with Schedule I of the Procurement Regulations and approved by the tender committee;
- (ii) A decision by the Procuring Entity to reject all tenders, proposals or quotations;
- (iii) Where a contract is signed in accordance to Section 68 of the Act; and
- (iv) Where an appeal is deemed frivolous.

A person shall make a request for a review by submitting a written application in compliance with the application template provided in Schedule XII of the Regulations. All written applications must contain the following:

- (i) The name and address of the applicant
- (ii) The Procuring Entity
- (iii) The date of submission of the written application
- (iv) The reference number of the procurement procedure and the date of issuance of the tender documents, request for proposals or request for quotations
- (v) The signature of the applicant

Details of the submission of review may be provided by the Review Board.

A practice that very quickly undermines the credibility of the administrative review process is the submission of frivolous applications not to mention the administrative burden and delay that is introduced to the procurement procedure. To reduce the occurrence of such practice and to increase the levels of accountability all applications must include the following statement:

“I hereby certify that this application is not frivolous and has been made solely for the purpose of redressing the suffering or the risk of suffering loss or damage due to the breach of a duty imposed on a Procuring Entity by the Procurement and Disposal Act or the Regulations. I understand that, if this application is determined to be frivolous by the Administrative Review Board, I may be subject to prosecution for fraudulent representation”.

The Request for a Review must be addressed to the Secretary of the Review Board. Any application for review submitted by a bidder must include as part of the application the following in order for it to be accepted and reviewed by the Administrative Review Board:

- (i) Details of the procurement proceedings to which the application relates, including the procurement reference number;
- (ii) Details of the provision of the Act, Regulations or other instructions which have been breached;
- (iii) An explanation of the breaches, including, where known, the date and the names of responsible officers; and
- (iv) Any available documentary or other evidence supporting the application.

The application for review shall be submitted in writing to the Procuring Entity for consideration, unless a contract has already been awarded.

Any application for review must be submitted within fourteen (14) days of the date of the letter of notification or when the bidder became aware of the circumstances giving rise to the application for review.

Upon receiving a request for a review, the Secretary to the Review Board shall notify the Procuring Entity of the pending review and the suspension of the procurement proceedings. The Secretary shall also notify all parties to the review of the details of the hearing of the review request.

(b) Review by the Review Board or its Panels

The Review Board shall institute an investigation, which shall consider, where appropriate:



- (i) The information and evidence contained in the application for review;
- (ii) Information from the Procuring Entity's procurement records;
- (iii) Information provided by staff of the Procuring Entity;
- (iv) Information from other bidders; and
- (v) Information in the investigation and decision of the head of the Procuring Entity, where applicable.

The Administrative Review Board after hearing the review request shall issue a written decision within thirty (30) calendar days in accordance with Section 97 of the Public Procurement and Disposal Act 2005, which shall indicate:

- (i) Whether the application is upheld or rejected;
- (ii) The reasons for the decision; and
- (iii) Any corrective measures to be taken, in accordance with Section 98 of the Public Procurement and Disposal Act 2005.

The Review Board may announce its decision immediately after the hearing pending the written decision.

Copies of the written decision are sent to:

- (i) The bidder who submitted the application for review
- (ii) The Procuring Entity
- (iii) All other parties to the Review

The Review Board may dismiss a request for a review if it is of the opinion that the request is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceedings or the procurement

2.9 DEBARMENT OF BIDDERS AND CONTRACTORS

The PPOA may debar a bidder or contractor from participating in procurement proceedings on the ground that the bidder or contractor:

- (i) Has committed an offence under the Public Procurement and Disposal Act or is in contravention of any of the clauses of the Regulations;
- (ii) Has committed an offence relating to procurement under any Act;
- (iii) Has breached a contract for a procurement by a public entity;
- (iv) Has, in procurement proceedings, given false information about his qualifications or capabilities; or
- (v) Has refused to enter into a written contract as required under Section 68 of the Public Procurement and Disposal Act.
- (vi) Has breached the Code of Ethics issued by PPOA under Section 139 of the Act

The Director-General, with the approval of the Advisory Board, may also debar a person from participating in procurement proceedings. Such debarment shall extend to other firms owned or controlled by the debarred person

Note that a debarment under this section shall be for a period of not less than five years.

(a) Submission of a Request to Debar

A request to debar a bidder or contractor may be submitted by a Procuring Entity, the Internal Auditor General, Controller and Auditor-General or any other oversight organ authorised by the laws of Kenya.

A request for debarment of a bidder or contractor shall be submitted to the PPOA and shall contain:

- (i) The name of the bidder or contractor;
- (ii) The grounds for recommending debarment;
-Details of the procurement proceedings or contract to which the request relates; and
- (iii) Documentary or other evidence supporting the allegation.

(c) Investigation of Petitions to Debar

When the PPOA receives a request to debar, it shall immediately notify the bidder or contractor, giving details of the petition and informing the bidder or contractor of its right to a hearing or to submit written evidence, prior to any decision to debar within ten (10) working days of receipt of the notice. The PPOA may institute an investigation on the basis of the submitted evidence.

In investigating the petition, the PPOA shall consider, where appropriate:

- (i) The information contained in the petition and other information obtained through consultation with the affected Procuring Entity and the body or person submitting the petition;
- (ii) Information provided by the bidder or contractor, through a hearing or in written form; and
- (iii) Any other relevant sources of information, including audits already conducted by the PPOA or other oversight bodies or information from other bidders.

The following procedures shall apply to any hearings:

- (i) The PPOA shall set a hearing date and inform all concerned parties
- (ii) Any hearing shall be organised within thirty days from date of submission of request;
- (iii) The bidder or contractor has the right to be represented by counsel;
- (iv) The hearing shall be recorded and all evidence presented shall be preserved; and
- (v) Witnesses shall be allowed to testify.
- (vi) The hearing may be presided over by a team appointed and chaired by the Director-General.
- (vii) Review Board members shall be members of the team appointed to hear the debarment case.

During the investigation of any petition to debar a bidder or contractor, the bidder shall be permitted to participate in public procurement and shall be required to continue performance of any ongoing contract, but any recommended contract award to the bidder shall be delayed, pending the outcome of the investigation.

(c) Decisions to Debar

Upon completion of its investigation and following any hearing, the PPOA shall issue a written decision, indicating:

- (i) Whether the petition is upheld or rejected;
- (ii) The reasons for its decision; and
- (iii) The length of the debarment period.

The written decision shall be sent to:

- (i) The bidder or contractor;
- (ii) The person who submitted the petition; and
- (iii) The affected Procuring Entity, where the petition was not submitted by the Procuring Entity.
- (iv) PPOA Website

Any debarment imposed shall take effect immediately upon issue of the written decision.

During the period of any debarment, a bidder shall not be permitted to participate in any public procurement proceedings, but shall be required to continue performance of any contracts already awarded.

The PPOA shall maintain a list of debarred bidders and contractors. The PPOA shall immediately inform all Procuring Entities of any changes to the list, including bidders and contractors removed from the list following expiry of their debarment period.

(d) Request for a Review of a Debarment

A person who is debarred under Section 115 of the Act may request the Review Board to review the debarment.

A request for a review may only be made within twenty-one days after the person was debarred. A request for a review shall be accompanied by the fee prescribed in Schedule V of the Regulations.

(e) Maintaining a List of Debarred Contractors

The PPOA shall maintain and make available to Procuring Entities a list of all persons debarred from participating in procurement proceedings;

The PPOA shall publish a current list of all persons debarred from participating in procurement proceedings on its official website and any other appropriate media.

2.10 ENSURING A BASIS FOR SETTING UP EFFECTIVE AUDIT STANDARDS

The legal and regulatory framework, this Manual inclusive, sets up a clear basis for effective audit standards that allows for meaningful audit. The Procurement Thresholds Matrix introduced in the Regulations set up clear and unambiguous guidelines regarding the use of particular procurement methods and the appropriate authorisations regarding the approval of steps within the procurement.

The documentation and filing requirements for procurement and disposal of stores, equipment and other assets as set out in this manual define clear standards pertaining to filing requirements and records management of procurement documentation.

The strict application of the manual with regards to documentation, recording, minuting and filing requirements will ensure the audit trails of a procurement requirement. Procuring Entities shall maintain all procurement files and documentation for a minimum period of six years.

2.11 AUTHORITY FOR PROCUREMENT DECISIONS

There are a number of important principles necessary to ensure sound procurement practice and mitigate opportunities for collusion, fraudulent practices corruption and conflicts of interest. These include:

- (i) The separation of authorities
- (ii) Having all approvals in writing
- (iii) Not allowing retrospective approvals
- (iv) Maintaining specimen signatures to serve as a security reference basis for authenticating the authority of procurement documentation.

(a) Clear Separation of Approval Authorities:

There must be clear separation of works received certification. In the case of approvals not explicitly identified within the Regulations, all Procuring Entities shall strictly adhere to the principle of separation of authorities in respect to origination of procurement proceedings, the selection of vendor, the commitment of the Procuring Entity by contract with the vendor, and the acceptance of the item by the Procuring Entity. Where the Procuring Entity has too few staff to achieve total separation of authorities then use a second signature by a senior officer to endorse the approval shall be allowed. Advice may also be sought from the PPOA on the matter.

(b) Requirement for all Approvals to be in Writing:

All approvals pertaining to any procedures in the procurement cycle or associated administrative procedures shall be in writing and properly dated, documented and filed.

Original records of all such approvals shall be filed. The filing of photocopies shall be deemed in contravention of this instruction.

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(c) No Retrospective Approvals:

There shall be no retrospective approvals on procurement and disposal proceedings by any of the bodies or officials involved with any of the proceeding in the procurement and disposal cycles, or in any of the administrative procedures pertaining to procurement or disposal. Such bodies shall include but not be limited to the Public Procurement Oversight Authority, The Administrative Review Board, the Administrative Review Panels, the Procuring Entities, the Procurement Entities, Procurement Committees, the Tender Committees, the Tender Evaluation Committees, the Disposal Committees, and the Goods Inspection and Acceptance Committees.

(d) Approvals under Delegated Authority:

When approvals are made under delegated authority, such delegation of authority shall be made to an officer with sufficient seniority and expertise to effectively carry out the approvals;

Each Procuring Entity must maintain names and specimen signatures of all of the persons authorised to make approvals within the procurement process irrespective of if the person has direct or delegated approval authority;

The responsibility for each approval made in the procurement procedure resides with both the person who delegates the authority and the person who is delegated the approval authority.

(e) Maintaining Specimen Signatures as a Security Reference:

The Procuring Entity must ensure that all specimen signatures of all persons authorised to make approvals within the procurement cycle are maintained and kept securely as a basis for effective control and to establish probity and clear lines of accountability for all documented procurement procedures.

2.12 PREFERENCES AND RESERVATIONS

The PPOA may issue guidelines for the application of the preference schemes by Procuring Entities in the evaluation of bids in accordance with the Procurement Act and Regulations.

2.13 PROMOTING ENVIRONMENTAL PROTECTION THROUGH PUBLIC PROCUREMENT

This manual, consistent with the objectives of the Procurement Law and the Regulations, seeks to promote sound principles of environmental protection in public procurement in Kenya. Kenya has ratified the Kyoto Agreement. Measures to protect the environment should be introduced in the design of a procurement requirement wherever and whenever possible.

The improvement of the environment and the mitigation of any negative environmental impact, by procurement of goods that require fewer resources for production, involve reduced levels of emissions and toxins in their production and in their composition and result in less waste and pollution over their lifetime is a constant objective. For example, the achievement of cost savings by procuring energy efficient goods and technology can be done through careful procurement planning.

Environmental protection can be enhanced by incorporating environmental protection factors in the evaluation process and liaising with the relevant environmental regulatory bodies. Examples of environmental protection factors that may be considered in the tender design and evaluation of bids, provided these factors are directly indicated in the bidding documentation, may include but not be limited to:

- (i) Carbon foot print;
- (ii) Level of forest degradation;
- (iii) Emission or spillage of toxic chemicals;



- (iv) The level of non bio-degradable waste;
- (v) Threat to levels of biodiversity; and
- (vi) Levels of radioactive materials.

Particularly in the specifications, these designs should be considered. Consultations with the environmental regulatory authority will be necessary.

3. OVERSIGHT, REGULATION AND POLICY

Topics
3.1 Parliament
3.2 Minister for Finance
3.3 Public Procurement Oversight Authority (PPOA)

Key Terms

- ❖ Designation of Authority
- ❖ Monitoring and Evaluation
- ❖ Inspection

3.1 PARLIAMENT

The Public Procurement and Disposal Act, 2005 is the main law governing Public Procurement in Kenya. This Act can only be amended by parliament. Parliament therefore has the responsibility of giving guidance on how public procurement should be conducted in the country by enacting appropriate laws.

The Act has established the Public Procurement Oversight Authority (PPOA) which is a body corporate.

The PPOA or the Authority has all the powers necessary or expedient for the performance of its functions. This is the body charged with the responsibility of oversight and regulating public procurement deriving its powers from the Act

Parliament through the Public Accounts Committee (PAC) shall oversee the performance of public procurement. To facilitate this the minister for finance shall table in the house an annual report on the performance of public procurement which shall be prepared by the Public Procurement Oversight Authority (PPOA) as required by section 20 (1) of the Public Procurement a Disposal Act 2005.

3.2 MINISTER FOR FINANCE

Section 140 of the Public Procurement and Disposal Act 2005 provides that the Minister shall make regulations generally for the better carrying out of the provisions of the Act. In compliance with this section the Minister issued the Public Procurement and Disposal Regulations 2006. The Regulations can only be amended by the Minister. The Regulations are very important in that they complement the Act and are part of the public procurement law. The PPOA has also been established under the Ministry of Finance.

3.3 PUBLIC PROCUREMENT OVERSIGHT AUTHORITY (PPOA)

The PPOA was established in January 2007 with the promulgation of management responsibility for the carrying out of procurement procedures and maintains its independence by avoiding participation in other procuring entities decisions on the evaluation of bids or the selection of bidders or contractors. It is the responsibility of

Individual Procuring Entities to manage the procurement process in accordance with the legal and regulatory required by the Public Procurement and Disposal Act 2005. In accordance with Section 8 of the Act, the PPOA is established as the principal body responsible for the regulation and oversight of public procurement practice and disposal in Kenya.

The PPOA operates under the advice of the Public Procurement Oversight Advisory Board (PPOAB) which amongst other things is responsible for ensuring that the PPOA meets all of its statutory requirements, reviewing and approving the strategic plan and budget for the PPOA.

(a) Role and Responsibilities of the Public Procurement Oversight Authority

The PPOA is responsible for the oversight, regulation and policy development of public procurement in Kenya. It has no operational or line requirements. It is also the responsibility of the PPOA to ensure that Procuring Entities do indeed adhere to these requirements. Specifically it is responsible for:

- (i) Policy initiation and dissemination;

Role and Responsibilities of the PPOA

- ❖ Policy Formulation
- ❖ Regulation
- ❖ Enforcing compliance
- ❖ Monitoring and Evaluation
- ❖ Capacity Building
- ❖ Data Management
- ❖ Public Sector-Private Sector Consultation
- ❖ Updating Procurement Thresholds and Authorities
- ❖ Providing Support to Procuring Entities
- ❖ Certification of Procurement Professionals

- (ii) Regulation of procurement practice and ensuring compliance with the legal and regulatory framework;
- (iii) Capacity building;
- (iv) Enforcing Compliance with the Act and regulations through investigations and the ordering of corrective actions;
- (v) Recommending to the Minister changes in procurement thresholds and authorities;
- (vi) Monitoring and Evaluation;
- (vii) Recommending amendments to the Public Procurement and Disposal Act and to the Regulations, if, when and where necessary;
- (viii) Convening the annual consultative meetings on public procurement;
- (ix) Providing clarification, support and help to Procuring Entities in the carrying out of procurement procedures; and
- (x) The maintenance of databases on procurement authorities and delegated authorities, procuring entities, units, tender committee memberships and debarred bidders

In order for the PPOA to function effectively it is incumbent on the Procuring Entities to cooperate fully with the PPOA and to comply with its directives and respond promptly and accurately to its reporting requirements and requests.

The PPOA will maintain an official website that will support the better carrying of procurement in Kenya with:

- (i) Updated Regulations, Manuals, Standard Bidding Documents, and Standard Procurement Forms;
- (ii) The announcement of all advertised Open Tenders, Restricted Tenders, Direct Procurement – open and Request for Proposal procurements and Disposals as may be necessary;
- (iii) The announcement of contract awards for all Open Tenders, Restricted Tenders, Direct Procurement and Direct Procurement – Emergency, except where classified security procurement;
- (iv) The announcement of training schedules on public procurement available to the private sector;
- (v) The announcement of any preference programs that the PPOA may have initiated and a clear set of preference eligibility requirements.
- (vi) Any other information necessary for public knowledge.

(b) Policy Function of the Public Procurement Oversight Authority

The PPOA has the responsibility of promoting sound procurement practice and the highest ethical standards in Kenya. These will be critical in the promotion of economic growth.

The PPOA promotes the following policy objectives:

- (i) Transparency and accountability in the procurement process;
- (ii) Wide participation in public procurement through:
 - Improved clarity in procurement documentation and forms;
 - Ready accessibility of procurement regulatory instruments, and procurement forms and documentation to the public; and

- Timely payment of invoices
- (iii) Setting procurement definitions, procedures, documentation and filing standards to facilitate an unambiguous basis for setting audit standards;
- (iv) Promoting the strict adherence of procurement practice to the Act and the Regulations.
- (v) Ensuring a sound balance between the promotion of competition, procurement control, transaction costs, administrative burden and process delay;
- (vi) Promoting economic efficiency and value for money procurement;
- (vii) Promoting good governance;
- (viii) Promoting the objectives of regional trade arrangements; and
- (ix) Ensuring that public procurement policy, systems and procedures are consistent with and integrated with other relevant Government policies, systems and procedures.

It is the role of the Procuring Entity and each participant to ensure that the procurement procedures are correctly adhered to and to ensure that the information is conveyed systematically and swiftly to the other officers involved in the Public Finance Management.

With regards to environmental protection and health and safety, the PPOA will promote the adoption of appropriate norms and standards through procurement.

(c) Monitoring and Evaluation Function

The PPOA is responsible for monitoring the application of the Act and the Regulations and evaluating the procurement capacity of the Procuring Entities. It is also responsible for monitoring and evaluating the impact of procurement policy initiatives that are implemented. In order to do so it must rely on the Procuring Entities to report on procurement activities as required by the Act and the Regulations in an accurate and timely manner and in accordance with its directives.

It is also responsible for monitoring and evaluating any special programs introduced such as preference programs, energy conservation programs, public private partnership programs, environmental protection programs and any other such programs.

The PPOA is responsible for monitoring the procurement capacity of each procuring entity and its organisation. For example, it will ensure that procurement professionals are hired for managing the procurement process in the Procuring Entities. The PPOA will report on a quarterly basis to the Advisory Board and the Minister on the findings of its Monitoring and Evaluation activities. This monitoring is an essential feedback mechanism that will serve for guiding policy making and for designing corrective measures in order to ensure that procurement is fully compliant with the laws and regulations of Kenya.

(d) The Capacity Building Function

The PPOA will determine the professionalism of procurement officers and members of Procurement and Tender Committees as part of its objective to develop a professional procurement cadre to carry out procurement to the highest standards and to ensure the delivery of services in accordance with Government policies.

The PPOA may work in cooperation with other appropriate public and non public sector organisations to define standards and to create the necessary training capacity. Capacity Building programs shall be developed by the PPOA with consideration of the differing needs of different Procuring Entities. In doing this consideration shall be given to:

- (i) Requirements for different levels and requirements for career progression for procurement officers;
- (ii) The differing types, volumes and complexity of procurement managed by different Procuring Entities and the needs and limitations of small Procuring Entities, where it may not be necessary or possible to employ a full-time designated professional procurement officer;
- (iii) The level of skills needed in the different Procuring Entity categories such as ministries, government agencies, government institutions, local government authorities, and state-owned enterprises; and
- (iv) The level of skills needed in central offices, versus provincial branches or district branches of Procuring Entities or within smaller facilities such as hospitals and schools.

The Development of a Professional Procurement Cadre can be achieved through appropriate training and certification

Data Management is important to achieving sound public procurement

For Help or Clarification on Public Procurement contact PPOA

(e) The Regulatory Function

The PPOA is responsible for regulating procurement practice in Kenya. It does so by issuing Standard Tender Documents, Procurement Manuals and Circulars for the better carrying out of procurement procedures, disposal of stores, equipment and other asset procedures the implementation of stores management, and inventory and distribution procedures. The Procuring Entities must adhere to the Act and the regulations directives issued by the PPOA. Further, the PPOA is responsible for specifying standardised procurement forms to facilitate and regulate the different steps and approvals within the procurement and disposal cycles.

Any legal and regulatory framework must evolve over time to take into account new and evolving technologies, improved management systems and improved financial administrative networks and infrastructure. Consequently the Act and the Regulations must be amended periodically. The PPOA is responsible for periodically updating the different procurement and authorisation thresholds for the different procurement methods and for the different types of Procuring Entity.

(f) The Data Management Function

The development of policy must be based upon current and comprehensive data. The PPOA has a responsibility to collect and process data and information pertaining to the practice and performance of procurement in Kenya. To facilitate its monitoring and evaluation functions, the PPOA may require Procuring Entities to submit reports on the procurement and disposal activities and to establish and maintain data and information bases concerning procurement.

The PPOA requires the Procuring Entities to submit information to facilitate the maintenance of current lists. Such information includes but may not be limited to Names of Head of Procuring Entities, Members of Procuring Units, Procuring Committees, Inspection and Acceptance Committees; Information on Delegated Procurement Authorities; and Information on Debarred Bidders

The PPOA may require the Procuring Entities to submit pricing information on items purchased and to maintain specific database. To that end, it will provide guidance to the procurement officers.

Procuring entities are required to submit the following information to PPOA on the implementation of the Public Procurement Act and the Regulations:-

- (i) Where they find difficulties in strictly following the given instructions.
- (ii) Where they engage a procuring agent and the procuring agent does not perform satisfactorily.
- (iii) Where they have written their internal procurement manuals submitting a copy of the same.
- (iv) Where a procurement contract is terminated providing full particulars.
- (v) Where the response for an open tender is less than three bidder giving particulars.
- (vi) Where evaluation of an open tender is not completed within 30 days as required by regulation 46.
- (vii) Where on the evaluation of an open or restricted tender all tenders are found to be non-responsive
- (viii) Where on evaluation, all the bids are found to be above the estimated and budgeted price and the contract cannot therefore be awarded.
- (ix) Any direct procurement of a value exceeding five hundred thousand shillings within 15 days after the notification of the award of the contract.
- (x) Any procurement pending bills which have not been paid sixty days after the payment due date.
- (xi) Every disposal made to a member of the procuring entity to be made by the Accounting Officer within fourteen days of the disposal.

All this information and others which may be gathered or requested by the PPOA shall be used by the PPOA for the purpose of continuous improvement of the public procurement system.

All procuring entities are required to submit a levy of 1.5% of the contract price of every procurement contract. Modalities of submission of the levy will be as communicated by PPOA.

(g) Clarification, Support and Help Functions of the PPOA

As part of a broader reform effort to enhance procurement in Kenya the PPOA maintains a Public Procurement and disposals Help Desk to provide both written and verbal help to explain procurement procedures to public officials as well as to the public. The objective is to provide the maximum level of transparency and improve the perception by the public that procurement is a clear, simple, accountable and professional affair.

The PPOA may use brochures and published guides to provide support as well as workshops on procurement open to the public to explain procurement procedures and requirements as part of a general capacity building function where the public may also be targeted.

The PPOA will report quarterly and annually to the Advisory Board and the Minister. These reports will rely on the information and data provided by the Procuring Entities. Therefore, it is important that the procurement entities report in a timely fashion to the PPOA.

(h) Enforcing Compliance with the Procurement Law and Regulations

All Procuring Entities are required by Section 101 of the Act to respond to written requests from the Director-General in writing with all due timeliness. The communications between the Procuring Entities and the Director-General may be made by e-mail or fax, provided that hard copies of the electronic communications are certified by the recipient's signature and maintained on file.

The Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of the Public Procurement and Disposal Act, the Regulations, the Standard Bidding Documents, the Procurement Manual or any Circulars or other written instructions of the Authority.

If the Director-General orders such an investigation a notification will be issued prior to the investigation to inform the Procuring Entity. The Head of the Procuring Entity and its entire staff must provide their full and complete cooperation with the PPOA Investigator. Such cooperation requires providing access to all of the documents and files that are required by Act and the regulation to be maintained for a particular procurement procedure.

Any Procuring Entity that does not have all of the documents required by the Procurement Act or Regulations or by this Manual to be maintained for a given procurement or disposal procedure shall be in serious breach of the Public Procurement and Disposal Act and the Regulations. The investigator shall make a report of the breach and form his own opinion.

The investigation of a procurement proceeding under order of the Director-General will not impact, influence or interfere with the audit work plan and schedule of the Controller and Auditor General, the Internal Auditor General or any other special audits that might be launched. It is a power of the PPOA to carry out its oversight function. The actions and corrective measures taken by the Director-General in responding to the recommendations of the Investigator will impact on any sanctions or penalties that may be applied to the Procuring Entity or any of its officers in accordance with the Public Procurement and Disposal Act or any other Acts.

For the purpose of carrying out an investigation of procurement proceedings ordered by the PPOA Investigators has the following powers:

The Investigator shall have access to all books, records, returns, reports and other documents of the Procuring Entity or a person who participated in the procurement proceedings, including electronic documents with the following exceptions:

- (i) Any procurement documents relating to the investigation;
- (ii) Where the documentation has been secured in locked premises for the purpose of an on-going audit or investigation.
- (iii) The investigator may make copies of any documents; and
- (iv) The Investigator may require any of the following to provide explanations, information and assistance:
- (v) An employee or official of the Procuring Entity; or

It is the legal obligation of the Procuring Entity to provide PPOA Investigators with all information and records requested for.

PPOA is responsible for classification of Procuring Entities. Every PE must know its class.

- (vi) An employee or official of a bidder who participated in the Procurement Proceedings.

The notification of an investigation to the procuring entity or bidder shall include the Terms of Reference of the impending investigation. The investigator shall present and discuss with the Head of the Procuring Entity his or her preliminary findings prior to completing his report.

It should be noted that the Investigators are not permitted to advise or comment upon on-going procurement proceedings and evaluations. This would be considered as a breach of the independence from the operational function that is to be carried out by the Procuring Entity.

If, after considering the report of an investigator, the Director-General is satisfied that there has been a breach of the Public Procurement and Disposal Act, the Regulations or any directions of the PPOA, the Director-General may, by order, do any one or more of the following:

- (i) Direct the Procuring Entity to take such actions as are necessary to rectify the contravention;
- (ii) Cancel the procurement contract, if any;
- (iii) Terminate the procurement proceedings; or
- (iv) Prepare a summary of the investigator's findings and recommendations and give a copy to the Procuring Entity or bidder under investigation, the Internal Auditor General, and the Auditor General and to the Kenya Anti-Corruption Commission established under the Anti-Corruption and Economic Crimes Act 2003 as the Director General may find it appropriate..

Before making an order the Director-General shall give the Procuring Entity and any other person whose legal rights the Director-General believes may be adversely affected by the order an opportunity to make representations.

(i) Classification of Procuring Entities

The PPOA is responsible for managing the designations of authorities for approving steps in the procurement cycle. It does so by maintaining a current list of all the Procuring Entities, indicating the type of Procuring Entity (whether it is a class A, B or C), the name of the Head of the Procuring Entity along with the complete list of delegated procurement authorities.

The PPOA is responsible for building capacity for carrying out the procurement in all of the Procuring Entities and to develop a cadre of procurement professionals to management the public procurement procedures in Kenya. In addition, the PPOA should facilitate and provide training for the private sector, including small and medium enterprises, in the application of public procurement procedures, the preparation of bids using standard bidding documents and other relevant topics. In organising such training, the PPOA may charge a fee where appropriate.

Chapter 4

RESPONSIBILITIES FOR PROCUREMENT AND DISPOSAL BY PUBLIC PROCURING ENTITIES

4 RESPONSIBILITIES FOR PROCUREMENT AND DISPOSAL BY PUBLIC PROCURING ENTITIES

Topics	
4.1	Organisation of Procuring Entities.
4.2	Responsibilities of the Accounting Officer/Head of Procuring Entity.
4.3	Responsibilities of the Procurement Unit.
4.4	The Procurement Committee.
4.5	The Tender Committee.
4.6	Tender Evaluation Committee.
4.7	Inspection and Acceptance Committee.
4.8	Responsibilities of the End User Department
4.9	Tender Opening Committee.

Key Terms

- ❖ Procuring Entities
- ❖ Procuring Units
- ❖ Procuring Committees
- ❖ Tender Committees
- ❖ Evaluation Committee
- ❖ Inspection and Acceptance Committee
- ❖ The Appeal and Review Board
- ❖ Public Procurement Oversight Authority
- ❖ Accounting Officer
- ❖ Head of User Department
- ❖ Disposal Committee
- ❖ Classes of PEs



4.1 ORGANISATION OF PROCURING ENTITIES

The different procedures and functions in carrying out procurement are required to be undertaken within an institutional framework. It is important to understand the institutional arrangements and to ensure cooperation if the objectives of sound procurement are to be met. This chapter presents the institutional arrangements and responsibilities for effecting procurement in a procuring entity, in particular:

- (i) The public procuring entities legal definition and organisation
- (ii) The role of the accounting officer and of the procurement unit
- (iii) The role of the head of user department
- (iv) The roles of the tender and procurement committee.
- (v) The roles of the technical and financial evaluation committees
- (vi) The role of the inspection and acceptance committee and
- (vii) The role of disposal committee.

The institutional arrangements describe the framework within the public sector to effect procurement and to determine the subset of eligible members of the market (i.e. the private sector) for the procuring entity to do business with. Of course, in determining the eligibility criteria, one needs to ensure that there is no prejudice whatsoever based upon any type of social discrimination.

The objective of this section is to guide the procuring entities on the required institutional arrangements for effecting procurement, and to specify the roles and responsibilities within the procuring entity. It details out the structure, the roles and functions of each of the parties involved in the procurement and disposal process.

It is the primary responsibility of a Procuring Entity to ensure that the Public Procurement and Disposal Act, the Regulations, Standard Bidding Documents, Manuals and any directions of the PPOA are complied with respect to each and all of its procurements and disposals. The Accounting Officer, the Head of the Procuring Entity and each of its employees and each

member of a board or committee of the Procuring Entity must ensure, within their areas of responsibility that the Public Procurement and Disposal Act, the Regulations, Standard Bidding Documents, this Manual and any directions of the Authority are complied with.

4.2 RESPONSIBILITIES OF THE ACCOUNTING OFFICER/HEAD OF PROCURING ENTITY

A) RESPONSIBILITIES OF THE ACCOUNTING OFFICER:

The Accounting Officer of a Public Entity has the overall responsibility for the execution of the procurement process in the Public Entity, and specifically, amongst other things shall be responsible for:

- (a) Ensuring that Heads of Procuring Entities within the purview of the public entity shall comply with the provisions under the Procurement and Disposal Act and the Regulations;
- (b) Ensuring that Procuring Entities establish a tender committee in accordance with the Public Procurement and Disposal Act and the Regulations;
- (c) Ensuring that Procuring Entities establish a procurement unit staffed to an appropriate level with procurement professionals;
- (d) Signing contracts for the Public Procurement and Disposal activities on behalf of the Procuring Entity for contracts entered into in accordance with the Act and the Regulations;
- (e) Ensuring that the procurement plans are approved and reviewed as necessary;
- (f) Any other functions provided for in the Public Procurement and Disposal Act, the Regulations or as may be directed by the PPOA.

The Accounting Officer may delegate certain responsibilities to other staff in order to carry out the requirements of the Public Procurement and Disposal Act, Regulations, Standard Bidding Documents, Manuals and directions of the PPOA.

“Procuring entity” is defined by the section 3 of the Public Procurement and Disposal Act 2005 as a public entity making a procurement to which the Act applies.

“Public Entity” is defined by the same section and includes:-

- (i) The government or any department of the government.
- (ii) The courts.
- (iii) The commissions established under the constitution.
- (iv) A local authority under the Local Government Act.
- (v) A state corporation.
- (vi) Central Bank of Kenya.
- (vii) A co-operative society
- (viii) A public school.
- (ix) A public University
- (x) A college or other educational institution maintained or assisted out of public funds or
- (xi) An entity prescribed as a public entity.

The public entities were classified by the Public Procurement Oversight Authority in gazette notice No 719 of 24th January, 2007 as follows:-

Class ‘A’

- State Corporations
- Ministries

Class ‘B’

- City councils (Nairobi, Mombasa, Kisumu)
- Co-operative Societies
- Universities

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- Colleges
- Judiciary
- Commissions
- Parliament
- District
- Provincial Hospitals
- Semi-Autonomous Government Agencies

Class 'C'

- Other Local Authorities (Municipal, Country, Town Councils)
- Schools
- District Hospitals, Sub-District Hospitals
- Health Centres/Dispensaries
- Polytechnics
- Constituency Development Fund Committees
- Voluntary Organizations/Institutions

The classification is not permanent and the procuring entities are required to be on the lookout for any changes that may be made. Any procuring entity which is not sure of its Class is advised to consult the PPOA. Regulation 3 of the Public Procurement and Disposal regulations 2006 in addition provides that "For the purpose of section 3 of the Act, Public Entity shall include -:

- (i) Any body that uses public assets in any form or contractual undertaking including public private partnership.
- (ii) A company owned by the public entity to carry out functions that would have otherwise been performed by the public entity and
- (iii) Any body in which the government has a controlling interest.

Regulation 6 (3) of the Public Procurement and Disposal Regulations 2006 provides that "The Authority shall by notice in gazette, classify procuring entities either as Class A, Class B or Class C, for the purposes of the 1st schedule".

B) RESPONSIBILITIES OF THE HEAD OF PROCURING ENTITY:

The definition of a procuring entity has been given in paragraph 4.1 The person heading that procuring entity is the one referred to as the head of procuring entity for the purpose of the Act, the Regulations, the Manual or any directions issued by the PPOA.

Further section 3 of the Public Procurement and Disposal Act 2005 defines "Accounting Officer" as;

- (i) For a public entity other than a local authority, the person appointed by the Permanent Secretary to the Treasury as the accounting officer or, if there is no such person, the chief executive of the public entity.
- (ii) For a local authority, the town clerk of the local authority.

It should be well noted that some heads of procuring entities are also accounting officers when others are heads of procuring entities but are not accounting officers because they have not been appointed as such.

It is therefore clear that the responsibilities of the accounting officers and those of the heads of procuring entities are the same for the purpose of the Act the Regulations, this Manual and any directions issued by the PPOA.

Basically the following are the responsibilities of the head of procuring entity-;

- i. Establishing a tender committee in accordance with the procurement law and regulations;

- ii. Establishing a procurement unit staffed to an appropriate level with procurement professionals;
- iii. Appointing a procurement committee;
- iv. Appointing an inspection and acceptance committee;
- v. Signing contracts for the procurement and disposal activities on behalf of the procuring entity for contracts entered into in accordance with the Act and the Regulations;
- vi. Ensuring that the procurement plans are prepared.
- vii. Ensuring all contracts are complied with;
- viii. Issuing as appropriate Administrative Guides to clarify and implement Circulars issued by the PPOA;
- ix. Report to the PPOA in accordance with directives of the PPOA;
- x. Cooperate fully with any and all investigations launched by the PPOA;
- xi. Ensuring that all procurement procedures are properly documented and records and procurement and disposal files maintained in a secure location; and
- xii. Any other functions provided for in the Public Procurement and Disposal Act, the Regulations or as may be directed by the PPOA.

4.3 RESPONSIBILITIES OF THE PROCUREMENT UNIT:

In order to carry out and manage the procurement procedures each Procuring Entity shall establish a Procurement Unit and, where appropriate, subsidiary Procurement Units. The size and level of staffing of the Procurement Unit, and any subsidiary Procurement Units, shall be determined by the procurement and disposal workload of the Procuring Entity, taking into account the volume, value, complexity and type of procurement and disposal conducted.

The Procurement Unit must be staffed with procurement professionals and may include staff with relevant technical skills, where a Procuring Entity has a significant volume of specialised procurement or procurement requiring significant technical input.

The Procurement Unit shall be responsible for ensuring that any authorization specified in Schedule I –The Procurement Thresholds Matrix of the Regulations and as specified in this Manual is strictly complied with.

Members of the Procurement Unit shall be appointed in accordance with the normal procedures applicable to the Procuring Entity, taking into account the certification and approval requirements which may be issued by the PPOA.

The head of the procurement unit shall be a procurement professional who shall report directly to the accounting officer or the head of the procuring entity.

Functions of Procurement Units:

There are many functions and responsibilities that are to be carried out by the Procurement Unit. Below are listed the main functions and responsibilities. They include, but are not limited to the following:

- a. Maintain any standing lists of bidders or lists of pre-qualified bidders required by the Procuring Entity and liaise with the Authority in respect of the Authority's register of suppliers;
- b. Prepare, publish and distribute invitations to pre-qualify, pre-qualification documents and invitations to express interest;
- c. Receive, open and safeguard applications to pre-qualify and expressions of interest;
- d. Evaluate applications to pre-qualify and assess expressions of interest;
- e. Propose shortlists and lists of pre-qualified bidders to the Procurement Com-

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- mittee for approval;
- f. Issue bidding documents to candidates
- g. Propose the membership of Evaluation Committee to the Accounting Officer for approval;
- h. Coordinate the evaluation of bids;
- i. Participate in or advise Evaluation Committee, as and where appropriate;
- j. Recommend a negotiating team for appointment by the accounting officer where negotiations are allowed by the Act and the Regulations and participate in negotiations;
- k. Prepare and publish notices of proposed award and notices of bid acceptance;
- l. Prepare contract documents, in line with the award decision;
- m. Prepare and issue rejection and debriefing letters;
- n. Prepare contract variations and modifications;
- o. Ensure that procurement and disposal documents are issued and that records are maintained, in accordance with the Regulations. Maintain and archive documents and records of the procurement and disposal record for the required period;
- p. Provide information, as required, for any petition or investigation to debar a bidder or contractor or any investigation under review procedures;
- q. Manage all Public Procurement and Disposal Activities of the procuring entity;
- r. Implement the decisions of the Tender and Disposal Committees including coordinating all activities of the tender committee;
- s. Act as a secretariat to the Tender and Disposal Committees ;
- t. Liaise with the Authority and other bodies on matters related to procurement and disposal;
- u. Co-ordinate the advertising of procurement and disposal opportunities;
- v. Prepare and submit to the Authority reports required under the Public Procurement and Disposal Act, the Regulations and guidelines of the Authority;
- w. Monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;
- x. Report any significant departures from the terms and conditions of the contract to the Accounting Officer;
- y. Recommend for delegation of a procurement or disposal function to another entity by the accounting officer whenever a need arises;
- z. Prepare consolidated procurement and disposal plans;
- aa. Advise the Procuring Entities on aggregation and economies of scale buying;
- bb. Co-ordinate internal monitoring and evaluation of the supply chain function;
- cc. Carry out market survey prior to placing of orders or adjudication by the Tender Committee;
- dd. Conduct periodic and annual stock taking;

- ee. Certify the invoices and payment vouchers to suppliers;
- ff. Verify that available stock levels warrant initiating a procurement process;
- gg. Carry out any other functions and duties as are provided under the Public Procurement and Disposal Act and the Regulations and any other functions that might be prescribed in Circulars issued by the PPOA.
- hh. In conducting its functions, the Procurement Unit shall at all times liaise with the following:
 - i. The end user who initiated the procurement, to ensure that the procurement meets its needs;
 - ii. The Procurement, Tender or Disposal Committee, to ensure that all required approvals are obtained promptly; and
 - iii. The PPOA and other oversight bodies, to share appropriate information and facilitate the conduct of monitoring and other PPOA functions.

4.4 THE PROCUREMENT COMMITTEE

Procurement Committees have the responsibility of ensuring that the selection of bidders are based on fair competition and in compliance with the legal and regulatory framework for the supply of goods works and services below the Tender Committee threshold. In this section the requirements for establishing a Procurement Committee is presented. The section also outlines the role and responsibilities of Procurement Committees. The opening of requests for qualifications by the procurement committee shall be by the procurement unit and the user departments. The secretary to the procurement committee shall prepare the agenda for the procurement committee meetings.

(a) Establishment of Procurement Committees

In each Procuring Entity, a Procurement Committee must be established to manage procurement requirements below the threshold set for the Tender Committee in accordance with Schedule I –The Procurement Thresholds Matrix of the Regulations. It is worth noting that typically this corresponds to the greater volume of procurement procedures and so represents a considerable work responsibility.

The Procurement Committee shall be composed of the following:

- i. An official delegated by the head of the procuring entity or the accounting officer, who shall serve as the chairman of the committee.
- ii. The finance officer or an officer carrying out related functions.
- iii. Three other members appointed by the head of the procuring entity or the accounting officer.
- iv. A secretary who shall be an officer appointed by the head of the procurement unit.

The procurement committee may be permanent or ad hoc provided the appointment of the members of the committee is provided by regulation 13 of the Public Procurement and Disposal regulations 2006.

All meetings of the Procurement Committee must be fully documented in recorded minutes which must be dated and signed by the chairman and the secretary after confirmation by all the members present. An original copy must be maintained in the Procurement File.

If a member is unable to attend a meeting, he should delegate his authority to an appropriate senior official, who shall attend the meeting in his or her place, and consign his delegation in writing. The letter should be recorded in the minutes and attached. The chairman shall not delegate his authority to any other person.

It is the responsibility of the member who is delegating authority to ensure that it is to an official with appropriate skill and experience to represent the member adequately at a meeting of the Procurement Committee.

(b) Approvals by Procurement Committees

The Procurement Committee is responsible for reviewing the submission of the Procurement Unit for a particular procurement requirement. It either accepts or rejects the recommendation made by the Procurement Unit. In making its decision, the procurement committee shall state the reasons for rejection or for clarifications and minor amendments. It must not request substantial modification to the procurement requirement and should not interfere with the award process. If a situation calls for substantial modification of the procurement requirement then the procurement procedure must be cancelled and a new procedure be initiated.

If the procurement committee has rejected a procurement requirement submitted by the procurement unit, the procurement unit may resubmit the application with new information. The procurement committee cannot dismiss a submission on the basis of being a resubmission.

All decisions of a procurement committee, including reasons for any rejections, will have to be recorded and notified to the procurement unit in writing.

Where any contract award or contract modification is beyond its authority level, the procurement committee shall verify the submission made and promptly submit it to the tender committee, it should not attempt to deal with the case, recommend a course of action any other than submission to the tender committee, nor attempt to divide the submission to remain below the tender committee threshold.

(c) Procurement Committee Meetings

The meetings should be attended by at least three members of the Committee inclusive of the Chairman, or their nominated representatives (quorum). Decisions shall be by consensus and where consensus cannot be achieved, the decision shall be through voting by simple majority and where there is a tie, the chairman shall have a second vote or casting vote.

The members, including the Chairman, should declare immediately any conflict of interest or potential conflict of interest in any submission. In such a case, he or she should leave the meeting while the matter is considered and should not participate in the deliberations or decision-making process of the Committee in relation to that particular submission.

For technical and other matters, the Procurement Committee may summon independent advisers or members of the Procurement Unit to explain submissions or provide technical advice, where required.

The meetings should be minuted by the secretary of the Procurement Committee; in particular the following matters should always be clearly detailed:

- i A register of attendance;
- ii The date;
- iii A list of all submissions considered;
- iv The decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- v A note on the basis for any evaluation made
- vi Any conflicts of interest declared by members; and
- vii Any dissenting opinions among Procurement Committee members.

The quorum of a meeting of the procurement committee shall be the chairman and at least two other members. With the approval of the chairman a meeting of the procurement committee may be held chaired by a member appointed by the other members. The quorum must however be three including the chairman.

The procurement committee shall prepare quarterly reports of contracts awarded during the period which shall be presented to the tender committee and management for necessary action. The report shall contain at least the following information.

- i Date of contract.

- ii Contract item.
- iii Contract sum.
- iv Contractor's name.
- v Total sum of all the contracts awarded during the period.

The procurement committee shall receive feedback from the procurement unit or the user departments where the contractors awarded contracts fail to perform for its directions or advise. The procurement committee shall refer any matters which are difficult to deal with to the appointing authority for necessary action.

4.5 THE TENDER COMMITTEE

Tender Committees have the responsibility of ensuring the selection of bidders are based on fair competition and in compliance with the legal and regulatory framework for the supply of goods works and services above the Tender Committee threshold. In this section the requirements for establishing a Tender Committee is presented. The section also outlines the role and responsibilities of Tender Committees.

(a) Establishment of the Tender Committee

In each Procuring Entity, a Tender Committee should be established. The composition of Tender Committees for different types of Procuring Entities is set out in Schedule II of the Regulations. Each member of the Tender Committee can delegate his authority to an alternate who shall be appointed in accordance with Schedule II of the Regulations. Where any member is unable to attend a meeting of the Tender Committee the alternate has to attend.

The functions of the tender committee are given in regulation 10 (2) of the Public Procurement and Disposal Regulations 2006.

The role of the Tender Committee is to perform the following functions:

- i. To review, verify and ascertain that all procurements have been undertaken in accordance with the Public Procurement and Disposal Act and Regulations, this Manual and the terms set out in the bidding documents;
- ii. To award procurement contracts where the value exceeds the threshold prescribed in Schedule I – the Procurement Thresholds Matrix;
- iii. To approve variations of contracts previously awarded in accordance with the terms and conditions spelled out in this Manual;
- iv. To approve extension of the tender validity period in accordance with the Regulations and this Manual;
- v. To ensure the availability of funds for the procurement under consideration;
- vi. To ensure that the Procuring Entity does not pay excessive prices;
- vii. Where aggregation has been used to review and approve the justification for such aggregation;
- viii. Where lots have been proposed to review and approve the justification for the use of such lots;
- ix. To review the selection of procurement method and where a procurement method other than Open Tender has been used to review and approve the justification for the adoption of the procurement method in accordance with the Procurement Threshold Matrix;
- x. To consider recommendations made by the Tender Evaluation Committee;
- xi. To approve the amendment of contracts in accordance with the terms and conditions spelled out in the Regulations and in this Manual; and
- xii. To undertake any other functions and duties as provided under the Act, the regulations, the manual or instructions issued by the PPOA.

(b) Approvals by Tender Committees

The Tender Committee is responsible for reviewing the submission of the Procurement Unit and of the Tender Evaluation Committee for a particular procurement requirement in accordance with the authority thresholds set in the Procurement Threshold Matrix. In making its decision, the Tender Committee shall state the reasons for rejection or for clarifications and minor amendments. It should not request substantial modification to the procurement requirement and should not interfere with the award process.

If the Tender Committee has rejected a procurement requirement submitted by the procurement unit or an evaluation report submitted by the Tender Evaluation Committee, the procurement unit may resubmit the application with new information. The Tender Committee cannot dismiss a submission on the basis of being a resubmission.

All decisions of a Tender Committee, including reasons for any shall be recorded and notified to the Procurement Unit or the Tender Evaluation Committee in writing and in such a manner as to guide their work to re-submit their report or procurement requirement. It is clarified that the secretary of the tender committee is not a member of the tender committee and shall not participate in the deliberations or vote in the tender committee meetings.

(c) Agenda of the Tender Committee

The secretary of the tender committee shall prepare the agenda for every item that will be adjudicated by the tender committee to ease the work of the committee. The purpose of Agenda is to ensure that the tender committee is given all necessary and accurate information for the purpose of adjudication and making informed decisions. The item of agenda shall have the following format:

- i. Title.
- ii. Purchase item.
- iii. Background information.
- iv. Invitation of bids.
- v. Submission and opening of bids.
- vi. Evaluation of bids.
- vii. Secretariat comments.
- viii. Request to the committee.

The secretary must ensure that the agenda is brief, comprehensive accurate and informative to facilitate speedy execution of the business of the tender committee.

(d) Tender Committee Meetings

All Tender Committee meetings have to be attended by at least at least five members of the Committee inclusive of the Chairman, or their nominated alternates, forming the quorum. The decisions of the Tender Committee should be reached by consensus or through voting by simple majority, or where there is a tie, the Chairman shall have a second or casting vote.

The members, including the Chairman, should declare immediately any conflict of interest or potential conflict of interest in any submission. In such a case, he or she should leave the meeting while the matter is considered and should not participate in the deliberations or decision-making process of the committee in relation to that particular submission. Rules on the tender committee are provided in regulations 10, 11 and 12.

The meetings should be minuted by the secretary of the Procurement Committee; in particular the following matters should always be clearly detailed:

- i. A register of attendance;
- ii. The date;
- iii. A list of all submissions considered;
- iv. The decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- v. A note on the basis for any evaluation made
- vi. Any conflicts of interest declared by members; and
- vii. Any dissenting opinions among Tender Committee members.

The minutes of the tender committee shall take the form of the agenda but will have as added item of the decision of the tender committee. The decision of the tender committee must be very clearly recorded. Full particulars of the contract award must be recorded. The following information should be provided.

- i. Particulars of the procurement item.
- ii. The contract sum.
- iii. Full particulars of the contractor.

- iv. Duration of the contract or delivery period.
- v. Other critical terms and conditions of the contract.

The Invitation of Observers and Advisers to Tender Committee Meetings

The Tender Committee may summon independent advisers or members of the Procurement Unit to explain submissions or provide technical advice, where required.

Regulations 12 (8) provides that to enhance transparency of the procurement process the procuring entity shall invite in addition to the representatives of various departments, at least two observers to attend its meeting in a case where the cost of the contract is estimated to be above fifty million shillings (Ksh. 50,000,000).

Regulation 12 (9) provides that at least one of the observers invited under paragraph (8) shall come from a duly recognized private sector organization or discipline relevant to the procurement under consideration. Regulation 12 (10) provides that, the failure of an invited observer to attend a meeting shall not nullify the procurement proceedings.

The following are clarified in regard to the observers.

- i. The anticipated observers to be invited are to be decided on by the procuring entity and are expected to be stakeholders without vested interest or conflict of interest in the subject matter of procurement.
- ii. The observers may include representatives of such known professional or private sector organizations like Kenya National Chamber of Commerce and Industry, the media, Kenya Association of Manufacturers (KAM) or registered non-governmental organizations.
- iii. The observers invited are expected to attend as invited stakeholders who will be in attendance and will not participate in the deliberations of the tender committee.
- iv. As stakeholders the procuring entity shall not be expected to make any payments to the observers for their attendance unless the internal regulations of the procuring entity expressly provides for such payments or fees.

The observers may prepare reports indicating their observations made on the procurement proceedings conducted by the Tender Committee of the Procuring Entity. Note that the observers have to be informed in good time before the date of the meeting to ensure they can participate. Letters of invitation form part of the records to be kept in the file. The report of the observers will be kept on file but cannot be shared with any other organisation, including the observer's organisation. The divulgence of information that would prejudice legitimate commercial interests or inhibit fair competition is considered an offence under section 44 (1) (b) the Public Procurement and Disposal Act 2005. The reports of the observers where made should be copied to the D.G. PPOA.

4.6 TENDER EVALUATION COMMITTEE

The main role of the Tender Evaluation committee is to select bids based upon technical and financial considerations the best submittal for a particular procurement request. It is important that the Tender Committee has the appropriate competence to properly assess the bids and it is crucial that the highest ethical standards be applied in carrying out their duties.

Establishment and Composition of the Tender Evaluation Committees

Regulation 16 (1) of the Public Procurement and Disposal Regulations 2006 provides that . For each procurement with the threshold of the tender committee, the procuring entity shall establish an evaluation committee for the purpose of carrying out the technical and financial evaluation of the tenders or proposals. This has the meaning that for every contract award made by the tender committee there must be an evaluation report made by an evaluation committee. Every procuring entity and particularly every tender committee must understand this requirement. Regulation 16 (2) provides that an evaluation committee established under paragraph (1) may comprise

- (i) A separate financial evaluation committee and a separate technical evaluation

- committee; or
- (ii) A combined financial and technical evaluation committee.

It is therefore very critical for the procuring entity to decide how the evaluation of the procurement will be done and provide for it in the bidding documents. This is very important because the evaluation criteria to be applied to any procurement must be provided for in the bidding documents. Regulation 16 (3) provides that an evaluation committee shall consist of a chairman and at least two other members all appointed by the accounting officer or the head of the procuring entity upon recommendation of the procuring unit.

Any member of staff can be appointed to be a member of an evaluation committee provided the person is capable of performing the work of the evaluation committee.

Regulation 16 (4) provides that ‘no person shall be appointed under paragraph (3) if such a person is a member of the tender committee of the procuring entity. It is here clarified that an alternate member of the tender committee may be appointed to be a member of an evaluation committee subject to that alternate member not participating in the tender committee meeting in which the subject procurement is adjudicated.

A member of an evaluation committee should have the following:-

- i Knowledge of the overall operations of the procuring entity;
- ii Knowledge of the technical aspects of the procurement such as engineering, architecture, medical and pharmaceutical sciences, agriculture, information and communications technology and software development;
- iii Knowledge of the accounting and financial principles to secure accurate financial evaluation.

(b) Functions of the Technical Evaluation Committee

The Technical Evaluation Committee is responsible for the technical evaluation of the bids received. It has to ensure strict adherence to the compliance and evaluation criteria set out in the bidding documents. This is a critical function that requires technical skills, independence and understanding of the procurement requirement. No additional evaluation or compliance criteria outside of the criteria explicitly stated (i.e. written clearly in a specific section of the bidding document to inform the bidders on the rating scheme and scale) in the bidding documents may be incorporated into the evaluation process. The technical evaluation committee must complete its report written within thirty days after the opening of tenders.

The evaluation process is first and foremost a professional independent assessment of each bid and as such has to be performed by each evaluator independently prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the Technical Evaluation Committee. Three steps are necessary. These are:

- i. Reviewing, analysing and making such diligence as deemed necessary for each bid to rate it accordingly to the grid established in the bidding document independently
- ii. Making a comparative analysis of all the bids received prior to finalising his or her rating;
- iii. Sharing his or her analysis, questions and evaluation including his or her rating with the other members of the Technical Evaluation Committee.

The Technical Evaluation Committee shall then prepare a report on the analysis of the bids received, the ratings assigned by each member, the debate and dissension amongst members and the final ratings assigned to each bid (average of the final individual scores assigned by each member of the Evaluation Committee) and submit the report to the Tender Committee through the secretary. The report must include clear recommendations to the Tender Committee to select the most qualified bidder or bidders, pending financial evaluation. Where appropriate, the Technical Evaluation Committee may seek clarification on the bids from the bidders provided that such clarification is not for the purpose of introducing any new changes to the submission.

The members of a Tender Evaluation Committee should not enter into direct communication

with any of the bidders participating in a bid that such Tender Evaluation Committee is considering under any circumstances. In the event that a bidder has a contact with a member of the Tender Evaluation Committee, such contact and the circumstances surrounding such contact shall be reported in writing immediately to the appointing authority.

(c) Functions of the Financial Evaluation Committee

The Financial Evaluation Committee shall be responsible for the financial evaluation of the bids received. It has to ensure strict adherence to the compliance and evaluation criteria set out in the bidding documents. No additional evaluation or compliance criteria outside of the criteria explicitly stated (i.e. written clearly in a specific section of the bidding document to inform the bidders on the rating scheme and scale) in the bidding documents may be incorporated into the evaluation process. The evaluation has to be carried out within a period of five days from the date of completion of the technical evaluation. The financial evaluation committee shall use the technical evaluation report in carrying out its evaluation.

It is here clarified that where the evaluation is by a separate technical evaluation committee and a separate financial evaluation report, the technical evaluation report shall be given to the financial evaluation committee directly without sending it to the tender committee. The tender committee shall be given the Technical evaluation report and the Financial report at the same time together with the agenda prepared by the secretary to the tender committee.

It is further clarified that where the evaluation is by an evaluation committee which is mandated to carry out both technical evaluation and financial evaluation, the evaluation committee must complete its work within thirty five days from the date of opening of tenders. It is important to note that evaluation of tenders may be complex and difficult. Apart from taking good care in appointing the members of the evaluation committee it is important that the evaluation committees are appointed early enough to start the evaluation immediately after the opening of bids.

Each member of the Financial Evaluation Committee evaluates each bid independently. The financial evaluation is a two-step process:

- i. **Step 1:** Review, analyse and make such diligence as deemed necessary for each bid to verify the accuracy, completeness and compliance to the bidding documents of the financial proposal;
- ii. **Step 2:** Share its analysis, questions and evaluation including its rating with the other members of the technical evaluation committee.

The financial evaluation committee shall then prepare a report on the analysis of the bids received, the ratings assigned by each member, the debate and discussions amongst members and the final recommendation of the contract award to the winning bid.

Regulation 16 (7), (8), (9) and (10) gives instructions of the Financial evaluation of bids. It is here clarified that the Financial Evaluation Committee may seek clarifications from any bidder regarding the bid including correction of arithmetic errors provided that this will not lead to making any changes to the submitted bids.

4.7 THE INSPECTION AND ACCEPTANCE COMMITTEE

Not ensuring the complete delivery and that a delivery is in complete compliance with the contract specifications has been identified as a major source of losses and which also undermines the objective of achieving value for money. The Inspection and Acceptance Committee serves as an important element to ensure that goods, works and services received are fully in accordance with the terms of the procurement contracts.

(a) Establishment of the Inspection and Acceptance Committee

An Inspection and Acceptance Committee has to be established in each Procuring Entity to enable to inspect and where required; to test goods received, or to inspect and review services, works and consulting and design in order to certify compliance with the terms and specifications of the contract and accept or reject on behalf of the Procuring Entity the delivered goods, works, services or consultancy services.

The composition of the Inspection and Acceptance Committee is as follows:

Regulation 17 (2) of the Public Procurement and Disposal Regulations 2006 provides that “The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendations of the procuring unit”. It is here clarified that for the purpose of efficiency and practicability flexibility is allowed. In this regard the inspection and acceptance committee may be permanent or ad hoc. Membership is also open to all members of staff with the relevant technical skills and subject to them being able to handle the responsibility of inspecting and accepting or rejecting the procurement object.

All three members should be present and sign the minutes and reports of the committee of meetings.

Consultancy services may be excluded from inspection by AIC where the PE delegates inspection and acceptance to the contract manager

(b) Functions of the Inspections and Acceptance Committee

Regulation 17 (3) provides that the inspection and acceptance committee shall immediately after the delivery of the goods, works, or services

- (i) Inspect and where necessary test the goods received.
- (ii) Inspect and review the goods, works, or services in order to ensure compliance with the terms and specifications of the contract.
- (iii) Accept or reject on behalf of the procuring entity, the delivered goods, works, or services.

Regulation 17 (4) provides that the inspection and acceptance committee shall ensure that:

- (i) The correct quantity has been received.
- (ii) The goods, works, or services meet the technical standards defined in the contract.
- (iii) The goods, works, or services have been delivered or completed on time, or that any delay has been noted.
- (iv) All required manuals or documentation have been received and
- (v) Issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

It is here clarified that proper and effective management of procurement contracts will make the work of the inspection and acceptance committee a lot easier. Procuring entities should therefore make a clear distinction between the procurement contracts management and inspection and acceptance committee which should be distinct but may collaborate in the performance of their responsibilities. This committee is very important and no procurement object will be accepted or payment processed without its approval. The threshold for inspection and acceptance committees for the different classes of procuring entities are provided for in the 1st schedule threshold matrix of the Public Procurement and Disposal Regulations 2006.

4.8 RESPONSIBILITIES OF THE USER DEPARTMENT

The end user department is not a creation of the Act or the Regulations, however it is an important element of a procuring entity as the end user departments are the structures which make up the procuring entity.

The Act and the Regulations recognise this and hence the end user department is assigned specific responsibilities in the procurement process. Of particular emphasis is team work which is called for in section 26 (1) of the Act which requires that “For the purpose of ensuring that its decisions are made in a systematic and structured way, a public entity shall establish procedures to provide for the making of decisions, on behalf of the public entity, relating to procurement”.

Regulation 9 provides that a user department shall be responsible for -:

- (i) Initiating procurement and disposal requirements and forwarding them to the procurement unit.
- (ii) Participate in the evaluation of tenders, proposals and quotations.
- (iii) Reporting any departure from the terms and conditions of the contract to the procurement unit.
- (iv) Forwarding details of any required variations to contracts to the procurement unit for consideration and action.
- (v) Maintaining and archiving records of contract management.
- (vi) Preparing any reports required for submission to the procurement unit, the procurement committee, the tender committee, the head of procurement entity or the accounting office.
- (vii) Undertaking conformity assessment of supplied goods works and services with the specifications of the contract documents.
- (viii) Endorsing the issuance of goods, works and services received notes.
- (ix) Preparation of technical specifications and submitting the same to the procurement unit.
- (x) Assisting in the preparation of procurement and disposal plans.
- (xi) Making clarifications on tenders, request for quotations and any other matter as may be required and
- (xii) Carrying out any other functions and duties as may be provided under the Act or these Regulations or may be stipulated by the Authority.

The procuring entities should therefore note that departments are not passive observers in the procurement process wanting to be supplied with their requirements. They must be actively involved all the way from the time of budgeting and procurement plans to the inspection and acceptance of the procurement object.

4.9 TENDER OPENING COMMITTEE

The tender opening committee is another important element in the procurement process.

Section 60 (1) of the Acts provides that “The accounting officer shall appoint a tender opening committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed -

- (a) The committee shall have at least three members and
- (b) At least one of the members shall not be directly involved in the processing or evaluation of tenders.

It is here clarified that the tender opening committee is distinct from the evaluation committee. It is also clarified that a person can be appointed to be a member of both the evaluation committee and the tender opening committee. The procedure of opening tenders is provided in chapter 7.

Chapter 5

ELIGIBILITY AND QUALIFICATION OF BIDDERS

5 ELIGIBILITY AND QUALIFICATION OF TENDERES/ BIDDERS

Topics
5.1 Eligibility
5.2 Qualifications
5.3 Qualifications Procedures
5.4 Pre-Qualification Procedure
5.5 Post Qualification Procedure
5.6 Pre-qualified Standing Lists
5.7 Pre-qualification Announcement
5.8 Pre-qualification Document
5.9 Evaluation of Applications
5.10 Debarment form Participating in Public Procurement Proceedings

Key Terms

- ❖ Eligibility
- ❖ Compliance Criteria
- ❖ Debarment
- ❖ Standing Lists

5.1 ELIGIBILITY

Procurement serves as one window through which the public sector interacts with the private sector. How such interaction is managed is very important in fostering a sense of fairness and widening the base of participation by the private sector in public procurement.

Clearly, public procurement should only be carried out with bidders who are legal entities and who have not been debarred from carrying out public procurement. In this Chapter the criteria for selecting eligible bidders is presented and the basis for ensuring that bidders are properly screened so as not to introduce bias and unfairness to the selection process while ensuring that only eligible bidders are included.

The details on the eligibility and qualification of bidders are worked out to ensure that all bidders are entitled to bid and that the competition is fair amongst comparable entities and that these entities are legally established and can enter into enforceable contracts with public institutions.

The eligibility criteria should be clearly stated in the bidding documents for each procurement. To ensure that these criteria are met, signed statements or documentary evidence may be requested to certify the eligibility. Consideration should be given to time and costs constraints when requesting documentary evidence as obtaining up-to-date certificate from several administration may take time.

Documentary evidence for eligibility may include:

- a Certified or notarized copies of the bidder's certificate of business registration, certificate of incorporation, business licence or similar document;
- b Certified or notarized copies of the bidder's tax registration, tax clearance certificates or similar document;
- c A list of all of the directors of the bidding Company;
- d The principal shareholders of the bidding Company, or list of partners or the proprietor as may be appropriate;
- e A signed statement that the bidder does not have a conflict of interest in relation to the procurement;
- f A signed statement that the bidder, or any of its directors or officers, have not been

Qualifications Requirements

- ❖ Qualifications, capacity, resource, equipment and facilities
- ❖ Legal capacity
- ❖ Not insolvent, in receivership, bankrupt, or in process of being round up
- ❖ Not an employee or public servant
- ❖ Not debarred

convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings; and

- g A signed statement that the bidder is not debarred from participating in Public Procurement.

To take account of the international dimension of procurement requirements in Kenya, the documentary evidence should be substitutable by equivalent documents from the relevant authorities in the bidder's country of origin or submission of statements certifying that equivalent documentation is not issued in the bidder's country of origin. The bidders are always responsible for providing certified translations of all submitted documentation whose originals are not in English.

Procuring entities must ensure that the eligibility criteria is clear in the bidding documents as it will form part of the evaluation criteria.

5.2 QUALIFICATIONS

It is the responsibility of the PE to state clearly any qualification criteria in the pre-qualification or solicitation document and to ensure that bidders provide signed statements or documentary evidence to certify their qualifications. In order to award a contract to a bidder, the Procuring Entity needs to verify that the bidder is qualified.

Qualification should include the following:

- The person has the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured;
- The person has the legal capacity to enter into a contract for the procurement;
- The person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing;
- The Procuring Entity is not precluded from entering into the contract with the person under Section 33 of the Act limiting the contracts with employees and entities in which they have personal interest or with which they have personal relations;
- The person is not debarred from participating in procurement proceedings under Section 115 of the Act and Regulations 90 and 91; and
- Any other criteria that may be set by the PPOA through issued Circulars.

To determine eligibility, the Procuring Entity has to require evidence or information to establish that the criteria are fully satisfied for qualification. The information and evidence required has to be specified in details in the bidding document and cannot be requested from one bidder only.

Note that if a person submits false, inaccurate or incomplete information about his qualifications, it should be disqualified and this may lead to debarment from further bidding in accordance with Section 115 (1)(d) of the Act.

No person can be excluded from submitting a tender, proposal or quotation in procurement proceedings on other grounds other than those provided in the Act, the Regulations or this Manual.

5.3 QUALIFICATIONS PROCEDURES

The procedure for qualification may be done at different stages of the procurement proceedings but in any case, the qualification must be ascertained by the Procuring Entity prior to award of contract.

Three qualification methods can be applied:

- (a) **Pre-qualification:** where the bidders first bid to prove their qualification and are then short-listed for tendering. In applying this method, the time and costs constraints versus the size and estimated value of the procurement requirement should be duly considered;

- (b) **Qualification as part of the bidding:** where bidders are presenting documentary evidence in their bids. In such cases, the evaluation of the qualification of the bidders should be done separately from the technical and financial evaluations;
- (c) **Post-Qualification:** where bidders presents statements, of qualification as required by the bidding documents on their qualification and these statements are verified by the Procuring Entity after evaluation and recommendation of the contract award but before the contract is awarded. The bidding documents must clearly state this method shall be applied.

The qualification criteria are designed to ensure that the bidder is capable of effectively performing the proposed contract, but not to restrict competition to a particular brand or business process or patent. Therefore, these criteria are defined along the following principles:

- i. Qualification criteria are limited to those necessary for the effective performance of the proposed contract
- ii. Qualification criteria have to be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of each proposed contract.

Qualification criteria may relate to:

- i. Technical competence and resources, including the availability of sufficient manpower, the qualifications and experience of key personnel or managers, available equipment, manufacturing or construction facilities;
- ii. Available capacities to perform the proposed contract including available manufacturing or production capacity taking into account other commitments or manufacturer's authorisations to supply;
- iii. Financial position, including financial soundness, sufficient turnover or sufficient cash flow;
- iv. Experience and satisfactory performance of similar contracts, taking into account relevant factors, including similar or comparable references and litigation record.

In designing the criteria, the Procuring Entity should always ensure that the evaluation criteria is very clear in the bidding documents.

5.4 PRE-QUALIFICATION PROCEDURE

Pre-qualification may be used to restrict bidding to a list of bidders who have been identified as qualified to perform the contract satisfactorily. It is used where:

- a. The goods, works, services or consulting and design are highly complex, specialised or require detailed design or methodology;
- b. The costs of preparing a detailed bid would discourage competition;
- c. The evaluation is particularly detailed and the evaluation of a large number of bids would require excessive time and resources.

The Pre-qualification mechanism may also be used to pre-qualify bidders for a group of similar contracts or to facilitate the preparation of shortlists under the restricted tendering or request for quotations methods. For example, when establishing a list of contractors that will be used to issue short-list for regular procurement of stationery or computer equipments. This mechanism should not preclude the practice of aggregation justified for making gains through economy of scales and reducing transactions costs by lowering the number of procurement proceedings and contracts to be managed.

5.5 POST-QUALIFICATION PROCEDURE

The recourse to post-qualification may be used to determine whether the bidder who submitted the lowest evaluated responsive bid is qualified to perform the contract effectively. It is mostly applied in areas where the procurement requirements is of a manageable size to most bidders, is a well established profession where certification or qualification on the basis of documentary

evidence is simple to verify. In such a case, it is essential to ensure that the bidding documents and templates clearly specify the criteria. Post-qualification is undertaken to ascertain that the bidder who is recommended for contract award has the capacity to perform the contract. One way of determining this is to visit the bidder's establishment. The criteria must be made very clear in the bidding documents.

5.6 PRE-QUALIFIED STANDING LISTS

Pre-qualified standing lists may be established for the purpose of selecting bidders for future contracts. Standing lists may be designed to select on a rotation basis bidders for regular and similar procurement requirements. Standing lists may also be designed to categorise entities according to preference scheme criteria. The establishment of a standing list does not mean the list should be used for all the procurement requirements of a Procuring Entity. It is purpose-led list and its purpose and usage by the Procuring Entity should be clearly stated in the bidding documents established for pre-qualification purpose. The Procuring Entity should always mention that the selection of a bidder on a standing list does not imply nor commit the procuring entity to any number of tenders or any amount of contract. The list is to be issued subject to the procurement thresholds.

The criteria for selection of candidates on a standing-list should be clearly specified and it is the duty of the procurement unit to ensure that it is strictly applied and recorded. The duration of the standing-list should be specified and adhered to. The standing list should be updated by the procuring entity annually.

Regulation 23 deals with pre-qualification procedure. The pre-qualified standing list should be updated annually to allow new bidders to be included and to remove those who are no longer qualified. Bidders who are not in the standing list should not be allowed to bid at any time. Pre-qualification shall only be allowed at the time of updating the standing list. Section 32 of the Act allows procuring entities to use their standing lists or pre-qualified list of another procuring entity.

5.7 PRE-QUALIFICATION ANNOUNCEMENT

The pre-qualification proceedings are publicly announced by the Procuring Entity through a public notice in newspapers, including international ones if necessary, and on its website where possible. The prequalification notice should include all the necessary information for a person to make an informed judgement on whether his company is qualified and the contract is of interest. It should include:

- a. Name, address and contact details of the Procuring Entity;
- b. An outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- c. A statement of the key requirements and criteria to pre-qualify;
- d. Instructions on obtaining the pre-qualification documents, including any fee payable and the language of the documents; and
- e. Instructions on the location and deadline for submission of applications to pre-qualify.
- f. The invitation to pre-qualify notice must be published in order to ensure effective competition and should follow these principles:
- g. Published in the printed media and in at least one publication of wide enough circulation to reach sufficient bidders to ensure effective competition; and/or
- h. Broadcasted over the radio or television, on the stations and programmes and at a time most likely to target potential bidders;
- i. Published on the internet, including any website established by the PPOA; and
- j. Posted on a public notice board that is used for advertising of procurement tenders by the Procuring Entity and is readily accessible to the public;
- k. Where tendering is international, the notice shall also be published in media of wide international circulation or on widely read internet sites, in the English language.

The Procuring Entity should ensure coordination of the publications and that sufficient time is allowed between the effective dates of publication and the date for submission for the bidders to review the procurement requirement, prepare their bids and send them including via interna-

tional courier where applicable. Regulation 24 (4) requires candidates to be given at least 14 days to prepare and submit their applications to be pre-qualified. Where foreign bidders are expected to participate, more time should be allowed as the procurement entity may find necessary.

In addition, where the Procuring Entity believes it is necessary to ensure wide competition, it may send the notice directly to embassies and chambers of commerce or business associations between Kenya and other countries. Records of the notice, publications and information to any party should be duly kept in the file.

5.8 PRE-QUALIFICATION DOCUMENT

In the case where pre-qualification documents are necessary, the procuring entity shall use the standard pre-qualification tender document issued by the PPOA with necessary amendments to suit its case.

The pre-qualification document is normally used for complex procurement requirement where the complexity, technical specification and volume to be delivered call for specific criteria to be met and that cannot be spelt out in the pre-qualification announcement. Indeed, a pre-qualification notice may be used as a pre-qualification document where it does not exceed a page in the printed media standard publication. Where it does exceed a page, the costs associated to the publication should be deemed unreasonable and a pre-qualification should be prepared in addition to the pre-qualification announcement.

The pre-qualification document thus contains all the information deemed necessary for the bidders to prepare and to submit their applications to pre-qualify. It includes such information as:

- a. The name, address and contact details of the Procuring Entity;
- b. Details of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- c. The qualification criteria, the scoring method and scale;
- d. Instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- e. Instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and
- f. Information on how applications will be evaluated;
- g. Information on how applicants will be informed of the results;
- h. Contact person, address, email, phone and fax numbers and date limit for obtaining clarifications such as verifying the equivalence of documentary evidence.

5.9 EVALUATION OF APPLICATIONS

All applications for pre-qualification received should be recorded and should be evaluated. The evaluation can only be based on the criteria, scoring method and scale detailed in the pre-qualification document. The result of the evaluation should be a pass or fail for each applicant. The evaluation should be carried out by an Evaluation Committee. Minutes, signed and dated, of all the evaluation proceedings should be kept and the evaluation report should form the basis for the Tender Committee to make its decision.

5.10 DEBARMENT FROM PARTICIPATING IN PUBLIC PROCUREMENT PROCEEDINGS

The Director General may declare a person debarred from participating in procurement proceedings with the approval of the Advisory Board. The case may be presented by the Procuring Entity. However, a person is given an opportunity to make representations to the Director General. Further, a debarred person may request the Review Board to review the debarment.

The Procuring Entity cannot debar any person from participating in a procurement proceeding on its own authority. Debarred candidates shall immediately be removed from the pre-qualified standing list of the procuring entity.

Chapter 6

PROCUREMENT PLANNING

6 PROCUREMENT PLANNING

OBJ:

6.1 THE COMPLETE PROCUREMENT CYCLE

This Chapter deals with procurement planning in details to assist procurement officers and the End-User Department fulfil their requirements and needs in terms of procurement to achieve their service delivery objectives. Procurement is an essential component of public finance management that has ramifications towards many other components and thus affects the overall efficiency and effectiveness of the PFM system to deliver public programmes and policies. This chapter looks at:

- a. The Procurement Cycle
- b. The Planning Requirements
- c. The Individual Procurement Plan
- d. The Methods of Procurement
- e. The Timing of the Procurement Proceedings

Procurement Planning directly links the procurement function to the Budget Preparation.

Budget Execution is affected by procurement. Unless procurement has been planned adequately, with realistic times taken into account for the preparation of procurement requirements and allotment of budget, the budget execution will be hampered.

Therefore, on planning its activities to implement a programme, a Procuring Entity needs to understand how each activity will be translated into individual procurement requirements and to determine the method and duration of these procurement requirement to ensure that the activities are carried out during the financial period. It is the responsibility of the Procurement Unit to assist each End-User Department in preparation of departmental procurement plans.

Planning the procurement requirements helps forecasting when a tender may be launched and proceedings are likely to result in a contract. Given this information and the likely type of contract, the Finance/Accounts Department is now in a position to forecast cash flow requirements and make projections.

A procurement plan is also a critical internal control tool. Each procurement requirement should be planned as part of the budget preparation process and should be reflected in a Procurement Plan that has been prepared and is maintained and updated by the Procurement Unit on the basis of End-User Department information. Procurement initiation requires existence of a procurement plan. This is the first level of commitment control. Commitment control helps ensuring cash availability to meet the cost of procurement contracts.

The complete procurement cycle begins with the procurement planning, a step closely linked with the budget process. It is followed by procurement initiation, bidder selection, notification of contract award, procurement

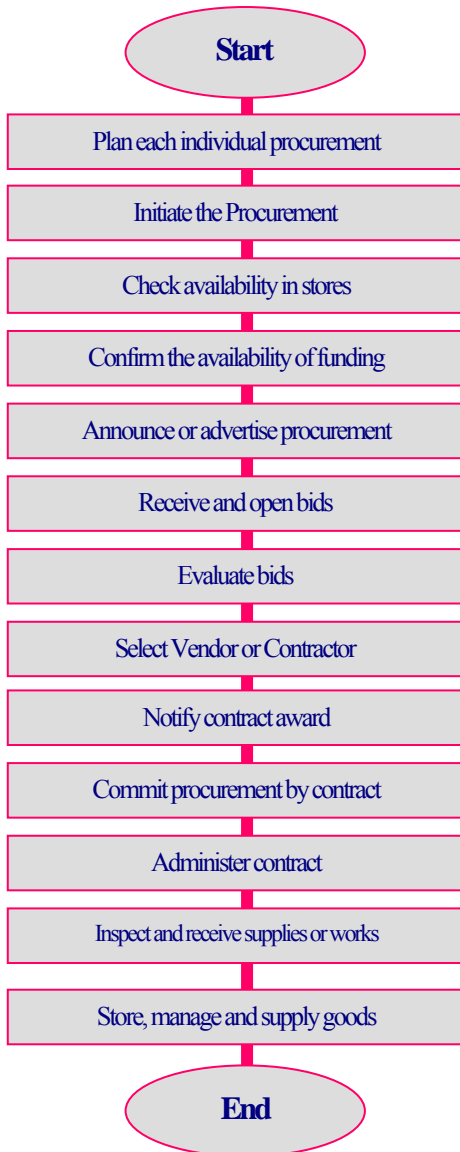
Key Terms

- ❖ Procurement Cycle
- ❖ Public Financial Management
- ❖ Linkages
- ❖ Procurement Plan
- ❖ Procurement Method
- ❖ Lotting
- ❖ Aggregation
- ❖ Budgeting
- ❖ Termination of Proceedings
- ❖ Audit Trail

Reference:

The section makes reference to the Public Procurement and Disposal Act, Section 26 to 29 and Regulations 20 and 21.

The Complete Procurement Cycle



TIP:

The budget preparation schedule is indicated in the budget call circular. Planning and Procurement specialist will need to work closely together from the start to establish the necessary understanding and coordination to finalise a budget and a procurement plan that are coherent and achievable.

commitment (contract signing), contract administration, receipt and acceptance of goods, works, services or consulting services, and the storage and inventory management of the goods and supplies received. The procurement cycle may also involve administrative review.

In short, the procurement cycle starts with the identification of the procurement requirement and ends with the registration of the assets procured into the procuring entities records.

It is the role and function of the Head of the Procuring Entity to ensure close coordination with the budget process, commitment control, finance and expenditure management and audit.

6.2 THE ANNUAL PROCUREMENT PLAN

Section 26 (3) of the Act and Regulations 20 and 21 make procurement planning mandatory. The procurement plans are prepared as part of the annual budget preparation process as they are necessary to inform the cash flow preparation. The annual procurement planning is an integral part of the budget processes. It can be based on indicative or approved budgets, as appropriate. In the case of the Medium Term Expenditure Framework, it does not provide an approved budget but an estimate that is a sufficient basis for planning procurement with multi-year incidence. It is important to appropriately plan multi-year procurements and to integrate them into the medium term budgetary frameworks. Their inclusion in the Costed Sector Plan and into the MTEF should be deemed sufficient for initiating multi-year procurement requirements.

For allowing sufficient time to integrate all procurement plans into the budget, the Heads of Procuring Entities are required to submit their signed annual procurement plans to their Accounting Officers at least thirty days before the close of each fiscal year. This requires close coordination between the End-User Department on whom the Procurement Unit and the Finance Department rely to obtain the set of activities, required inputs and estimated financial volumes and execution duration.

A procurement plan is not static. Each Procuring Entity will need to revise and to update their procurement plans. For example and importantly, once the budget process is completed and the budget has been approved, the Procurement Plan has to be reviewed in order to take into account the exact votes as the basis for procuring the required goods, works and services.

Contents of the Procurement Plan

The content of the annual procurement plan should serve as guide throughout the year for the Procuring Entity, in particular for the Procurement Unit, for the End-User Departments and for the Finance Department. The annual procurement plan should be prepared taking into consideration the following :

- i A detailed breakdown of the goods, works, services and consultancies required to carry out the activities of the Procuring Entity. These should be segregated by end-user department as well as segregated between

- Recurrent Budget and Development Budget;
- ii A schedule of the planned delivery, implementation or completion dates for all goods, works, services and consultancies required taking into account the necessary time period for effecting the procurement proceedings;
 - iii An indication and justification for whether a procurement requirement should be procured under a single-year period or under a multi-year arrangement. Where a multi-year arrangement is planned, the period should not exceed the period of the Medium Term Expenditure Framework for goods, services and consultancies. In the case of works, the period of the procurement plan should only be limited by the scheduled time of completion.
 - iv An indication of which items should be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-use items. This may be justified on the basis of savings derived from economies of scale;
 - v Where aggregation is justified the optimal period for such aggregation should be indicated taking into account seasonal price variations, warehousing and distribution capacity, and product shelf life.
 - vi An indication of which items shall be divided into lots;
 - vii An estimate of the value of each package of goods, works, services and consulting and design required and an indication of the budget available and sources of funding;
 - viii An indication of the rules applicable to the procurement: in the case where a procurement is not subject to the Public Procurement and Disposal Act and Regulations but to specific rules dictated by an international agreement as in the case of a Donor funded procurement;
 - ix An indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
 - x An indication of whether the goods, work, services and consultancies will be procured by the Procuring Entity, a specialised Procurement Unit, any special agency designated to procure common-use items or any other body;
 - xi An indication of the warehouse requirements for storing the planned procurement;
 - xii An indication of the shelf life for any goods that may be perishable or degradable;
 - xiii An indication of the resources available for managing the procurement workload; and
 - xiv Details of any committed or planned procurement expenditure under existing multi-year contracts.

It becomes clear that the procurement plan is complex undertaking as it requires coordination with other departments to ensure its usefulness as a guide and as a control tool as well as its coherence with the End-User Department activities plan. The preparation and updating of the procurement plan should thus be considered as a routine activity rather than a one-off job.

The Procurement planning formats issued by PPOA should be used. The procurement planning formats are annexed to this chapter.

6.3 AGGREGATION AND LOTTING

(a) Considerations for Aggregation

The following considerations should be made when examining the possibil-

REFERENCE

Annual Procurement Plan is made mandatory by section 26 of the Act and regulation 20.

TIP:

Formats of annual procurement plans are available on the PPOA website www.ppoa.go.ke. A procuring entity may design its own formats provided that the requirements specified in this section are met and approval by PPOA.

TIP:

Consider Aggregation techniques where specifications and needs are identical and economies of scale can be made.

Consider Allotment techniques where large and complex procurement requirements may be segregated into smaller lots that are either bundles of similar supplies or lots permitting more competition.

WARNING

Lots shall not be used to avoid using a more competitive procurement method: this is called "slicing". When using lots, the procurement procedure is decided on the basis of the overall estimated value of the procurement requirement.

ity of aggregating procurement requirements:

- i. Items are of a similar nature and are likely to attract the same potential bidders;
- ii. Whether the aggregation should be done for the whole year, or whether seasonal price fluctuations require that such aggregation shall be limited to particular seasons as can be expected to be the case for primary food commodities;
- iii. Whether the storage capacity and distribution capacity and costs offset any potential economies of scale cost savings achieved through aggregation;
- iv. The optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;
- v. The need to apply any applicable measures to promote the participation of small enterprises or to promote end-user or community participation;
- vi. Items will be subject to the same bidding requirements and conditions of contract; and
- vii. The potential to realise savings in time or transaction costs or to facilitate contract administration by the Procuring Entity.

The aggregation is thus a mean to reduce the use of the Low Value Procurement Method. The Low Value Procurement Method does not need a detailed Procurement Plan as it deals with items of a low value nature and that are not in themselves critical element for achieving objectives of the Procuring Entity.

(b) Considerations for Division into Lots

The division of a procurement requirement into lots, which could otherwise be procured as a single contract, should be considered when:

- i. It is anticipated that the award of several separate contracts may result in the best overall value for the Procuring Entity through enhance competition;
- ii. The division of a requirement into a package of separate lots is permitted where it is likely to increase the number of responsive bids by enabling the participation of bidders who are able to bid for some, but not all, types of item; or small enterprises that would not be qualified to bid for the complete package as a single contract. This might support economic development policies. The justification should clearly establish the link to such a policy and the impact of the division.

A requirement cannot be divided into lots:

- i. For the purpose of avoiding procurement thresholds;
- ii. Where the award of several separate contracts would create problems of compatibility or inter-changeability between items purchased as separate lots;
- iii. Where the award of several separate contracts would invalidate or otherwise restrict any contractor's warranty or liability;
- iv. Where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements;

Where a procurement requirement is divided into lots of equal packages, especially with the purpose of ensuring greater competition and/or partici-

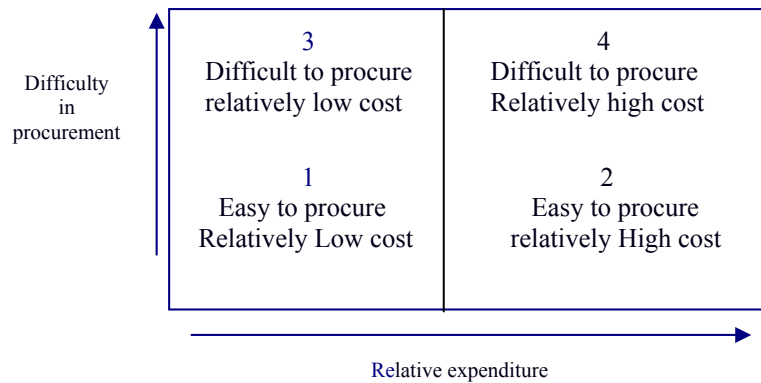
pation of SMEs, no single vendor should be awarded more than one lot as it would otherwise defeat the purpose of the division process.

Where a requirement is divided into lots, which may result in separate contracts, the selection of the procurement method may be determined by the estimated value of each individual lot and not necessarily by the total value of all the lots.

Where a requirement which could be procured as a single contract is divided into lots with equal packages, the Procuring Entity shall permit bidders to bid for a single lot, any combination of lots or all lots.

6.4 GROUPING, PACKAGING AND PROFILING

(a) **Grouping** – Separate and group together of goods, works, services and consultancies. As a general rule these should not be mixed in procurement except in special cases where they are inseparable. Consider also the cost and the difficulty in procurement of each procurement .



(b) **Packaging** - Packaging means putting your items of procurement together to form Procurement packages. Items packaged together will be bought together either in one tender or one request for quotations.

In packaging the items you consider the following:

- like items
- large or small items
- values of the items

The Packaging will help you in deciding which procurement method to use for each package.

(c) **Profiling**—Profiling will involve analysing all your procurement packages and putting them into four groups taking into consideration the value of the procurement packages and the degree of difficulty in procuring the packages as shown in (a) above:

TIP:

Budgeting and allocation of funds have to be verified once the budget has been approved. To ensure the correct allocation, the End-User Department should specify the estimated value of their procurement requirements.

For the specific cases where activities are funded by donors, the allocation should be confirmed on the basis of a:

- ❖ Letter of Intent or Pledge for MTEF purposes
- ❖ Financing Agreement for Annual budget

The Financing Department may seek help from PPOA and from the External Resources Department on how to treat donor funded activities in their plans.

Check-list: Costs of Procurement

- ❖ Estimated value of procurement requirements
- ❖ Contingencies: contract variations, exchange rate fluctuations or allowance for price adjustments
- ❖ Other costs :freight, insurance, customs clearance, inland delivery, import taxes or duties, inspection, installation or any costs relating to service or maintenance agreements
- ❖ Costs relating to facilities, services or resources to be provided by the Procuring Entity: office space or communication facilities for consultants or counterpart staff or storage space and stores managers time for receiving the goods; and/or

(d) Procurement Profile details

- (i) Items in the first category (1) are relatively low cost as individual items. However collectively they may amount to a lot of money. The items are also easy to procure. The procurement of these items will in most cases be done by the procurement unit and contracts awarded by the procurement committee however some of the contracts shall be awarded by the tender committee. The suitable method of procurement will be: -
 - Request for quotations
 - Low value procurement method
 - Open tender where the items are put together and term contracts awarded.
- (ii) Items in the second category (2) will be relatively high in expenditure as individual items. Collectively they shall also relatively high in expenditure. Most equipment bought will fall in this category. The items are however easy to procure and they will in most cases be readily available in the market. The most suitable method of procurement for these items shall be:
 - Open tender
 - Restricted tender
 - Request for proposals (RFP)
- (iii) Items in the third category (3) will be relatively low in expenditure but relatively difficult to procure. The best example of this category are spare parts for equipment an laboratory items which will need to be imported. Some medical items like drugs may also fall in this category. The procurement of these items will require co-operation of the procurements unit and the user department all the way through. The suitable methods of procurement for these items will be: -
 - Open tender
 - Restricted tender
 - Direct procurement
 - Request for quotations
- (iv) Items in the fourth category will in most cases be of relatively very high expenditure. They will also be difficult to procure and in some cases complex and very high cost. Almost all constructions and capital projects will fall in this category. The procurement of these items will require the attention of the procurement unit, user department, tender committee, Accounting Officer and top management. The suitable method of procurement for these items will be: -
 - Pre-qualification tender
 - Open tender

6.5 INDIVIDUAL PROCUREMENT PLANS

Individual Procurement Plans

Following the receipt of the approved purchase requisition from the user department, the Procurement Unit should prepare a procurement plan for each individual procurement requirement. An individual procurement plan serves to guide the procurement proceedings and to inform the Tender Committee and any other relevant decision maker. It includes at least the following information:

- a. A description of the requirement, including the schedule required for de-

- livery, implementation or completion of the goods, works, services or consultancy;
- b. The estimated value of the requirement;
 - c. The proposed procurement method;
 - d. A justification for the use of any method other than open tendering;
 - e. An estimate of the time required for each stage in the procurement cycle;
 - f. The proposed type of contract;
 - g. An indication of the resources required and available for management of the procurement process and contract administration; and
 - h. Any other relevant information.

The procurement planning formats issued by PPOA must be used.

This is a very important phase that will determine the efficiency with which the procurement proceeding are conducted and will help guiding the work, ensuring that the procurement is done in conformity with the Act and the Regulations. It is also useful for informing non- specialist stakeholders of the timing. Note that emergency cannot be justified for the lack of adequate planning by the Procuring Entity. Any other procurement method to be used except open tendering must be approved by the tender committee before commencement of the procurement process.

In the case where the Request for Quotations Method is permitted for the procurement requirement, no written individual procurement plan shall be required.

Low Value Procurement shall not be subject to approval by the tender committee except where it is included in the annual procurement plan.

6.6 SELECTION OF APPROPRIATE TYPE OF CONTRACT

Different types of contracts may be used to commit the Procuring Entity and the winning bidder. The selection of the most appropriate contract should be done at an early stage because it forms part of the decision basis of the bidders and of their pricing structure, hence the bidding document should include a template of the contract. The standard tender documents carry sample contract forms applicable to the procurement.

It should also be noted that the type of contract is decided on when preparing the tender documents. The general conditions of the tender and the special conditions of the tender and also the tender document submitted by the bidder forms part of the procurement contract.

CONSOLIDATED ANNUAL PROCUREMENT PLAN

Financial Year:

Procuring Entity (Ministry, Parastatal, School, University, College etc)

Department:

Name of Project (If applicable)

Serial No.	Item/Service description	Unit of issue	Quantity	Estimated Unit Cost	Estimated Total Cost In Kshs. '000	Funds Allocated	Procurement Method	Timing of Activities				Targeted Outputs	Remarks	
								1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter			

Prepared by: Head of Procurement Sign Date

A.I.E Holder Sign Date

Approved by: Accounting Officer Sign Date.....

ANNUAL PROCUREMENT PLAN FOR CONSULTANCY SERVICES

Financial Year:

Procuring Entity (Ministry, Parastatals, Schools, University, Colleges etc)

Department:

Name of Project (If applicable)

Dates for Completion of Key Procurement Processing Activities	
Serial No.	Service Description
1	Estimated Total Cost In Kshs. '000
2	Procurement Method
3	Request for Proposals & short-listing (Pre-qualification)
4	Invite proposals
5	Receive proposals
	Technical/Financial Evaluation
	Tender Committee Action
	Signing of Contract
	Start Assignment
	Completion of Assignment
	Payment

Prepared by Head of Procurement Unit Signature Date

A.I.E Holder Signature Date

Approved by: Accounting Officer Sign Date.....

ANNUAL PROCUREMENT PLAN FOR CIVIL WORKS

Financial Year:

Procuring Entity (Ministry, Parastatals, Schools, University, Colleges etc)

Department:

Name of Project (If applicable)

Serial No.	Works Description	Estimated Costs	Procurement Method	Dates for completion of Key Procurement Processing Activities									
				Selection of Consultant (if applicable)	Preparation of Drawings, BOQs etc	Sale of Bidding Documents	Receipt/Opening of bid documents	Bid evaluation	Tender Committee action	Donor "No objection" where applicable	Signing of contract	Work Commencement	Completion of works
1.													
2.													
3.													
4.													
5.													
etc.													

Prepared by: Head of Procurement Signature Date.....

A.I.E Holder Signature Date

Approved by: Accounting Officer Signature Date

WORK PLAN FOR THE PROCUREMENT PROCESS OF WORKS/GOODS WORLD BANK/IDA FUNDED PROJECTS

Financial Year:

Procuring Entity (Ministry, Parastatal, School, University, College, etc)

Department:

Name of Project (If applicable)

NO	ACTIVITY	OFFICER RESPONSIBLE	TIME TO BE TAKEN (in weeks)	
			WORKS	GOODS
1	Prepare BOQ documents for works/prepare specifications for goods			
2	Bank's No Objection			
3.	Advertise for pre-qualification (work)			
4	Receive the prequalification applications (work)			
5	Evaluate the applications and shortlist (works)			
6	Banks No objection to prequalification			
7	Prepare schedule of requirements			
8	Prepare working drawings (work)			
9	Prepare bidding documents			
10	Banks no objection			
11	Issue Bidding documents to prequalified firms (works) Advertise for bids –goods			
12	Receive and open bids			
13	Evaluation bids			
14	Banks no Objection to bid evaluation results			
15	MTC action			
16	Banks no objection to contract awards			
17	Bank's no objection to negotiated (if applicable)			
18	Negotiations (if applicable)			
19	Bank's no objection to negotiated contract awards (if applicable)			
20	Prepare and sign contract			
21	Mobilization period for works/delivery of goods			
22	Advance payment for works			
23	Payment as per the contract works & goods			

Prepared by: Date

Approved by Date

(Accounting officer)

NB: The officers responsible for the various activities/Tasks of the project include: Project coordinator, Procurement Manager, Project Accountant, Technical Specialist, Task Team leader of the donor e.g. (World Bank, IDA), Project Implementation Team

WORK PLAN FOR THE PROCUREMENT PROCESS OF CONSULTANCY SERVICES – WORLD BANK /IDA FUNDERS PROJECTS

Financial Year:

Procuring Entity (Ministry, Parastatals, Schools, University, Colleges etc)

Department:

No	ACTIVITY	OFFICER RESPONSIBLE	TIME TO BE TAKEN (In weeks)
1	Prepare BOQ comments		
2	Bank's No objection		
3	Advertise for expression of interest for prequalification's		
4	Receive the prequalification's application		
5	Evaluate the applications and shortlist		
6	Bank's No objections to prequalification		
7	Prepare schedule of requirements		
8	Prepare Terms of Reference, Request for proposals		
9	Bank's "No objection"		
10	Invite proposals from the short listed firm		
11	Receive proposals both technical and commercial price proposals		
12	Open and evaluate the technical proposals		
13	Bank's "No objection" to the evaluation of technical results		
14	Public opening of price/commercial proposals for the technically responsive farms only.		
15	Combine technical price evaluations		
16	Tender Committee action		
17	Bank's no objection to contract awards		
19	Negotiations (where applicable)		
20	Bank's no objection to negotiate contract		
21	Prepare and sign contract		
22	Advance payment (are applicable)		
23	Payment as per the contract		

Name of Project (If applicable)

Prepared by:..... Signature

..... Date.....

Approved by Accounting Officer Signature

..... Date.....

Chapter 7

PROCURING GOODS, WORKS AND SERVICES

7 PROCUREMENT OF GOODS, WORKS AND SERVICES

7 Topics

7.1	Preparation of Procurement Specifications
7.2	Open Tendering Method
7.3	Restricted tendering method
7.4	Direct procurement method
7.5	Request for quotations method.
7.6	Request for proposals procurement method
7.7	Procedure for low-value procurements
7.8	Specially permitted procurement procedure
7.9	Filing and Archiving

INTRODUCTION

This chapter addresses the procurement of goods, works and services as provisioned in the Act and the Regulations. Open Tender is the preferred method of procurement and any other method can only be applied in specific circumstances and with the approval of the tender committee. This guides on how to select the appropriate method to apply. It also details the application of three procurement methods i.e. Open and Restricted Tender and Request for Quotation. It also aims at guiding the user to choose the appropriate procurement method and how to apply it for the procurement of Goods, Works and Services.

After preparation and approval of the Procurement plan, the next important issue to consider is the preparation of specifications for each procurement package to be procured.. Section 34 of the Act requires that the procuring entity has the responsibility to prepare the specific requirements relating to the goods, works, services or consultancies. The specifications must be clear to give the correct and complete description of what is to be procured and thus allow fair and open competition among the candidates.

In case of works the specifications shall include bills of quantities, designs and drawings. In case of technical specifications for equipment reference should not be made to particular trademarks, names, brands, patents, design, type, product or service provided or to a specific origin unless it is unavoidable in which case there shall be a statement allowing equivalents of what is referred to.

7.1 PREPARATION OF PROCUREMENT SPECIFICATIONS

The specifications should be as neutral as possible and not to appear to favour particular bidders. In case of consultancies the terms of reference (TOR) must be adequate to enable the participating consultants to understand the requirements of the assignment. Specifications are so crucial to the success of procurement and the following points should be noted:

- (a) Specifications must be prepared by qualified staff.
- (b) The responsibility for preparation of the specifications is shared by the user and technical departments and coordinated by the procurement unit.

Key Terms:

- Procurement Method
- Vendor and Bidder
- Threshold
- Authorisation
- Emergency
- Single Source
- Request for Proposal
- Request for Quotation
- Open /Restricted Tender
- Announcement
- Evaluation
- Award
- Bidding Documents
- International Competition
- Goods
- Works
- Non-consulting Services

Reference:

The section is drafted with references made to Part IV, Section 29 of the Public Procurement and Disposal Act and Part III, Regulation 27.



Figure 7.1: Flow diagram to choose the appropriate type of procurement

- (c) Specifications must be updated and based on adequate market trends.
- (d) A procurement agent or consultant may be engaged to prepare complex specifications.
- (e) Specifications form a very critical part of the bidding documents.
- (f) The evaluation criteria which must be disclosed in the bidding documents shall be partly based on the specifications.
- (g) Specifications must include packing if necessary.
- (h) Preparation of the bidding documents should not be commenced before the specifications are ready.
- (i) Specifications should take into account total cost of ownership.

7.2 OPEN TENDERING METHOD

(a) Use of Open Tender – Goods, Works and Services

The Open tender Method is the preferred method of procurement and alternative Procurement methods are used only if specific conditions are met. The Procurement Threshold Matrix has to be adhered to when using this method.

Open Tender Method should thus be considered as the default method when no special circumstances permit the application of restrictions to the level of competition and when the estimated value is not below the thresholds permitting the application of a restricted competition such as Request for Quotation or Restricted Tender for efficiency purposes.

(b) The Procurement Thresholds and Authorisations for Open Tender – Goods, Works and Services

If the Open Tender (Goods, Works and Services) Procurement Method is used, it should be applied in accordance with the Procurement Thresholds Matrices established for each class of Procuring Entity. The procedures for applying the Open Tender – Goods, Works and Services Procurement Method whether applying direct advertisement requirements or two-stage tender proceedings are presented in this section. Where differences exist, they are clearly pointed out and explained for ease of reference and application. In the case of doubt, the procurement officer should always refer to the PPOA help desk.

The authorisations by thresholds have to be strictly adhered to at each stage of the procurement cycle. The tables below provide a synthesis of the thresholds and authorisations applying for the Open Tender Procurement Method.

The choice of method takes into account the estimated value of procurement. This includes consideration of the desirable level of competition. Market knowledge is necessary to ensure that the level of competition is adequately appreciated. The procurement planning should have sufficient time provision to allow publication of the tender announcement and submission. Competition is thus a composite result of clarity of specifications, time and transparency of the method selected. It is the responsibility of the procurement unit to ensure the selection of the most appropriate method for guaranteeing value for money.

(i) Thresholds for Class A Entities

International Open Tender:

Goods	Works	Services
Maximum is the budget allocation	Maximum is the budget allocation	Maximum is the budget allocation
No Minimum	No Minimum	No Minimum

Check-list:

- ❖ Verify your Procuring Entity's Class (Section 26 of the Act)
- ❖ Verify estimated value of the procurement requirement and threshold to apply
- ❖ Verify the authorisations that pertains to each stage of the procurement requirement

Note. International open tender shall be decided or based on lack of adequate national competition.

National Open Tender

Goods	Works	Services
Maximum is the budget allocation	Maximum is the budget allocation	Maximum is the budget allocation
Minimum is Kshs. 6,000,000	Minimum is Kshs. 6,000,000	Minimum is Kshs 3,000,000

(ii) Threshold for Class B Entities

International Open Tender.

Just like for class A Entities the maximum is the budget allocation and there is no minimum

National Open Tender

Goods	Works	Services
Maximum is the budget allocation	Maximum is the budget allocation	Maximum is the budget allocation
Minimum is Ksh. 4,000,000	Minimum is Ksh. 4,000,000	Minimum is Ksh. 2,000,000

(iii) Threshold for Class C Entities

International Open Tender.

Just like in class A and class B Entities the maximum is the is the budget allocation and there is no minimum.

National Open Tender.

Goods	Works	Services
Maximum is the budget allocation	Maximum is the budget allocation	Maximum is the budget allocation
Minimum is Ksh. 3,000,000	Minimum is Ksh. 3,000,000	Minimum is Ksh. 1,000,000

Figure 7.2: Selecting Open Tender, Restricted Tender and Request for Quotation (Class A)



Acronyms Key:

These Acronyms are used in the Threshold Matrices

- ❖ HoPE: Head of Procuring Entity
- ❖ AO: Accounting Officer
- ❖ HUD: Head of End User Department
- ❖ TC: Tender Committee
- ❖ IAC: Inspection and Acceptance Committee

REFERENCE

The section is drafted with references made to Part V, Sec. 50 to 71 of the Public Procurement and Disposal Act and Part IV, Sec. 35 to 52 of the Regulations.

TIP:

Remember that a prequalification procedure may also be used with the aim of establishing a standing list from which short-lists of qualified bidders may be drawn for Restricted Tender or Request for Quotation proceedings.

In this situation, note that the rules pertaining to these methods should be applied for each procurement requirement. The prequalification documentation should be prepared in accordance with chapter 5

TIP:

Publication and Broadcasting

Where your Entity does not have a website, you may publish on the PPOA website publication in at least one national newspaper of wide coverage is a mandatory requirement.

(c) Pre-qualification or Open Tender without prequalification

Open Tender may sometimes be costly to administer as it requires to review all bids with fairness and equality in order to select the winning bid. In cases where the procurement requirement is large but simple, this may mean dealing with a large, i.e. superior to 12 or more bids. It is thus better to first identify potential bidders on the basis of compliance criteria to determine their qualification and then to conduct the tender on a short-list of pre-qualified bidders having demonstrated their capacity and intention to respond. This procedure permits reducing the number of bids to be evaluated technically and financially as this is a complex and costly task without reducing the level of competition as the prequalification stage is open to all competitors but simply seeks to evaluate the technical and financial capabilities of competitors.

The criteria of deciding that a procurement is complex and the best way to handle is through prequalification shall be based on the technical complexity of the procurement object and not the value or estimated cost of the procurement.

(d) Procedure for Pre-qualification

Regulation 23, 24 and 25 deal with prequalification. The prequalification procedure is as follows:

- (i) A pre-qualification or expression of interest is advertised inviting interested candidates to submit applications to be pre-qualified.
- (ii) The standard tender document for pre-qualification of procurement candidates issued by the PPOA shall be used.
- (iii) The pre-qualification tender document shall include an outline of the procurement requirements including the nature and quantity of goods, works or services and the location and timetable for delivery and performance of the resultant contract. It does not require to have detailed specifications of the procurement object.
- (iv) The criteria for pre-qualification must be disclosed.
- (v) All the information necessary for the candidates to prepare and submit applications to be pre-qualified must be given.
- (vi) The processing of a prequalification tender including the opening and evaluation must be the same as that of open tender.
- (vii) Candidates shall be given not less than 14 days to prepare and submit pre-qualification tenders.
- (viii) The evaluation report containing the candidates who are recommended as having qualified shall be submitted to the tender committee for approval.
- (ix) The evaluation report shall also indicate reasons why other candidates were not qualified.
- (x) Bid documents for the procurement shall be issued directly to all the pre-qualified candidates and then processed in the normal way.

(e) Invitation of tenders

Two possibilities exist:

- i. Invitation through the publication of an announcement of tendering proceedings in the case of open tendering, where no pre-qualification has been conducted; or
- ii. Invitation from the list of pre-qualified bidders established where a pre-qualification stage has been conducted.

The content of the invitation to tender notice should be sufficient to inform all the bidders on the procurement requirements key specifications and conditions of execution so as to allow the bidders making an informed decision in order to be responsive and competitive. The following is a minimum prescription:

- i. The name, address and contact details of the Procuring Entity;

- ii. The tender unique sequential code assigned to the procurement proceedings by the Procuring Entity;
- iii. The nature of the procurement requirement, including a description, the quantity of goods, works or services and the location and timetable for delivery or performance of the contract.
- iv. An indication of the procurement method being used;
- v. A statement that those submitting tenders or their representatives may attend the opening of tenders;
- vi. A statement of any key technical requirements, qualification requirements and evaluation criteria, and/or any applications of preference margins;
- vii. Instructions on obtaining the bidding documents, including any price payable and the language of the documents; and
- viii. Instructions on the location and deadline for submission of bids.

Section 54 (2) of the Act requires that tenders be advertised, at least twice in a newspaper of general nationwide circulation which has been regularly published for at least two years before the date of issue of the advertisement and on its website if it exists. The newspaper referred to here shall be a daily newspaper and not a periodical. The advertisement referred to here is the minimum requirement and the procuring entity is free to make more advertisements as may be found necessary including use of the PPOA website)

The advertisement shall also be posted at any conspicuous place reserved for this purpose in the premises of the procuring entity as certified by the head of the procuring entity. Procuring entities are also encouraged to have a notice board where procurement notices shall be pinned..

For international tendering, the notice must also be published in media of wide international circulation or on widely read internet sites, in the English language. In addition, where the Procuring Entity believes it is necessary to ensure wide competition, it may send the notice directly to embassies, chambers of commerce and potential bidders. The Procuring Entity must keep a record of any bidders to whom the notice is sent directly in the procurement file.

(f) Considerations for choosing between International and National Proceedings

How do you choose between National and International for Open Tender Proceedings? This affects the level of competition and the costs and timing of the proceedings. Thus, the decision is based on two aspects:

- i The technical specifications of the procurement requirement: are the technology, skills, knowledge, know-how, business process and available on the national market? These conditions should imply that the advertisement and level of effort made for achieving an appropriate amount of competition is either deemed sufficient at national level or requires wider competition through international competition. Market knowledge is essential as the Procuring Entity will be responsible for justifying the choice of method.
- ii The existence of potentially more competitive bidders or appropriate solutions for the procurement requirement on the international market. For example, specific systems or business processes may have been developed internationally. International bidders may contribute to the transfer of technology.

As a matter of principle, the Procuring Entity should always choose the method that ensures the maximum level of competition. However, there might be a preference scheme to be taken into account. Further, the costs of the proceedings should be kept in balance with the estimated value of the procurement requirement.

When a Procuring Entity employs international tendering using the Open Tender Method the following rules should be applied:

TIP:
Publication and Broadcasting

To obtain guidance on the relevant media to be used for publication and broadcasting, check the standard list on the PPOA website www.ppoa.go.ke or call the helpdesk.

- ❖ Examples of publications are: The Economist, Newsweek, Times.
- ❖ Examples of dedicated websites: dgmarket, UN Development Business



- i. The invitation to tender and the tender documents shall be in English language;
- ii. The tender should be advertised on the official website of the PPOA and the invitation to tender should be published in at least one English-language newspaper or other publications that have sufficient circulation outside Kenya to allow effective competition;
- iii. The period of time between the advertisement and the deadline for submitting tenders must not be less than thirty days;
- iv. The technical requirements should be expressed, to the extent compatible with requirements under Kenyan law, in international standards or standards widely used in the industry
- v. A bidder submitting a tender may, in quoting prices or providing security, use a currency that is widely used in international trade and that the tender documents specifically allow to be used;
- vi. If and when a bid is submitted in an acceptable, convertible and widely used international currency the currency conversion value to be used for the purposes of open tender evaluation shall be the Central Bank of Kenya selling rate on the date of bid opening or any other date specified in the bid documents;
- vii. Any general and specific conditions to which the contract will be subject must be of a kind generally used in international tendering and must be provided in the bid documents.

(g) Contents of Bidding Documents for the Open Tender Method

Standard tender documents have been developed by the PPOA and must be used with minor necessary modifications. Use of other tender documents developed by a procuring entity shall require approval of the PPOA.

The bidding documents are an essential interaction document between the Procuring Entity and the potential bidders the bidding documents officially specify the procurement requirements and the proceedings in a legally binding manner. It is therefore critical to dedicate sufficient time and care for their preparation.

The bidding documents have to provide bidders with all the information they may require in order to submit bids that are responsive to the needs of the Procuring Entity. At this stage, the bidder is not seeking information to make up his decision on whether he will respond to the tender, but is seeking direction to respond technically and financially, be responsive and be competitive. If not, in the case where many bidders would compete but not in accordance with the specifications, it may mean that the tender proceedings have to be declared non responsive for lack of effective competition. Effective competition is thus achieved by designing with care the bidding document to reflect the requirements and the specifications that are essential to the success of the project and that permits clear, unambiguous comparison to these specifications and amongst the bids. With these principles in mind, the bidding documents should contain:

- i. A clear description of the goods, works or services required;
- ii. If works are being procured, relevant drawings and bills of quantities prepared by qualified professionals;
- iii. The general and specific conditions to which the contract will be subject, including any requirement for performance security ;
- iv. Instructions to tenderers on the preparation of bids, including any standard forms to be submitted and the required documentary evidence and information including:
 - The forms for tenders;
 - The number of copies to be submitted with the original tender;
 - Any requirement that tender security be provided and the form and amount of any such security;
 - Any requirement that evidence be provided of the qualifications of the person submitting the tender;
 - An explanation of where and when tenders must be submitted, a state-

TIP:
Standard Bidding Documents

Templates for the Instructions to Bidders and other standard bidding documents can be obtained from the PPOA Website (www.ppoa.go.ke).

Explanations on the application of the standard bidding document can be obtained from the PPOA helpdesk.

You may check on the web for other Standard Bidding Documents as designed by the World Bank, European Commission or South African Government to understand the different approach but common rationale.

- ment that the tenders will be opened immediately after the deadline for submitting them and an explanation of where the tenders will be opened;
- Instructions on the sealing, packaging, labelling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or replacement of bids;
- A statement that those submitting tenders or their representatives may attend the opening of tenders;
- A statement of the period during which tenders must remain valid.
- v. A statement of whether alternative bids are permitted or should be submitted only in addition to the response to the bid (variant proposal) and any instructions relating to alternative bids;
- vi. Any applicable preference programs and the margin of preference to be applied;
- vii. Information on the methodology for the evaluation of bids, the evaluation criteria to be applied and the manner in which the criteria shall be applied (with clear scale and scoring);
- viii. Information on the procedure for contract award, including the requirement for publication of a notice of proposed award and the bidders' right to appeal;
- ix. A statement that the Procuring Entity may, at any time, terminate the procurement proceedings without entering into a contract;
- x. The type of contract to be awarded ;
- xi. The terms and conditions of the proposed contract; and
- xii. Information on the Government's policy on fraudulent activities corrupt practices.
- xiii. A statement on the bidder right to appeal under administrative review.

The bidding documents must detail all specific conditions and requirements.

In describing the specific requirements of the procurement, the Procurement Unit is responsible to provide the necessary advice to the End-User Department so that specifications are clear, give a correct and complete description of what is being procured and allow for fair and open competition among those who may wish to participate in the procurement proceedings. Such specifications may relate to the performance rather than to design or descriptive characteristics. To the extent possible, they should as much as possible be based on national or international standards but should not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless there is no other sufficiently precise or intelligible way of describing the requirements. In such an event, the requirements should allow for equivalents to what is referred to.

(h) Issue and Sale of Bidding Documents

The issuance of Bidding Document shall be organised by the Procuring Entity so as to ensure access and costs efficiency. All bidders responding to the invitation to tender notice must receive by mail and/or electronic mail the bidding document or be able to obtain them at the premises of the Entity. The Procuring Entity shall maintain names and addresses of all bidders to whom the documents are issued.

Where a short-list has been established or pre-qualified bidders, determined, the bid documents shall be issued to all bidders on this list at the same time. To the extent possible, the procuring entity shall issue the bidding documents by electronic mail or any other method the same day.

The Procuring Entity may charge a fee for the bidding documents where the PEs charges a fee it shall be calculated to cover the costs related to printing, copying and distribution of the documents only and shall not include any element of profit. In this event, signed receipts for the documents have to be issued and the bidders may be re-

Check-list for setting the period for bid preparation:

- ❖ Is it national or international? Delays in mailing
- ❖ Does it involve preparing a methodology, schedules, maps or other specialised professional diligences?
- ❖ Does it include options and the possibility of an alternative bid (also called variant)?
- ❖ Does it necessitate authentic legal documents to obtain from national administration?
- ❖ Does it include very specific requirements for pricing that necessitates specific calculations, obtained quotes from other vendors?
- ❖ Is there a complex or unusual specification? For example the reference to an existing standard and the need for an equivalence.
- ❖ Is the level of sub-contracting expected to be important?
- ❖ Special restrictions and requirements?

TIP:

Note that it is important to ensure that all communications between the Procuring Entity and a bidder seeking a contract for the procurement are in writing.

quired to submit a copy of the receipt with their bid. Bidders may request to inspect the bidding documents at the premises of the entity prior to purchasing them. Where a fee is charged the fee must be paid before the closing date of the tender.

(i) Bidding Period

The minimum bidding period shall be 21 days for national tenders and 30 days for international tenders. Pre-qualified bidders shall be given not less than 14 days. The days referred to here are calendar days.

Bidders are allowed to ask for clarifications. The Bidding Document have to specify the period after which no questions nor request for clarifications will be responded to. Should questions raised by the bidders induce a need for change or should the bidders require changes acceptable to the procuring entity, the bidding documents should be amended and all the bidders should be informed simultaneously. Importantly, because such changes may have ramifications, the time remaining before the deadline for submitting tenders when informing the bidders should be not less than one third of the time allowed for the preparation of tenders. If this is not the case, the Procuring Entity has to extend the deadline to allow the amendment to the tender documents to be taken into account in the preparation or amendment of the bids.

(j) Submission and Receipt of Tenders

Bidders shall submit their tenders in accordance with the instructions given in the tender documents.

The submission and receipt of tenders is strictly regulated in order to ensure fairness and equal treatment of all the bidders as well as securing the bids to avoid any collusion. The following criteria must be verified when receiving a tender:

- i. A tender must be in writing, it must be signed by an authorised officer of the bidder and it must be sealed in an envelope;
- ii. A tender and the envelope it is sealed in must bear the tender number assigned by the procuring Entity and any other reference as specified in the bidding documents;
- iii. A tender must be submitted before the deadline for submitting tenders and any tender received after that deadline shall be returned unopened or marked "late" and stored unopened. It will be important for the tender documents to state how late tenders shall be treated but whatever the case they shall be rejected.

If a tender delivered by post is inadvertently opened, the fact of that accidental opening must be recorded on the envelope by the person who opened the tender and then the tender has to be resealed and placed in the tender box immediately.

(k) Bid Securities for the Open Tender Method

A Procuring Entity may require bid securities, in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids. The bidding documents shall clearly state any requirement for a bid security and specify the acceptable forms of the bid security.

Section 41 (1) provides that the tender security shall not exceed 2% of the estimated value of the contract. It is here verified that tender securities shall not be applicable where the bids are not expected to result into a contract like in the case of prequalifica-

tion tenders and expressions of interest.

The value of any required bid security shall be expressed as a fixed amount or as a percentage of the bid price. In any case, the amount of the bid security requested by the Procuring Entity should not be in excess of two percent (2%) of the estimated value of the contract.

In determining the amount of bid security required, the Procuring Entity should then take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders being deterred to bid or to fulfil the conditions of their bids. The amount shall be high enough to deter irresponsible bids, but not so high as to discourage competition.

The bidding documents shall state that bid securities must be:

- i. In accordance with the format and wording provided in the bidding document;
- ii. In a form acceptable to the Procuring Entity, which may be:
 - cash;
 - a bank guarantee;
 - A letter of credit;
 - An Insurance Company Bond where approved by PPOA or
- iii. Valid for the period prescribed in the bidding document, which should normally be at least 30 days beyond the expiry of the bid validity period.
- iv. Bid securities issued by the insurance companies shall be on demand terms.

The Procuring Entity has to release bid securities promptly to unsuccessful bidders before expiry of the term of the security on formation of a contract with successful bidder and submission of any required performance security. The bid security of the successful bidder shall not be released, until the contract or any required performance security has been received (where such a performance security is required).

The conditions for forfeiture of a bid security shall be specified in the bidding documents. The bidding documents shall state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting the bid security. The bidding documents shall state the procedures to be followed for withdrawal, substitution or modification.

In exceptional circumstances, the procuring entity may solicit the tenderer’s consent to an extension of the period of tender validity. The request and responses thereto shall be made shall be made in writing. The tender security shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

(I) Modifications to Tenders

Before the deadline for submitting tenders, a bidder who has already submitted his bid may change or withdraw it. The change or the withdrawal must be submitted in writing before the deadline for submitting tenders and following the instruction to bidders for submitting tenders. After the deadline for submitting tenders, a bidder who submitted a bid cannot change it and any attempt or offer to change the substance of the tender may be considered as a cause for debarment. Reciprocally, it is strictly forbidden for the Procuring Entity or any officer to attempt to have the substance of a tender changed.

Should modifications to the tenders be necessary, the Procuring Entity has to provide copies of the tender documents to all persons who have received or purchased the Bidding Documents and should consider extending the deadline for submission to

TIP :
Bid Securities: Costs

Keeping costs down is justified by the need to maintain transaction costs at an acceptable level to avoid bidders applying costs loaders that affect the financial of the project. The objective of Bid Securities is to avoid frivolous bids where many bidders exist as this would create undue work and might bias competition. Fixed imposed percentage is not acceptable as it permit inferring the bid price and this can bias the technical evaluation and thus create undue influences.

TIP:

Modifications to the Bidding Documents should be advertised on the PPOA and Procuring Entity’s Websites.



WARNING

Bidding Document prepared by the Procuring Entity must received by PPOA's where they differ substantially from those issued by PPOA. for approval prior to applying them.

REFERENCE:

Section 58 to 60 of the Public Procurement and Disposal Act and Regulation Article 44 and 45 of the Regulations 2006.

TIP: **Submission**

Note that electronic submissions are not permitted unless otherwise specified by the PPOA .

allow sufficient time for the bidders to consider the amendment. Such an amendment should not be such that the quantity, financial volume or other specifications and requirements would normally have required a different procurement method to be applied according to the Procurement Thresholds Matrix applying to the Procuring Entity. The addendum would be deemed to be part of the tender documents. It is the responsibility of the procurement unit to verify that the amendments do not change the requirement in such a manner that it would have required a different procurement method.

(m) Clarifications and information to bidders

The Procuring Entity may organise:

- i. A pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or
- ii. A site visit, to enable bidders to gain access to the site for delivery of any proposed works , goods or services.

Details of pre-bid conferences and site visits, including the date, time and location, must be included in the bidding document and, where possible, in the invitation to tender. The date of any pre-bid conference or site visit should be sufficiently early in the bidding period, to enable bidders to take the information into account in preparing their bids.

The Procuring Entity has to prepare minutes of any pre-bid conference and promptly send them to all bidders to whom the bidding documents have been issued. The minutes must include:

- i. All information provided as part of any briefing;
- ii. Details of any clarifications requested, but without identifying the source of the inquiry; and
- iii. The details of responses provided as clarifications.

Following any pre-bid conference or site visit, the Procuring Entity has to ensure that clarifications or amendments to the bidding documents are issued to all candidates within a reasonable time.

In addition to the pre-bid conference, the bidding documents must state that a Bidder may seek clarification of the bidding document and the final date after which such clarification may not be sought. Such date has to allow adequate time for potential bidders, including foreign bidders, to receive and apply the clarifications.

Where a request for clarification is received, the Procuring Entity must promptly provide a clarification in writing, copied to all bidders and including a description of the inquiry, but without identifying the source.

At any time prior to the deadline for submission of bids, the Procuring Entity may, either at its own initiative or in response to a request for clarification from a Bidder, amend the bidding document by issuing an addendum.

As for clarifications, any addendum shall be issued in writing and the same information shall be provided to all bidders at the same time. All addenda must be numbered sequentially and bear the procurement requirement unique sequential number. All clarifications and addenda to the bidding documents are binding to bidders and to the Procuring Entity.

(n) Receipt and Opening of Bids

The Procuring Entity has to make arrangements for the receipt and safe-keeping of bids up until the deadline for submission of bids. These include:

- i. The provision and security of a bid or tender box, in which bidders are responsible for depositing their bids directly and for which the Procuring Entity shall remain responsible to ensure it is locked until the time for bid opening; or
- ii. The receipt of bids by staff of the Procuring Entity, who are responsible for issuing signed receipts, showing the precise date and time of receipt and keeping bids in a secure location until the time for bid opening where they are bulky and cannot be placed in the tender box.
- iii. Where a bid is too large to be inserted in the tender box or that samples were required to be submitted separately, the Procuring Entity has to acknowledge receipt of each of the bids or samples. Samples may require specific preservation that the Procuring Entity shall be responsible for.

The Procuring Entity is responsible for ensuring that bids can be received at all times, issuing receipts and for maintaining an adequate record that may be audited. Records have to indicate the name of each bidder, the date and time of receipt and the name of the person responsible for receipt. This means ensuring accessibility to the office and tender box and staff availability at the times stated in the tender documents.

The Procuring Entity is responsible for the safe keeping of all bids from the moment it has discharged the mail, the courier or the bids deposited directly to the Procuring Entity's office. It cannot however be made liable for the loss or delay in delivery of any bid delivered by mail or courier.

It is not permitted to disclose the number or identity of bids received, prior to the bid opening, other than to public officials who may require the information as part of their official duties: in such circumstances, the names and reasons for obtaining the information should be recorded.

The bidding process has to be closed precisely at the date and time of the deadline for submission as stated in the bidding document. Where a tender box is used for the receipt of bids, the Procuring Entity should seal the tender box at the date and time of the deadline and ensure that no further bids are placed in the tender box. The Procuring Entity shall assign suitable, experienced staff to manage the bid closing.

Any bid that is received after the date and time of the deadline for submission of bids cannot be accepted for the evaluation, but will be declared late and rejected. Therefore late bids must also be recorded and labelled, stating the date and time of receipt and must be returned unopened to the bidder. Any late bid which is not labelled with the bidder's name has to be recorded and left unopened. It is the responsibility of the Procuring Entity to keep sufficient evidence that a bid was late. Any bidder who brings a late bid at the time of opening shall be asked to go back with it.

When a late tender is rejected, the outer envelope should be opened for the purpose of identifying the name and address of the bidder. The inner envelope must not be opened, but has to be returned unopened to the bidder. It shall be placed in an outer envelope addressed to the bidder.

The Head of the Procuring Entity shall appoint a Tender Opening Committee specifically for the procurement requirement in accordance with the following principles:

- The committee shall have at least three members; and
- At least one of the members must not be directly involved in the process-

ing or evaluation of the tenders.

Immediately after the deadline for submitting tenders, the tender opening committee should open all tenders received. Bidders, or their representatives, may be permitted to attend the opening. This has to be specified in the tender notice and bidding document. The Tender Opening Committee has to number each tender for reference. Envelopes marked "withdrawal" have to be opened first. The following shall be read out loud and recorded in a document to be called the tender opening register:

- i. The name of the bidder submitting the bid;
- ii. If only one envelope system is used, the total price of the tender including any modifications or discounts received before the deadline for submitting tenders; and
- iii. If applicable, what has been given as tender security.
- iv. If two envelope system is used, the presence of a technical proposal and financial proposal in separate envelopes and in adequate copies as required by the tender documents. Those attending the opening should be encouraged to take their own notes of the tender opening proceedings using their own materials.

The Procuring Entity must, on request, provide a copy of the tender opening register to a person submitting a tender. Each member of the Tender Opening Committee shall:

- i. Sign each tender on one or more pages as determined by the tender opening committee; and
- ii. Initial, in each tender, against the quotation of the price and any modifications or discounts.

With the exception of late bids, no bids shall be accepted, rejected or evaluated in any way at the bid opening. Any discrepancies or missing documents should be recorded in the minutes. The minutes should contain:

- i. A record of the procedure followed in opening the tenders; and
- ii. The particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders;
- iii. The names of all bidders whose bids were opened;
- iv. The presence or absence of a bid security, if one was required;
- v. The total price of the bid, including the currency and amount and any discounts offered, except where the double envelope procedure is followed;
- vi. Each member of the tender opening committee shall sign the tender opening minutes.

All Bidders' representatives attending the bid opening should be requested to sign the record, but the absence of any signature shall not invalidate the record.

All the tender opening documents plus the minutes shall be passed on to the evaluation committee through the head of the procuring unit.

(o) Responsiveness of Bids and Compliance Criteria

Responsiveness of a bid is determined by the content of the bid itself and the specifications in the bidding documents. Clarifications received or requested for are also considered. A substantially responsive bid is one which conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.

The Evaluation Committee has to conduct an examination to determine whether bids are complete and are responsive to the instructions and requirements of the bidding document. This preliminary examination shall determine whether:

- i. The bid has been submitted in the correct format;
- ii. Any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
- iii. The bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- iv. The bid has been correctly signed and authorised;
- v. The correct number of copies of the bid have been submitted;
- vi. The bid is valid for at least the period required;
- vii. All key documents and information have been submitted;
- viii. Any required samples have been submitted; and
- ix. The bid meets any other key requirements of the bidding document.

A material deviation, reservation or omission shall result in rejection of the bid at this stage: this means that the bid shall not be subject to any further evaluation. Non material deviations, reservations or omissions shall not result in rejection of the bid.

(p) Material deviations, reservations or omissions mean:

- i. A deviation that affects in any substantial way the scope, the quality or the performance of the works, services or supplies specified in the bidding documents.
- ii. A reservation that would limit in any substantial way, inconsistent with the bidding documents, the Procuring Entity's rights or the bidder's obligations under any resulting Contract; or
- iii. An omission that when corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

Any bid which contains a material deviation, reservation or omission is automatically declared rejected and may not subsequently be made responsive by the bidder or the Procuring Entity.

The classification of a deviation, reservation or omission as material or non-material must be determined in the light of the objectives of the procurement requirement and in comparison to the specified requirements as stated in the bidding document. It has to take into account the impact on key factors, cost or risk.

Consistency in examination has to be ensured. In case of a deviation, it needs to be quantified to the extent possible in order to be qualified as minor or as a source of non responsiveness and it should be taken into account in the evaluation and comparison of tenders. Where examination for responsiveness determines that none of the submitted tenders is responsive, the Procuring Entity shall notify each person who submitted a tender that the bidding was not responsive.

Responsiveness should not be solely regarded as an administrative verification but also a technical one. Further, it should be clearly understood that non responsiveness may lead to appeal and reviews. Therefore the reason for non-responsive declaration must be clearly stated and factual.

Where none of the bids is responsive and financial bids have been submitted in a separate envelope, all the financial bids shall be returned to the bidders unopened.

TIP:
Examples of Material Deviations, Reservations and Omissions

- ❖ Unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
- ❖ Unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
- ❖ Unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

TIP:

Care must be taken not to confuse material deviation with options. The bidding document may specify if options and alternative bids (variant) are authorised and how s they should be presented

Check-list for assessing responsiveness:

- ❖ It meets all of the eligibility criteria;
- ❖ It meets all of the compliance criteria;
- ❖ It conforms to all the mandatory requirements in the bidding documents.
- ❖ Minor deviations that do not materially depart from the requirements set out in the tender documents;
- ❖ Errors or oversights that can be corrected without affecting the substance of the bid and tender.



Where only one or two bids are determined responsive the procuring entity shall have the option of proceeding with the evaluation or determining the entire tender non-responsive for lack of adequate competition. This option must however be provided in the bidding documents.

(q) General Principles

Only the bids declared responsive should be evaluated according to the procedures set out below and to the criteria set out in the tender documents. No other criteria than those specified in the bidding documents can be used. Therefore it is essential to ensure that while establishing the bidding documents, due considerations has been given to the evaluation criteria, the rating scales and the scores assignment. The criteria must, to the extent possible, be objective and quantifiable; and each criterion must be expressed so that it is applied, in accordance with the procedures below, taking into consideration price, quality and service of the procurement object.

The successful tender shall be the responsive tender with the lowest evaluated price. This means with due consideration of the technical evaluation and the weighting of the technical and financial evaluation where appropriate.

The methodology for the evaluation of bids shall consist of two steps:

- (i) A comparison of each bid to the technical requirements of the description of goods, works or services on a pass or fail basis, to determine whether the bids are technically responsive; and
- (ii) The determination of the bid with the lowest evaluated price.

In addition to criteria aiming at assessing the quality of a bid, evaluation criteria may be related to the performance, characteristics or terms and conditions of a bid, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service, operating or maintenance costs or the productivity of equipment.

Any additional evaluation criteria shall be designed to measure the advantage or disadvantage of a factor to the Procuring Entity. Such advantage or disadvantage shall be quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only. The bidding document shall state the methodology for calculating and applying the adjustment to the bid price where applicable.

(r) The Evaluation Committee

The Head of the Procuring Entity or the Accounting Officer must appoint an Evaluation Committee for each procurement requirement above the procurement threshold of the tender committee. The members of the evaluation committee shall be proposed and recommended by the procurement unit in consultation with the respective user department. Evaluation Committee is responsible for the evaluation of bids and preparation of an evaluation report with recommendations for contracts awards or rejection..

The Evaluation Committee must be composed of members who possess the requisite skills, knowledge and experience relevant to the procurement requirement such as:

- i. Technical skills relevant to the procurement requirement;
- ii. End user Department representation;
- iii. Procurement and contracting skills;

- iv. Financial management or financial analysis skills; or
- v. Legal expertise.

The most important consideration is be that the evaluation committee should be able to discharge its duty diligently.

For purposes of transparency and to ensure segregation of duties, members of the Tender Committee shall not be appointed as members of the Evaluation Committee.

(s) Evaluation

All procurement with the value of at least the threshold of the tender committee shall be evaluated by an evaluation committee appointed by the accounting officer or the head of the procuring entity as required by regulation 16(1) of the Public Procurement and Disposal Regulations 2006.

The thresholds are:

- For Class A PEs - Ksh. 500,000
- For Class B PEs - Ksh. 500,000
- For Class C PEs - Ksh. 100,000 and Ksh. 200,000 for Direct Procurement.

The procurement unit shall recommend the members of the evaluation committee to the appointing Authority. In so doing, consideration of the individual members capability and suitability to perform the task shall be taken. Into account. Consultations shall be necessary particularly with the user Department.

The Evaluation Committee may be appointed in the following manner.

- (i) One evaluation committee to carry out both the technical and financial evaluations and make recommendations.
- (ii) Two separate evaluation committees, one for Technical evaluation and the other for Financial evaluation.
 - If two separate committees are appointed the preliminary evaluation shall be done by the Technical evaluation committee.
 - A member shall not be appointed to both technical and financial evaluation committees.
 - A member of a tender committee shall not be appointed to any evaluation committee.
 - An evaluation committee shall consist of a chairman and at least two other members as required by regulation 16 (3).
 - Regulation 46 requires that the evaluation committee completes its work and produces the evaluation report within a period of 30 days after opening of tenders.
 - Where two separate committees are appointed the evaluation shall be completed as follows.
 - Technical evaluation - within 30 days after the opening of tenders or bids (Regulation16(5)(b)).
 - Financial evaluation - within 5 days after the completion of the technical evaluation.(Regulation16(7)(b))

Section 66 of the Act requires that the evaluation and comparison of bids shall be done using the procedures and criteria set out in the bid documents and no other criteria shall be used. The procuring entity must therefore ensure that the evaluation criteria is made very clear in the preparation of tenders and other bid documents. This is one of the most difficult parts of the procurement process.

TIP:
Evaluation Grid, Criteria and Weighting

This is a critical element of the bidding documents. Such criteria and weighting formulae have to be specified in the bidding documents. This is to ensure that bidders are geared to respond to the needs of the entity and to provide transparency in the selection.

Reference:

Evaluation Criteria

In Open Tender Method for Goods, Works and Services, the criteria serve to compare bids to a common reference. This is done on a PASS or FAIL basis.

All bids that meet the requirements, and are thus deemed substantially responsive (in their content and technically), can be financially evaluated.

TIP :

The authorisation of alternative bids may be granted in addition to the submission of the bid according to the specifications in order to guarantee a sufficient number of comparable bids.

Where different solutions may be suggested by the bidders, you should provide specifications in terms of performance criteria such as levels, standards, volumes, frequency, timeline, etc.

(t) Technical Evaluation

The Evaluation Committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the description of goods, works or services in the bidding document so as to determine the responsiveness of bids.

The technical evaluation shall determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document. The factors taken into account shall be those indicated in the bidding document only and may include:

- i. Conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
- ii. Satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
- iii. Suitable staffing, equipment and machinery capacity or arrangements for supervision or management of an assignment;
- iv. Any other criteria that has a direct relationship with the performance of the contract and the delivery of the procurement within a specified time frame.

The evaluation shall not take into account any requirements which were not included in the bidding documents. Any material deviations should result in rejection of the bid and such bids should not be subject to financial evaluation and comparison. Non-material deviations may be allowed and corrected.

Alternative bids shall not be permitted, except where specifically indicated in the bidding documents. The Procuring Entity may permit alternative bids, where it is anticipated that bidders may be able to offer goods, works or services which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in an alternative manner. Alternative bids may be permitted in areas of rapidly changing technology or where a need could be satisfied in a number of different ways and the Procuring Entity wishes to encourage cost efficient and technically innovative approaches by bidders.

Where alternative bids are permitted, the bidding documents should state that the alternative bid does not need to conform precisely to the description of requirements, but must:

- i. Meet the objectives or performance requirements prescribed in the description of requirements;
- ii. Be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
- iii. Clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of requirements, in terms of technical performance, price, operating costs or any other benefit.

Alternative bids should be evaluated in the same way as any other bids, except that the technical evaluation should only take into account the objectives or performance requirements prescribed in the description of requirements.

Where a bid is substantially responsive, the Procuring Entity may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation. The non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids.

The Procuring Entity may seek clarification from a bidder of its bid. The request and the clarification should always be exchanged in writing. The request for clarification shall not seek and the bidder shall not be permitted to:

- i. Change the substance of the bid; or
- ii. Substantially alter anything which is a deciding factor in the evaluation.

Any clarification received, which is not in response to a request from the Procuring Entity, cannot be taken into account. The failure of a bidder to reply to a request for clarification may result in the disqualification of its bid.

(u) Financial Evaluation

After the technical evaluation, financial evaluation is conducted to determine the evaluated price of each bid and to determine the lowest evaluated bid, which is substantially responsive to the requirements of the bidding document. The evaluated price for each bid shall be determined by:

- i. Taking the bid price, as read out at the bid opening;
- ii. Correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- iii. Applying any non-conditional discounts offered in the bid;
- iv. Making adjustments for any non-material non-conformity, error or omission;
- v. Applying any additional evaluation criteria, through an increase or decrease to the bid price in accordance with the weighting system established in the bidding documents;
- vi. Converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- vii. Applying any margin of preference indicated in the bidding document.

Bids must be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price. Where the bidding documents included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee has to conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

Bidders are permitted to offer **discounts** to their bids (and this should be clearly stated in the bidding documents). It must be clearly included in the bid and read out at the bid opening. No discount may be offered or taken into account after the deadline for submission of bids. Any non conditional discounts may be taken into account in the financial evaluation and comparison of bids. Bidders may also be permitted to offer discounts, which are conditional on the award of one or more lots. Conditional discounts shall be taken into account in a further financial evaluation.

If the discount is based on **prompt payment** and included in a bid, it can become a term of the contract if that bid is accepted, and must be utilised by the Procuring Entity, if payment is made in accordance with the terms of the discount. However, prompt payment discounts cannot be considered in the evaluation and comparison of bids, unless such discount is taken into account through the application of any additional evaluation criteria.

(v) Finalising Evaluation of Bids

TIP:

For detailed procedures on corrections, ask for guidance at the PPOA helpdesk.

Evaluated Price includes:

- ❖ Bid price
- ❖ Corrections
- ❖ Discounts
- ❖ Adjustment for errors
- ❖ Evaluation criteria
- ❖ Use of a single currency
- ❖ Preference margin

Reference:

Section 42 and 137 of the Public Procurement and Disposal Act: Collusions and Penalties

Note that after the deadline for the submission of tenders, proposals or quotations:

- ❖ No vendor who submitted a tender, proposal or quotation shall make any unsolicited communications to the Procuring Entity or any person involved in the procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of tenders, proposals or quotations; and
- ❖ No person who is not officially involved in the evaluation and comparison of tenders, proposals or quotations shall attempt, in any way, to influence that evaluation and comparison.

A person who contravenes to these rules may be guilty of an offence and shall be liable on conviction:

- ❖ If the person is an individual, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding three years or to both; or
- ❖ if the person is a corporation, to a fine not exceeding ten million shillings.

Reference :

Filing and Archiving

- ❖ The Government Financial Management Act
- ❖ The Public Procurement and Disposal Act Section 49

Where it is indicated in the bidding document, and in accordance with any rules or schemes for domestic preference issued by the PPOA, the Evaluation Committee may apply a margin of preference to eligible bids. The bidding documents shall clearly state:

- i. Eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
- ii. The documentation required as evidence of eligibility for the margin of preference; and
- iii. The percentage of the margin of preference and the manner in which it will be applied during the evaluation.

Where it is provided for in the bidding documents, the Procuring Entity may also conduct a post-qualification of the bidder who submitted the lowest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively. The criteria for qualification have to be as set out in the bidding documents.

Where a bidder is determined not to be qualified after a post-qualification, its bid must be rejected and a post-qualification conducted on the bidder who submitted the next lowest evaluated responsive bid.

After each evaluation proceedings have been carried out by each evaluation committee, technical and financial, each Evaluation Committee should prepare an evaluation report for submission to the Tender Committee. The evaluation report must include at least:

- i. A summary of the bids received and opened;
- ii. The results of the preliminary examination for assessing bid responsiveness to the instructions to bidders;
- iii. Reasons why bids were declared non responsive;
- iv. Details of any non material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- v. The evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- vi. The ranking of the bids, according to their total evaluated price;
- vii. A statement of the lowest evaluated substantially responsive bid, for each lot where applicable;
- viii. Any preference scheme applied;
- ix. A summary of the application of any conditional discounts and the lowest evaluated combination of bids, where applicable;
- x. The results of the technical evaluation;
- xi. The results of any post-qualification; and
- xii. A recommendation to award the contract or contracts to the lowest evaluated responsive bid or combination of bids, or other appropriate recommendation, such as the rejection of all bids.

The evaluation report must be signed by all the members of the evaluation committee and dated.

(w) Award of Contract

Adjudication and contract award is the responsibility of the tender committee as provided in the first schedule threshold matrix of the Regulations. The secretary of the tender committee shall prepare the agenda which shall be used by the tender committee during the adjudication and contract award. For each item of procurement to be adjudicated and awarded there will be a comprehensive agenda item which shall be in the following format:

- i. Agenda No
- ii. Title
- iii. Purchaser/User
- iv. Background information
- v. Invitation of Bids
- vi. Submission and opening of bids
- vii. Evaluation of bids.
- viii. Availability of funds for the resultant contract.
- ix. Secretariat comments.
- x. Request to the tender committee to adjudicate and make a decision.

Regulation 11 provides that in the adjudication and consideration of the agenda for a procurement contract award, the tender committee may make the following decisions.

- (i) Approve the award.
- (ii) Reject the application with reasons.
- (iii) Approve the contract award subject to minor clarifications or corrections.

Where the tender committee rejects an application for contract award the decision shall be reported to the head of the procuring entity or the accounting officer for direction. An item rejected by the tender committee may be re-submitted to the tender committee for re-adjudication with new information.

After the tender committee meeting the secretary must prepare the minutes of that meeting which is an official written record of the tender committee deliberations and decisions. The minutes must be comprehensive, factual, accurate and precise.

The purpose of the minutes is to record a comprehensive process which was followed and the decisions taken or made by the tender committee to award the contract to the recommended bidder or otherwise. The minutes should therefore be written in a special way to ensure that the procurement process as required by the Act and the regulations was followed.

The minutes of the tender committee shall have the following format:

- i. Title (meeting number, f/y, venue and time held)
- ii. Attendance.
- iii. Confirmation of the minutes of the last meeting.
- iv. Matters arising from the minutes.
- v. Substantive items of agenda for the meeting.
- vi. Any other business.

After the minutes are confirmed by the tender committee they must be signed and dated by both the chairman and the secretary. Decisions made by the tender committee shall not be implemented before the confirmation of the minutes in which the decisions were made.

Where the decisions need to be implemented before the confirmation of the minutes, a request must be made to the tender committee in the agenda for the tender committee to allow immediate communication of the decision. The tender committee may accept or reject the request depending on the reasons advanced.

(x) Notification of Contract Award.

Before expiry of the validity period of bids, the Procuring Entity must notify the person who submitted the successful tender that his/ her tender has been accepted. At the same time as the person submitting the successful tender is notified, the Procuring Entity must notify all other persons submitting tenders that their tenders were not successful.

Check-list of documents to be kept:

- ❖ Procurement Initiation Form
- ❖ Tender Committee Minutes (initiation, nomination of committees and approval of bidding documents)
- ❖ Complete Tender Documents and Specifications and Instruction to Bidders
- ❖ Publication Notice
- ❖ Receipt of Sale of Tender Documents
- ❖ Receipt of Bids for prequalification and for selection stages
- ❖ Bid Opening Minutes for prequalification and for selection stages
- ❖ Evaluation Committee Minutes for prequalification
- ❖ Evaluation Committee Minutes for selection (technical and financial)
- ❖ Evaluation Committee Reports and Recommendations for pre-qualification and for selection stages
- ❖ Tender Committee Minutes (prequalification)
- ❖ Tender Committee Minutes (selection)
- ❖ List of Prequalified Bidders
- ❖ Invitation to Bidders
- ❖ Bids Received
- ❖ Letter of Notification
- ❖ Signed Contract
- ❖ Certificate of Receipt of Goods, Works or Services
- ❖ Certificate of Acceptance of Goods, Works or Services

The notification of a contract award does not change the validity period for a tender or tender security. The successful bidder must reply in writing within 14 days that he has accepted the award. If the bidder refuses to accept the award, its bid security shall be forfeited. The next qualified bidder shall then be considered for contract award.

(y) Contracts

The person submitting the successful tender and the Procuring Entity shall enter into a written contract based on the tender documents, the successful tender and any clarifications provided.

The written contract shall be entered into within the period specified in the notification but not until at least fourteen days have elapsed from the date of the notification. No contract shall be deemed formed between the person who submitted the successful tender and the Procuring Entity until a written contract is signed by both parties. The Procuring Entity shall not request or require, as a condition of awarding a contract that a person who submitted a tender undertake responsibilities not set out in the tender documents.

If the bidder submitting the successful tender refuses to enter into a written contract, the Procuring Entity shall notify the next most qualified bidder. This regulation does not apply if the period during which tenders must remain valid has already expired.

7.3 RESTRICTED TENDERING METHOD

Use of Restricted Tender Procurement Method

The Restricted Tender Procurement Method may be used as an alternative procurement method other than open tendering only as allowed by the Act and the Regulations. The procurement method must be provided for in the procurement plan and approved by the tender committee.

Restricted procurement method may be used in the following cases.

Case 1

Where the procurement is complex and there is a need to restrict bidding to pre-qualified candidates.

Case 2

Where the expected bidders are very many and there is a need to restrict bidding to a manageable number and

Case 3

Where there are only a few known bidders and there is no advantage seen in advertising an open tender.

CONDITIONS FOR USE OF THE RESTRICTED PROCUREMENT METHOD

Minimum and Maximum Thresholds applying to each case scenario

Case 1:

In this case where the procurement is considered to be complex the procurement shall be processed through a pre-qualification for the purpose of determining the pre-qualified bidders who shall be allowed to participate in the bidding process. For procurement below the minimum, open tender or any other alternative procurement method applica-

ble shall be used.

Class of PE	Goods	Works	Services
A	Maximum Budget allocation	Maximum Budget allocation	Maximum Budget allocation
	Minimum Ksh. 20,000,000	Minimum Ksh. 20,000,000	Minimum Ksh. 20,000,000
B	Maximum Budget allocation	Maximum Budget allocation	Maximum Budget allocation
	Minimum Ksh. 5,000,000	Minimum Ksh. 5,000,000	Minimum Ksh. 5,000,000
C	Maximum Budget allocation	Maximum Budget allocation	Maximum Budget allocation
	Minimum Ksh. 500,000	Minimum Ksh. 500,000	Minimum Ksh. 500,000

Case 2

In this case procurement above the maximum shall be through open tender.

Class of PE	Goods	Works	Services
A	Maximum Ksh. 20,000,000	Maximum Ksh. 20,000,000	Maximum Ksh. 20,000,000
	Minimum Ksh. 1,000,000	Minimum Ksh. 2,000,000	Minimum Ksh. 1,000,000
B	Maximum Ksh. 4,000,000	Maximum Ksh. 4,000,000	Maximum Ksh. 4,000,000
	Minimum Ksh. 1,000,000	Minimum Ksh. 2,000,000	Minimum Ksh. 1,000,000
C	Maximum Ksh. 3,000,000	Maximum Ksh. 3,000,000	Maximum Ksh. 3,000,000
	Minimum Ksh. 500,000	Minimum Ksh. 500,000	Minimum Ksh. 500,000

Case 3

In this case procurement above the maximum shall be procured through open tender.

TIP:

The internet is a useful source of information on existing vendors and competitors within a sub-sector or sector. For example, facilities such as Google search, with key words and compass may be utilised to assess the existence of an oligopolistic market situation.

Key Terms

- ❖ Direct Procurement
- ❖ Emergency
- ❖ Sole Suitable Contractor
- ❖ Urgent need
- ❖ Single Source
- ❖ Negotiation

Reference:

The section is drafted with references made to the Public Procurement and Disposal Act, section 74 and Article 63 of the Regulations.

GOOD PRACTICE

Emergency arise from natural disasters and other extreme or extraordinary conditions. This often means that the goods, the persons and the firms or other forms of organisations presents in the country may already be fully committed to meeting the conditions created by this disaster. In such case, we recommend that contact be made with the UN agencies and other international organisations to seek help in identifying suitable and available bidders. In some cases, the bidder may be a UN agency such as IAPSO, WHO, UNOPS, UNICEF, WFP or an NGO with specialised capacity.



Figure:75 Flow Diagram to choose Emergency Procurement

Class of PE	Goods	Works	Services
A	Maximum Ksh. 20,000,000	Maximum Ksh. 20,000,000	Maximum Ksh. 20,000,000
	Minimum Ksh. 1,000,000	Minimum Ksh. 2,000,000	Minimum Ksh. 1,000,000
B	Maximum Ksh. 4,000,000	Maximum Ksh. 4,000,000	Maximum Ksh. 4,000,000
	Minimum Ksh. 1,000,000	Minimum Ksh. 2,000,000	Minimum Ksh. 1,000,000
C	Maximum Ksh. 3,000,000	Maximum Ksh. 3,000,000	Maximum Ksh. 1,000,000
	Minimum Ksh. 500,000	Minimum Ksh. 500,000	Minimum Ksh. 500,000

Other conditions for restricted tender.

Under case 2 procurements, at least 10 bidders shall be invited to bid, The selection of these bidders shall be made from a list of pre-qualified candidates maintained by the procuring entity or by another procuring entity. The selection shall not be discriminative.

In case 3 procurements all the known bidders who are expected to be less 10 shall be invited to bid.

7.4 DIRECT PROCUREMENT METHOD

Direct procurement method is not a preferred method because it is completely devoid of competition and transparency. Procuring entities are therefore not encouraged to use it except when it is not avoidable and strictly in accordance with the requirements of the Act and the Regulations. When direct procurement is used it shall be provided for in the procuring entity’s procurement plan and also approved by the tender committee.

Direct procurement may be used in the following circumstances.

- (a) When there is only one supplier who can supply the goods works or services being procured and there is no reasonable alternative or substitute for the goods, works or services.
- (b) Where the goods being produced are urgent and because of the urgency the other available methods of procurement are not practical. This is the situation which can be regarded as an institutional emergency. In such cases the circumstances that gave rise to the urgency were not foreseeable and were not the result of dilatory conduct or negligence on the part of the procuring entity.

Where direct procurement is used no thresholds shall be considered provided the above conditions are met and the procurement method is approved by the tender committee. Procuring entities are encouraged to have their own internal rules and procedures of including procurements considered urgent or emergencies which are to be made through direct procurement to provide for efficiency, authorization and accountability.

Where direct procurement is used, proper documentation and specifications must be prepared. After the bid is received from the only bidder, negotiations are allowed before

the contract award is made. Contract award shall be by the tender committee or by any other authority if provided for by the internal rules and regulations of the procuring entity. Where the contract award is not by the tender committee, the contract award shall be reported to the tender committee.

Negotiations of the contract shall be after the approval of the contract award by the tender committee. Regulation 58 (2) of the regulations provides that negotiations shall be conducted by at least two members of staff of the procuring entity appointed by the accounting officer or head of procuring entity on the recommendations of the procurement unit.

Negotiations under direct procurement method may include negotiation of the price. The negotiating team shall prepare a report of the negotiations which shall be submitted to the tender committee for decision making Regulation 58(3).

Regulation 62 (3) provides that a procuring entity shall, within 14 days after notification of the award of the contract, report any direct procurement of a value exceeding Ksh. 500,000 to the Public Procurement Oversight Authority (PPOA).

7.5 REQUEST FOR QUOTATIONS METHOD.

Section 88 of the Act provides that procuring entities may use request for quotations for goods, works and services which are readily available in the market and whose cost is below the set thresholds in schedule one of the regulations.

It is mandatory for the procuring entity to have a pre-qualified suppliers list which is maintained for effective use of the request for quotations procurements method. The set thresholds for request for quotations procurement method are as follows.

In the procurement of goods and services the procuring entity shall use a request for quotations which shall contain the following information.

- (a) Quotation number and date.
- (b) Name and address of the procuring entity.
- (c) Name and address of supplier invited to quote.
- (d) Date and time of submission of the quotation.
- (e) Particulars of the item including item no, specifications, unit of issue, quantity required.
- (f) Part to be completed by the supplier including unit price, delivery time, discount, brand, country of origin and remarks.
- (g) Space for suppliers signature.
- (h) Space for official use with:

Opened by 1. Name _____ Designation _____
 2. Name _____ Designation _____
 3. Name _____ Designation _____
 4. Date _____ Time _____

- (i) Instructions and conditions for the procurement.

Where a standard request for quotations form is issued by the PPOA it must be used by all the procuring entities.

In the procurement of works the request for quotations document shall be prepared in such a way that it meets the standards required for procurement of works. This means that it must be comprehensive and adequate just like in open tendering except that the

Non-Mutually Exclusive Conditions to Apply Emergency

- ❖ Urgent need
- ❖ No other practical procurement method
- ❖ Unforeseeable circumstances
- ❖ Not the result of dilatory conduct

bids shall be processed differently as provided in this part.

- (a) Request for quotations shall be prepared in duplicate and given to the supplier. After the supplier has completed the request for quotations he shall submit the original to the procuring entity duly signed and stamped and retain the duplicate.
- (b) In deciding the supplier to be invited to quote a procuring entity shall ensure a fair and equal rotation amongst the persons on the pre-qualified suppliers list. (Regulation 10(2)(k), 59(2).
- (c) When issuing request for quotations to suppliers there is no requirement of placing them in an envelope but when the suppliers submit the RFQ to the procuring entity they must be submitted in sealed envelopes as required by regulation 60 (a).
- (d) The procuring entity shall also give clear instructions to the suppliers on the mode of delivery of the sealed envelopes. The envelopes shall be addressed to the procuring entity and also clearly indicate the quotation number and closing date.
- (e) The request for quotations shall be given to as many persons as necessary to ensure effective competition but in any case not to less than three persons.
- (f) If it is not possible to get at least three persons the tender committee shall be requested to approve less than three persons to be invited to quote.
- (g) The suppliers shall be given adequate time to prepare and submit their quotations. In this regard seven to fourteen days is recommended. Where circumstances dictate that less time be allowed this may be done subject to approval of the head of procuring unit.
- (h) Request for quotations after being received by the procuring entity shall be opened by at least three responsible officers one from the procurement unit, and one from the user department.
- (i) The officers opening the quotations shall also be responsible for the evaluation and recommendation of contract award.
- (j) Section 89 (4) of the Act provides that the successful quotation shall be the quotation with the lowest price that meets the requirements set out in the request for quotations.
- (k) Where the procurement unit is of the view that the successful quotation is higher than the prevailing market price, the procurement unit shall reject the quotations and repeat the process afresh issuing the quotations to other persons in the pre-qualified list.
- (l) Section 30 (3) of the Act provides that standard goods, services and works with known market prices shall be procured at the prevailing real market price. The procurement unit shall reject all offers whose prices are above the prevailing real market prices. To effectively do this, the procurement unit must conduct market research to assure itself that quotations submitted reflect those prevailing in the market. In this regard the market price index issued by the PPOA shall be used by the procuring entities.
- (m) A request for quotations may be national or international. Where it is international the terms and conditions applicable shall be those generally used in international trade.
- (n) Adjudication and contract award for a request for quotations is the responsibility of the procurement committee of the procuring entity if below Kshs.500,000. Above that amount, the responsibility falls under the tender committee.
- (o) The procurement committee may;
 - (i) Approve a submission.
 - (ii) Reject a submission with reasons or
 - (iii) Approve a submission subject to minor clarifications to be made by the procurement unit.
- (p) Any submission rejected by the procurement committee may be resubmitted

- for adjudication with new information.
- (q) The decisions of the procurement committee shall be binding and final.
- (r) For all procurement with the value of Ksh. 500,000 and above a written contract must be prepared to be signed by the procuring entity and the supplier.
- (s) For contracts below Ksh. 500,000 a written contract may not be necessary and orders may be placed using a local purchase order or a local service order.

It must however be ensured that all the necessary terms and conditions of the procurement contract are incorporated. If the terms and conditions of the contracts shall include the bid document submitted by the winning bidder, then a formal contract must be prepared and signed by the parties.

7.6 REQUEST FOR PROPOSALS METHOD

Section 76 (1) of the Act provides that a procuring entity may use a request for proposals for procurement of services or a combination of goods and services, where the services to be processed are advisory or otherwise of a predominantly intellectual nature. Request for proposals would thus be used in the procurement of consultancy services. This is dealt with in chapter 8 (of this manual) **Procurement of Consultancy Services**.

7.7 PROCEDURE FOR LOW-VALUE PROCUREMENTS

Section 90 (1) of the Act provides that a procuring entity may use a low - value procurement procedure where the estimated value of the goods, works or services being procured is less than or equal to the set procurement thresholds in schedule one of the regulations. The procurement thresholds for low value procurement are as follows.

- Class A Entities Kshs 30,000 per item
- Class B Entities Kshs 10,000 per item
- Class C Entities Kshs 5,000 per item

This method is used where:

- (a) The procuring entity does not see any benefit accruing to it in terms of time or cost implications by using any other procurement method.
- (b) The procedure is not used to avoid competition.
- (c) The method is approved by the tender committee if reflected in the annual procurement plan.
- (d) The procurement is made through direct shopping from a reputable outlet or provider identified by the procuring entity.
- (e) An original receipt or invoice is obtained to account for the money and item purchased.

Procuring entities are encouraged to establish their internal rules and regulations governing low value procurement for effective control of use of procurement imprest where the use of cheques is found cumbersome, inconvenient and uneconomical.

7.8 SPECIALLY PERMITTED PROCUREMENT PROCEDURE

Section 92 (1) of the Act provides that a procuring entity may use a procurement procedure specially permitted by PPOA. A specially permitted procurement procedure is any procurement method, without limitation, identified and explained by a procuring entity not provided for in the Act and the Regulations and has been specially permitted by the PPOA to be used for a particular procurement by that particular procuring entity. Regulation 64 (1) provides that a specially permitted procurement procedure may be considered and allowed by the PPOA if the following apply:

Check-list for establishing a short-list (Request for Quotation)

- ❖ Standing list
- ❖ List of pre-qualified bidders
- ❖ Market knowledge
- ❖ Other sources
- ❖ At least 5 bidders
- ❖ Fair and equal opportunity for all bidders on standing list

Check-list:

- ❖ confirm non availability of goods, works or services required
- ❖ prepare a written request for a bid, containing a description of the goods, works or services required as described in the bid documents.
- ❖ verify funds availability;
- ❖ Issue a written or verbal request to the bidders and obtain a written proforma invoice where possible;
- ❖ Issue a Local Purchase Order and obtain vendors signature on it.

TIP:

Request for Quotation may be submitted via electronic mail where PPOA has approved it.

Reference:

The section is drafted with references made to Part IV, Sections 90 and 91 of the Public Procurement and Disposal Act and Part III, article 64 of the Regulations.

- (a) Where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and the regulations.
- (b) Where the market conditions or behaviour do not allow effective application of the Act and the Regulations.
- (c) For specialized or particular requirements that are regulated or governed by harmonized international standards or practices.

The following conditions shall also apply:

- (a) Before seeking the approval of the PPOA the procurement method shall be approved by the procuring entity's tender committee.
- (b) The application for approval by the PPOA shall be accompanied by all particulars of the proposed procurement including bid documents.
- (c) Procurement proceeding shall not be commenced before the procurement method is specially permitted by the authority.

Regulation 64 (3) requires that the PPOA shall maintain a register or record of all specially permitted procurement procedures.

79 FILING AND ARCHIVING

It is the responsibility of the Procuring Entity to ensure that it maintains adequate and accurate records of the tendering proceedings in compliance with the Public Procurement and Disposal Act and Regulations and with the Government Financial Management Act. All Procuring Entities must file all the documents described above in accordance with the Government Financial Management Act.

In the case where the procurement requirement involves feasibility studies and surveys directly carried out or accepted by the Procuring Entity in order to prepare the tender documents the reports and other documents resulting from these studies and surveys must be filed as part of the procurement dossier.

Accurate records of all Evaluation and Tender Committees proceedings must be taken, maintained and filed. Accurate records of all sales and receipts of bids, request for clarifications and clarifications issued by the Procuring Entities must be maintained and filed. The Procuring Entities has to ensure that all non active procurement files are safely archived for not less than seven years and that no active dossier is archived.

It is the responsibility of the Procuring Entity to ensure that all files are kept securely and are protected from theft, fire, flooding and rain, access by unauthorised persons or any other threats to the integrity of the filed documentation.

In accordance with the Public Procurement and Disposal Act, 2005 and the Government Financial Management Act, 2004 the Procuring Entity must ensure that all procurement files are accessible and can be made available to any authority empowered to request so within an appropriate timeframe for the requesting authority to perform its duties or as stipulated by the PPOA

Finally, the Procuring Entity should ensure that the documents required for each Procurement and Disposal procedure are filed using a unique sequential code. The Procurement File should also bear clearly the unique sequential code of the Expenditures Files directly relating to the specific procurement procedure. This shall be done in order to ensure that there exist a clear, transparent and auditable linkage between the Procurement Cycle and the Financial Management of Expenditures so as to achieve effective contract administration and provide and clear audit trail.

For filing and archiving, reference is made to the Government Financial Man-

agement Act and to the Public Procurement and Disposal Act Section 49

An “active dossier” is defined, in the context of the Procurement and Financial Management cycle, as a procurement requirement that has not completed its full cycle as defined in this manual and for which payments are still due.

Each procurement requirement should be allocated a unique sequential number by the Procurement Unit. Each Procurement file should bear this unique procurement requirement

Each procurement file should bear the unique Expenditure File Number pertaining to this procurement requirement contract and payments

Check-list of documents to be kept for direct procurement and emergency:

- ❖ Procurement Initiation Form
- ❖ Justification of Emergency
- ❖ Description and key Specifications
- ❖ Invitation to Bid and Vendor's Acceptance
- ❖ Evaluation Committee Minutes for Bid Review
- ❖ Evaluation Committee Recommendation
- ❖ Bid Received
- ❖ Negotiation documents
- ❖ Signed Contract (may be endorsed by PS/MoF)
- ❖ Certificate of Receipt of Goods, Works or Services

Chapter 8

PROCUREMENT OF CONSULTANCY SERVICES (REQUEST FOR PROPOSALS PROCUREMENT METHOD)

8 PROCUREMENT CONSULTANCY SERVICES (REQUEST FOR PROPOSALS METHOD)
Topics
8.1 When Request For Proposals may be used
8.2 Procurement Methods Under Request For Proposals
8.3 Expression of Interest (EOI)
8.4 Terms of Reference (TOR)
8.5 Receiving and Opening of Proposals
8.6 Evaluation of Proposals and Contract Award

8.1 WHEN REQUEST FOR PROPOSAL MAY BE USED
 Section 76(1) of the Act provides that RFP procurement procedure may be used for a procurement if the procurement is of services or combination of goods and services and the services are advisory or otherwise of a predominantly intellectual nature. Before this procurement method is resorted to it must have the approval of the tender committee in addition to being provided for in the procuring entity's annual procurement plan.
 A procuring entity shall procure consultancy services only when :

- (a) It does not have the capacity to provide these services
- (b) When time is not available due to workload

8.2 PROCUREMENT METHODS UNDER REQUEST FOR PROPOSAL
 Schedule one-threshold matrix of the regulations provides that, for this procurement method the maximum level of expenditure shall be determined by the funds allocated in the budget. Also there is no minimum expenditure for the use of this procurement method. However the conditions provided in the Act and the regulations must be met.

Section 76 (2) of the Act provides that subject to any prescribed restrictions, a procuring entity may use a request for proposals for a procurement if the procuring entity would be allowed to use another alternate procurement procedure for that procurement under Section 73, 74, 88 or 90:

- i. Section 73 deals with Restricted Tendering
- ii. Section 74 deals with Direct Procurement
- iii. Section 88 deals with Request for Quotations and
- iv. Section 90 deals with Procedure for Low Value Procurement

In practice the methods of selection of consultants under RFP are as follows:

- (a) Quality and Cost Based Selection - QCBS
- (b) Quality Based Selection- QBS
- (c) Least Cost Selection- LCS
- (d) Fixed Budget Selection - FBS
- (e) Single Source Selection - SSS
- (f) Consultants Qualifications Selection - CQS

These methods can be explained as follows:

Key Terms

- ❖ Request for Proposal
- ❖ Request for Quotation
- ❖ Threshold
- ❖ Authorisation
- ❖ Announcement
- ❖ Evaluation
- ❖ Award
- ❖ Bidding Documents
- ❖ International Competition
- ❖ Intellectual services
- ❖ Intangible
- ❖ Consulting
- ❖ Design

TIP:
 Look up the meaning of key terms in the Glossary Section of the Manual.

PRACTICE

Compare the specifications of car maintenance services with the specifications you would write for design a car maintenance centre.

Training services that are catalogue based can be acquired as services. Conducting a Training Need Assessment and designing a syllabus are intellectual services.

REFERENCE:

The section is drafted with references made to Part VI, Sections 76 to 87 of the Public Procurement and Disposal Act and articles 55 to 58 of the Regulations.

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Methods of Selection of Consultants

- ❖ QCBS
- ❖ QBS
- ❖ LCS
- ❖ FBS
- ❖ SSS
- ❖ CQS

TIP: **Short-listing**

When a large number of Expression of Interest are expected to be presented and to qualify, it is possible to introduce criteria to compare the relative merit of expression of interest in order to restrict the short-list to a manageable number of bidders. The number of Bidders should not be less than ten. The principles, criteria and number of bidders on the short-list have to be indicated in the Expression of Interest.

- (a) QCBS - Quality of proposal and price taken into consideration as a combination.
 - i. Expression of interest may be invited
 - ii. RFP document must be prepared
 - iii. Evaluation criteria must be clearly evaluated must be clearly established
 - iv. Numerical scores may be applied to the evaluation criteria.
 - v. The contract is to be awarded to the lowest evaluated tender.
 - vi. Where numerical scores are used the contract is to be awarded to the bidder with the highest combined score.
 - vii. Professionalism must be used for this procurement method.
- (b) QBS
 - i. Expressions of interest are invited if necessary
 - ii. Shortlisted consultants or known consultants are invited to submit technical and financial proposals
 - iii. The RFP document is to be used
 - iv. The consultant found to be the highest evaluated and technically selected, the contract shall be negotiated.
 - v. Where it is possible to select the best from EOI, the selected consultant is requested to submit a technical and financial proposal after which the contract is negotiated.
- (c) LCS - Quality of proposal considered, lowest price of those qualified selected.
 - i. RFP document must be used
 - ii. The evaluation criteria must be clear and particularly the minimum technical qualification
 - iii. Those not meeting the minimum technical specifications shall be disqualified.
 - iv. Financial evaluation criteria must be clear and will be applied
 - v. The contract shall be awarded to the bidder who is determined to be the lowest evaluated
 - vi. If the bidders are not known, EOI should be invited.
- (d) FBS - Quality of proposal considered. Best proposals within the fixed budget selected.
 - i. This will be used for small contracts where the other consultants are known and the estimated cost of the consultancy is fixed by the procuring entity and is based on the knowledge of the market.
 - ii. The consultants shall submit technical bids as required by the RFP document and also submit the financial proposals.
 - iii. Those not passing the technical evaluation shall be disqualified
 - iv. Those bidding above the fixed cost by the procuring entity shall also be disqualified
 - v. The fixed cost shall be kept confidential by the procuring entity depending on the circumstances and the type of contract
 - vi. The contract shall be awarded to the lowest evaluated bidder
- (e) SSS - Contract negotiated with single consultant. This is not a preferred method because of its uncompetitiveness but can be used.
 - i. This shall apply in special cases where the procuring entity decides that the services are best obtained from a single known source to the best interest of the procuring entity.
 - ii. Where the approval of the procuring entity's tender committee, must be obtained prior to commencement of the procurement process.
 - iii. The contract shall be negotiated between the procuring entity and the consultant and shall be approved by the tender committee.
 - iv. A fee paid to the consultant as approved by the tender committee shall be favorably comparable to the consultants market rate which should be known

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to the procuring entity.

- (f) CBS - Expression of Interest by individual consultants. Best selected to submit proposals both technical and financial and contract negotiated.

The procuring entity shall be required to select the procurement method to use and obtain the approval of the tender committee before commencement of the procurement proceedings.

8.3 EXPRESSION OF INTEREST (EOI)

Section 78(1) of the Act provides that procuring entity shall prepare a notice inviting interested persons to submit expressions of interest.

The notice inviting expression of interest shall set out the following:

- (a) Name and address of procuring entity
- (b) A brief description of the services being procured
- (c) Qualification requirements
- (d) Where and when expressions of interest must be submitted.

The notice of expression of interest shall be advertised in at least two daily newspapers of nation-wide circulation as required by section 78 (3).

Invitation of expression of interest through advertisement shall not apply where the tender committee has expressly approved procurement through:

- (a) Single Source Selection (SSS)
- (b) Where there is no need of preparing a shortlist before inviting for Request for Proposals in which case the tender committee will have approved invitation of Request for Proposals directly.
- (c) Restricted tendering
- (d) Direct procurement (firm)

8.4 TERMS OF REFERENCE (TOR)

Section 79 of the Act provides that the procuring entity shall prepare terms of reference that set out the following:

- (a) The specific requirements under Section 34 relating to the services and, if applicable, the goods being procured and the time limit for delivery and completion, and
- (b) Anything else required under regulations to be set out in the terms of reference.

Regulations 56 requires that the terms of reference prepared by the Procuring entity shall set out:

- (a) The background including the reasons necessitating the procurement.
- (b) The objects to be achieved by the procurement
- (c) The output expected from the person awarded the contract.
- (d) The qualifications necessary for a person to be awarded the contract.

The PPOA has issued standard Request for Proposal for use by procuring entities when procuring consultancy services. The use of these standard documents is mandatory.

The documents are:

1. Standard request for proposals (RFP) (Selection of consultants)
2. Standard Request for Proposals (RFP) (Selection of individual)

Contents of Request for Proposals (RFP)

- ❖ Letter of Invitation
- ❖ Information to Consultants
- ❖ Standard Bidding documents for Technical Proposals and Financial Proposals
- ❖ Terms of Reference (TOR)
- ❖ Standard forms of Contract

TIP:

Evaluation Grid, Criteria and Weighting

Evaluation criteria and weighting formulae have to be specified in the bidding documents. This is to ensure that bidders are geared to respond to the needs of the entity and to provide transparency in the selection. As mentioned, the criteria scoring and scales should be simple and measurable. They should be specified into the bidding documents.

Typical, weighing formulae: total score equals 80% of technical score plus 20% of financial score.

Total Score=0.8*TechScore+0.2*FinScore

The ratio of 70/30 is also possible. Consider the expected competition level. The higher the competition, the more emphasis can be put on technical requirements, the competition level ensuring keeping the costs in check.

TIP:

A minimum qualifying score may be established in the bidding documents. Typically the Technical Note or Score, the sum of all scores assigned to each criteria, is set at 65 to 75 points out of 100 points.

The higher the standard set, the less bids will pass. This is a useful way to further refine the application of these method, thus depending on the technical specifications, putting more or less emphasis on them.

Where the Expression of Interest for Proposal is expected to generate a lot of responses due to high competition or well-known methodologies, this may provide an opportunity to select highly qualified firms or individuals while keeping the costs in check through a competitive bidding that weighs heavily the financial proposal.

consultants).

The standard Request for Proposals (RFP) has the following content.

Introduction

Section I – Letter of invitation

Section II – Information to consultants and appendix to information to consultants

Section III – Technical proposals

Section IV – Financial proposal

Section V – Terms of Reference

Section VI – Standard forms of contract.

Those managing the procurement proceedings especially the procurement unit and the user departments are required to be qualified and take great care in the preparation of these documents.

Issuing and receiving of request for Proposal is similar to the issuing and receiving of open tenders as provided in chapter 7 or open procurement of goods works and services.

8.5 RECEIVING AND OPENING OF PROPOSALS

- (a) The proposals may be invited through an advertisement or they may be invited directly from the short listed pre-qualified consultants who had earlier expressed interest for that particular procurement.
- (b) The proposals shall be submitted by the consultants strictly in accordance with the information provided in the request for proposals document.
- (c) The procuring entity shall instruct the consultants to seal the technical proposals and the financial proposals in separate envelopes and then seal them together in an outer envelope. The outer envelope shall be addressed to the procuring entity and also bear the reference of the procurement (number and name). The envelope containing the financial proposal shall bear the name of the consultant submitting the proposal. This will enable the procuring entity to return the financial proposal to the consultant unopened when this is required.

The two proposals shall be clearly marked Technical proposal and Financial proposal respectively. The procuring entity shall also instruct the consultants the number of copies which are required informing them that failure to submit the number of copies required may lead to disqualification.

- (d) The opening of the proposals shall be by an opening committee appointed by the Accounting Officer just like in the case of open tenders.
- (e) At the time of opening only the outer envelope shall be opened confirming the presence of the technical proposal and the financial proposal.

The technical proposal envelope may be opened at the same time confirming the number of copies but the financial envelope must not be opened. However the procuring entity must ensure that the instructions on the opening are clearly spelt out in the request for proposal document and strictly followed. There must be a clear instruction that only financial proposals of the consultants who shall be found to be technically qualified shall be opened and the others shall be returned to the respective consultants.

- (f) The financial proposals shall remain sealed in the envelopes and shall be secured safely up to the time of public opening.
- (g) Any proposal received after the time given for submission of the proposals shall be rejected.

8.6 EVALUATION OF PROPOSALS AND CONTRACT AWARD

- (a) Section 82 of the Act provides that the procuring entity shall examine the proposals received in accordance with the request for proposals. Each proposal shall be evaluated to determine if it is responsive and if it is the procuring entity shall assign a score to the technical proposal, in accordance with the procedures and criteria set out in the request for proposal.
- (b) Section 82 also provides that for each proposal which is determined technically responsive the procuring entity shall evaluate and assign a score to the financial proposal in accordance with the procedures and criteria set out in the request for proposals.
- (c) Section 82 (4) provides that if the request for proposals provides for additional methods of evaluation, the procuring entity shall conduct such methods in accordance with the procedures and criteria set out in the request for proposals.
- (d) Regulation 57 provides that the evaluation of request for proposals shall be the same as the evaluation of open tenders set out in regulation 47.
- (e) The following are therefore clarified:
 - (i) When preparing the request for proposals the evaluation criteria to be set and which will need to be applied strictly during evaluation shall be based on scores.
 - (ii) Evaluation shall be done by a competent evaluation committee appointed by the accounting officer.
 - (iii) Evaluation shall be completed within 30 days from the date of opening of the proposals.
 - (iv) The evaluation committee shall prepare an evaluation report containing the recommendation for contract award signed by all the members of the evaluation committee.
- (f) Section 82 (5) of the Act provides that the successful proposal shall be the responsive proposal with the highest score determined by the procuring entity by combining scoring, for each proposal, in accordance with the procedures and criteria set out in the request for proposals, the scores assigned to the technical and financial proposals under subsection (2) and (3) and the results of any additional method of evaluation under subsection (4).
- (g) Apart from providing for the scores in the technical proposal and the financial proposal in the evaluation criteria it is necessary to give the weight that will be given to the technical proposal and the financial proposal. The normal practice is to score the technical proposal out of 100 points and the financial proposal for the lowest price shall be scored 100% and then the other prices shall be given a score by applying the formulae $\frac{PL}{P} \times 100$ where PL is the lowest price and P is the price being considered.

The weights to be applied to technical and financial proposal may be as follows:

Technical
90

Financial
10

TIP:
Financial Evaluation

The financial offer analysis includes comparing it to the technical proposal to verify that all elements of the proposals have been included in the costing, no matter what their costs are. Although this seems trivial, it should be given due care: bidders may make technical proposals that are not manageable given the financial offer.

TIP:
Financial Evaluation

The financial evaluation formulae is :

$$\text{Fin Score} = \frac{\text{Lowest bid Price}}{\text{Bid Price}} \times 100$$

The total score formulae is:

$$\text{Total Score} = a * \text{TechScore} + b * \text{FinScore}$$

Where a and b are the ratio whose combined value is strictly equal to 1. For example:

$$\text{Total Score} = 0.8 * \text{TechScore} + 0.2 * \text{FinScore}$$

80
70

20
30

The technical scores and the financial scores are adjusted by applying the weights before adding them together to determine the highest combined score.

- (h) Section 83 of the Act provides that the procuring entity shall notify the person who submitted the successful proposal that its proposal was successful. At the same time as the person who submitted the successful proposal is notified, the procuring entity shall notify all other persons who submitted proposals that their proposals were not successful.
- (i) Section 84 of the Act provides that the procuring entity may negotiate with the person who submitted the successful proposal and may request and permit changes subject to section 85 (2) which states that “the contract may not vary from the requirements of the terms of reference, the request for proposals or the terms of the successful proposal except in accordance with the following:-
 - (i) The contract may provide for a different price only if there is a proportional increase or deduction in what is to be provided under the contract, and
 - (ii) The variations must be such that if the proposal, with those variations, was evaluated again under section 83, the proposal would still be the successful proposal”
- (j) Section 84 (2) of the Act provides that if the negotiations with the person who submitted the successful proposal do not result in a contract the procuring entity may negotiate with the person who submitted the proposal that would have been successful had the successful proposal not been submitted.
This has the meaning that the contract can be awarded to the second lowest evaluated bidder by the tender committee and the process of negotiation restarted. This process of awarding to next most qualified bidders can only be applied within the bid validity period. The process may be repeated until a successful bidder is awarded the contract.
- (k) The contract which is concluded must be in writing and signed by both parties. In preparing the contract, the contract format provided in the request for proposals document must be used. Section 85 (4) of the Act provides that the contract must set out either –
 - (a) The maximum amount of money that can be paid under the contract or
 - (b) The maximum amount of time that can be paid for under the contract.

A consultancy contract may be lump sum which means has a specific amount of money to be paid or time based which means it shall give an amount of fees to be paid for a specific period called a rate and the total amount to be paid shall be determined by the period of time within which the assignment has been completed.

The rate may be based on an hour, a day or a month. It is very important for this part of the contract to be made very clear to avoid contract disputes later.

Chapter 9

MANAGEMENT/ ADMINISTRATION OF PROCUREMENT CONTRACTS

9 MANAGEMENT/ADMINISTRATION OF PROCUREMENT CONTRACTS

Topics
9.1 Purpose of Contract Management or Contract Administration
9.2 The Procurement file
9.3 The Contract file
9.4 Contract Administration Responsibilities
9.5 Procurement Contract Management Plan
9.6 Maintenance of Risks Register
9.7 Measurement and Control of Performance
9.8 Contract Review Reports
9.9 Payments to Contractor
9.10 Contract Review

INTRODUCTION

Contract administration pertains to the preparation of procurement documentation, the processing and approval of such documentation, monitoring contract implementation, approving and administering contract variations and modifications, and possibly cancelling or terminating contracts.

Weak contract administration is an invitation to corrupt practices. If a Procuring Entity fails to ensure that the vendor or contractor delivers to the specification or quantities of the contract this can lead to substantial losses. If a Procuring Entity approves contract variations that lead to significant deviations from original agreed costs, this undermines effective competition since for example an increased volume of delivery addressed at the time of tender could have led to significantly lower per unit prices from the competing bidders.

Poor documentation and records management, along with weak coordination between the Government’s representative, the procuring unit and the accounting unit undermine payment controls and lead to payments in excess of contract ceilings, especially in multi-year contracts. It is imperative that the Accounting Unit maintain accurate and up to date ledgers that properly track all contract payments and record contract totals and approved contract variations to serve as payment ceilings.

Several procurement reviews in Kenya and elsewhere around the world have identified weak contract administration as a major source of loss and a significant area of abuse and corruption.

9.1 PURPOSE OF CONTRACT MANAGEMENT OR CONTRACT ADMINISTRATION

- (a) A procurement Contract is a written agreement between a procurement entity and a supplier, contractor or consultant which is enforceable by law. Administration is defined as the activities involved in managing a business organization or institution.

Key Terms

- ❖ Procurement Contract
- ❖ Contractor
- ❖ Procurement File
- ❖ Contract File
- ❖ Contract Administrator
- ❖ Sub-Contracts
- ❖ Risks Register
- ❖ Review Reports
- ❖ Payments

Caution

Much abuse and corruption arises during the contract administration stage. Bidders may bid low to ensure that they secure the contract and then employ contract variations as a method for increasing their revenues.

Reference:

The section is drafted with references made to Part IV, Section 47 of the Public Procurement and Disposal Act and Regulation 31 of the Regulations.

Documentation Requirements

- ❖ All documents of the full procurement cycle must be filed and updated:
- ❖ Copy of the letter appointing the contract administrator;
- ❖ Signed justification for any contract variations and written approval by the Tender Committee or Procurement Committee
- ❖ Copies of field reports of the Government's Representative
- ❖ All correspondences
- ❖ All survey and inspection reports
- ❖ All interim payment requests
- ❖ File links to expenditure file and any project meeting files

Management is defined as the process being responsible for a business organization or institution. In this part, contract administration and contract management shall have the same meaning and may be used interchangeably.

- (b) In a procuring contract the contractor has the responsibility of performing the contract as per the terms and conditions of the contract. The procuring entity has the responsibility of meeting its obligation of paying the contractor as per terms and conditions of the contract. These are the basic responsibilities of the parties. For the purpose of ensuring that both parties perform and meet their obligations procurement contracts must be managed. On the part of the procuring entity the procurement contract must be managed with an aim of obtaining goods, works and services as per contract and achieve value for money

9.2 THE PROCUREMENT FILE

The Procurement file is important in the management of a procurement contract. The file is opened for the purpose of processing the procurement before the contract is awarded. It contains the following.

- a. Procurement initiation requisition..
- b. All correspondence on the procurement.
- c. Bid document.
- d. Bids received.
- e. Evaluation and award of the contract.
- f. Information on the award of the contract and particulars of the contract.

This file contains very important information and must be handled carefully.

9.3 THE CONTRACT FILE

Section 68(3) of the Act provides that no contract is formed between the person submitting the successful tender and the procuring entity until the written contract is entered into. The contract file shall be opened after the procurement contract is signed and it shall be opened by the contract manager. The file shall be used for recording the actual performance of the requirements indicated in the contract.

The file should contain the following:

- a. Signed original procurement contract.
- b. Any signed modifications to the contract.
- c. Contract correspondence between the parties.
- d. Information on the performance.
- e. Correspondence on the contract.
- f. Management progress reports
- g. Minutes of meetings of project team
- h. Payment records and close up documents.
- i. Copy of performance security (where required)
- j. Any other relevant information.

9.4 CONTRACT ADMINISTRATION RESPONSIBILITIES

For each contract entered into, the Procuring Entity must designate a member of staff, or a team of staff, as the Contract Administrator responsible for administering the contract. The Procuring Entity must issue a signed letter naming and appointing the Contract Administrator that must be included in the procurement files and contract.

It is the responsibility of the Contract Administrator to perform the obligations and duties of

the Procuring Entity specified in the contract; and to ensure that the contractor performs the contract in accordance with all of the terms and conditions of the contract. In particular it is important that the Contract Administrator ensure that the contractor supply the quality and quantities specified in the contract. It should be noted that this may require rather specialised methods for measuring quantities. Such measurements must be independent and not rely solely on the contractor's submitted measurements of quantity.

The Contract Administrator is responsible for:

- i. Monitoring the performance of the contractor, to ensure that all delivery or performance obligations are met or appropriate action taken by the Procuring Entity in the event of obligations not being met;
- ii. Ensuring that the contractor submits all required documentation as specified in the bidding documents, the contract and as required by law;
- iii. Ensuring that the Procuring Entity meets all its payment and other obligations on time and in accordance with the contract.
- iv. Ensuring that there is adequate cost, quality and time control, where required;
- v. Preparing any required contract variations or change orders and obtaining all required approvals before their issue. Such variations or change orders must be clearly justified in writing backed by supporting evidence;
- vi. Managing any handover or acceptance procedures;
- vii. Making recommendations for contract termination, where appropriate, obtaining all required approvals and managing the termination process;
- viii. Ensuring that the contract is complete, prior to closing the contract file including all handover procedures, transfers of title if need be and that the final retention payment has been made;
- ix. Ensuring that all contract administration records are complete, up to date, filed and archived as required; and
- x. Ensuring that the contractor and the Procuring Entity act in accordance with the Provisions of the Contract.
- xi. Discharge of performance guarantee where required

(a) Administration of Sub-Contracts

The prime contractor shall be responsible for administering any subcontracts and the Procuring Entity shall monitor only the prime contractor's management of its subcontracts.

The Procuring Entity shall not directly administer any subcontracts, except where:

- i. There is a risk of the Procuring Entity incurring undue cost or delay;
- ii. Successful completion of the prime contract is threatened; or
- iii. Special surveillance of high risk or critical subsystems is required.

(b) Technical Inspection of Goods and Works

The Procuring Entity shall inspect goods or works at any reasonable time or place, including: During manufacture or construction; prior to shipment; on delivery or completion; or prior to final acceptance the Procuring Entity's may also inspect subcontractors.

The Procuring Entity may observe tests conducted by the contractor, or any subcontractors, under their own quality control procedures, conduct its own inspection; or employ an independent third party to undertake technical inspection.

(c) Inspection and Acceptance of Goods, Works and Services

The Procuring Entity shall ensure that all goods, works and services are subject to inspection and verification by Inspection and Acceptance Committee, prior to their acceptance.

The inspection and verification shall ensure that:

- i. The correct quantity has been received;

Effective Contract Administration requires:

- ❖ Up to date files that are properly organized for easy retrieval;
- ❖ A coded linkage between procurement files and expenditure files;
- ❖ Close coordination and shared information between the Government's representative (e.g. resident engineer), the procurement unit and the accountant. Note all contract modifications or variations require authorization of the Tender Committee;
- ❖ The accountant to maintain accurate and up to date ledgers where payments can be tracked against a contract total even in a multi year contract.

Variations to Contracts:

- ❖ In accordance with section 47(b) of the Procurement Law and the Regulations any variation of a contract shall be effective if and only if:
- ❖ The price variation is based on the prevailing consumer price index obtained from Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;
- ❖ The quantity variation for goods and services does not exceed ten percent of the original contract quantity;
- ❖ The quantity variation for works does not exceed fifteen per cent of the original contract quantity; and
- ❖ The price or quantity variation is to be executed within the period of the contract.

Contract Variation Categories

Price Variations

Quantity Variations

Optional Specification Variations

Obligatory Specification Variations

Contract Payments and Budget Releases:

- ❖ Large payments can affect the predictability of budget releases if such payments are unforeseen, and hence undermine commitment control. For large contracts cash flow projections must be prepared to be fed into procurement plans which in turn inform the cash flow projections upon which budget releases can be based;
- ❖ In particular, ensure that retention payments are included in cash flow projections submitted to the Budget Office to inform Budget Release decisions.

- ii. The goods, works or services meet the technical standards defined in the contract;
- iii. The goods, works or services have been delivered or completed on time, or that any delay has been noted and appropriate actions as indicated in the contract have been taken;
- iv. All required deliverables have been submitted; and
- v. All required manuals or documentation have been received.

The Inspection and Acceptance Committee responsible for inspecting the goods, works or services shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

9.5 PROCUREMENT CONTRACT MANAGEMENT PLAN.

The contract manager shall prepare a management plan which shall give a background of the contract and capture key focus area of the contract.

It shall contain the following.

- a. Background Information.
- b. Contract management team.
- c. Contractor details.
- d. Scope of contract management.
- e. Key provisions of the contract.
- f. Duties and responsibilities.
- g. Communication channels.
- h. Review and reporting requirements.
- i. Activities and timescales.
- j. Any other information which will assist the contract management team management team in its task.

9.6 RISK MANAGEMENT AND MAINTENANCE OF RISKS REGISTER.

Risk is the single word that determines every contract. Adequate steps for risk mitigation must be taken in all public procurement contracts. Where the tender document so requires, an unconditional performance security must be provided by the successful tenderer issued by a reputable bank or a PPOA approved insurance company based in Kenya or by cash. Where a tender is international the security must be partly payable in Kenya Shillings and be issued by local institutions. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

Failure of the successful tenderer to lodge the required performance security shall constitute a breach of contract and sufficient grounds for the annulment of the award and forfeiture of the tender security and any other remedy under the contract. In the circumstance the procuring entity may award the contract to the next ranked tenderer.

The greatest risks which must be mitigated in the management of procurement contracts are:

- (a) The supplier delivering late or not delivering at all.
- (b) The quality of the required goods, works or services being of inferior quality
- (c) Being charged a higher cost than what the contract provided for.
- (d) The risk of paying for work not done

A risks register should be maintained in which identified risks should be recorded and monitored. The common contract risks that should be watched are:

- i. Incomplete or incorrect specifications.

- ii. Poor communication.
- iii. Supplier lacking sufficient resources.
- iv. Production problems.
- v. Quality problems including technology.
- vi. Shipment details.
- vii. Underestimation of costs by supplier.
- viii. Inflation trends.
- ix. Unexpected events.

Any risks identified shall be isolated and addressed before it is too late.

9.7 MEASUREMENT AND CONTROL OF PERFORMANCE

The requirements of the contract must be closely watched to ensure that there are no deviations or risks and those identified are dealt with in time.

Some of these will be

- (a) Cost overruns.
- (b) Effectiveness of communication.
- (c) Inputs, process and outcomes.
- (d) Timeliness.

9.8 CONTRACT REVIEW REPORTS

In large procurement contracts the contract management plan should provide for review meetings. Review meetings are held periodically as found necessary for the purpose of face to face communications of contract performance and discussing the way forward and preparing status reports.

After a review meeting a status report should be prepared to be shared by the parties which should include:

- (a) Executive summary.
- (b) Report on performance of activities and budget.
- (c) Other issues relevant to the contract such as environmental and general observation including the performance rating.

It is important for the contract manager to report to the procuring entity's administration the outcome of such contract review meetings.

9.9 PAYMENTS TO CONTRACTOR

It is very important for the contractor to perform the contract satisfactorily. Similarly it is important for the procuring entity to make payments to the contractor timely and according to the contract requirements. Payments should not be made unless the invoice or the fee note is accurate and also submitted in accordance with the provisions of the contract.

Failure to pay the contractors in time by procuring entities in the past has led to pending bills accumulating to unacceptable amounts and thus giving public procurement a bad name. It has been said that this is one of the reasons why bidders in public procurement quote high prices to cover for the payment delays which they will always anticipate.

Section 48 of the act provides that where there is an overdue amount owed by a procuring entity under a contract for a procurement, the following shall apply.

- (a) Unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts ; and

Contract Termination:

- ❖ As per the terms of the Procurement Regulations.
- ❖ A contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.
- ❖ The procurement unit shall obtain the approval of the tender committee which authorised the original contract, prior to terminating the contract and the request for approval shall clearly state:
 - ❖ The reasons for termination;
 - ❖ The contractual grounds for termination; and
 - ❖ The cost of terminating the contract.

REFERENCE:

Section 97 of the Public Procurement and Disposal Act

- (b) The interest to be paid under paragraph (a) shall be in accordance with the prevailing commercial bank rates”

The procuring entities are therefore required to plan their procurement and cash/fund flows to ensure that contractors are paid in a timely manner.

9.10 CONTRACT REVIEW

In large procurement contracts it is good practice after the contract is completed to conduct a contract close-out review. This should be done by the contract management team. The review should consider the following:

- (a) The timeliness of contract performance.
- (b) Cost and quality performance.
- (c) Risks analysis.
- (d) Organizational and operational effectiveness.
- (e) Appropriateness of the procedures.
- (f) Suppliers performance.

After the review a report should be prepared and distributed as necessary. The report shall provide good lessons for management of future contracts. Where there is need for action resulting from the report the management of the procuring entity shall decide. Where the team has performed well it should be commended and where it has not done very well it shall note for future improvement.

Chapter 10

RECEIVING, INSPECTION AND ACCEPTANCE OF GOODS, WORKS AND SERVICES

10 RECEIVING, INSPECTING AND ACCEPTANCE OF GOODS, WORKS AND SERVICES

Topics
10.1 Introduction
10.2 Inspection and Acceptance Committee (IAC)
10.3 Inspection and Acceptance of Goods, Works and Services

10.1 INTRODUCTION

Inspection and Acceptance of Goods, Works, Services and Consultancy Services is the final step of the Procurement Cycle. It is at that stage that the Procuring Entity must have been able to ensure that the contracts (or Local Purchase Order) have been duly enforced by the contractor and itself, and that the deliveries correspond to the contracts terms, especially with respect to:

- a. Timing
- b. Standards and Specifications of the contracts
- c. Quantities
- d. Place
- e. Price, Value and Costs

It is the responsibility of the Procuring Entity to ensure that each of these dimensions have been duly verified before accepting the final delivery of any item procured. The acceptance and certification of the delivery is the evidence that will serve to effect the payment to the contractor. The importance of duly managing this step cannot be over-emphasised.

10.2 INSPECTION AND ACCEPTANCE COMMITTEE (IAC)

- (a) Regulation 17 provides that a procuring entity shall establish an inspection and acceptance committee composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procurement unit.
- (b) The Head of the procurement unit shall therefore be principally responsible for the appointment of the committee in a timely manner and therefore the inspection and acceptance or rejection of the procured items without unnecessary delays. The duties and responsibilities of the IAC are listed in regulation 17 (3).
- (c) It should be further noted that the IAC is different from the management teams of procurement contracts. The IAC shall be performing administrative duties of certifying that the procurement contracts have been properly performed and supervised or managed by the management teams. The work of the IAC comes at the end immediately after delivery of the goods, works and services.

10.3 INSPECTION AND ACCEPTANCE OF GOODS, WORKS AND SERVICES

- (a) The work of the committee

The IAC may inspect goods, works or services at any reasonable time or place, including:

Key Terms

- ❖ Receipt of goods, works and services
- ❖ Inspection
- ❖ Acceptance
- ❖ Quality assurance
- ❖ Specifications
- ❖ Standards

TIP:

Look up the meaning of key terms in the Glossary Section of the Manual.

Reference:

The section is drafted with references made to Part IV, Section 49 of the Public Procurement and Disposal Act and article 17 of the Regulations.

- i. During manufacture or construction;
- ii. Prior to shipment;
- iii. On delivery or completion; or
- iv. Prior to final acceptance.
- v. The IAC may also inspect subcontractors

The IAC may observe tests conducted by the contractor, or any subcontractors, under their own quality control procedures; or the procuring entity may employ an independent third party to undertake technical inspection where it lacks capacity.

The Procuring Entity has to ensure that all goods, works and services are subject to inspection and verification inspection and acceptance committee, as appropriate, prior to their acceptance.

The inspection and acceptance comprises all necessary verifications and tests to ensure that the goods, works and services delivered are compliant to the bidding document specifications and to the proposal of the bidders. Verifications may comprise such checks as:

- i. The correct quantity has been received;
- ii. The goods, works or services meet the technical standards defined in the contract;
- iii. The goods, works or services have been delivered or completed on time, or that any delay has been noted;
- iv. All required deliverables have been submitted; and
- v. All required manuals or documentation have been received.

The inspection and acceptance committee responsible for inspecting the goods, works or services shall issue interim completion acceptance certificates or goods received notes, as appropriate and in accordance with the contract.

(b) Treatment of Partial Supplies

The treatment of partial supplies may or may not be permitted in the bidding document and contract. Partial delivery of supplies should be used as a tool for supply chain management and for reducing the costs of storage and handling for the Procuring Entity.

In such a case, the partial delivery of supplies should be duly recorded and should permit tracking all partial deliveries and accumulated deliveries in order to manage the contract.

If the partial delivery is not envisaged in the bidding documents and contract, the Procuring Entity may treat it as follows:

- i record and accept the partial supplies delivered as meeting the necessary standards and establish a prorata delivery and acceptance certificate that will lead to a prorata payment;
- ii reject all the supplies delivered on the basis of partial delivery and treat it as a breach of contract.

It should be Noted that a rejection might involve an appeal from the vendor with the possibility of legal proceedings. Thus in taking such a decision the Procuring Entity should ensure that:

- i. The partial delivery is not a delay;
- ii. The delay in delivery or the partial delivery is not the results of the Procuring Entity's delays in addressing contract management issues;
- iii. The partial delivery or delay is not the results of an unforeseeable event;

- TIP:**
- ❖ Partial Supplies may be accepted if provided for under the contract. If not, then verify contract specifications and apply penalties where necessary.
 - ❖ Ensure that delays or partial are not due to the Procuring Entity's failure to meet its obligations such as timely acceptance of samples or space for delivery.

- iv. The partial delivery or delay is causing a clear and demonstrable harm to the Procuring Entity's activities
- v. Inconveniences shall be avoided by having clear clauses on partial deliveries in the contract.

(c) Inspection and Acceptance of Goods, Works and Services Received – Low Value

The appropriate authorities for approving the inspection and acceptance of goods are prescribed in the Procurement Thresholds Matrix. Under the Low Value Procurement Method, the inspection is carried out by the Store Officer. His functions include:

- i. Verify that the User has endorsed the Goods, Works or Service Received Note;
- ii. Inspect, verify and ascertain that goods, works, services have been delivered to the Procuring Entity in accordance with the terms and specifications of the Purchase Requisition;
- iii. Verify that the quantities delivered are consistent with the quantities indicated on Local Purchase Order and the vendor's claim
- iv. Verify whether the delivery is partial or complete;
- v. Ensure that the Procuring Entity does not receive less quantity than contracted for or receive goods, works, services that are of different specifications than was contracted for;
- vi. Approve the Goods, Services, Works Received Notes;
- vii. Undertake any other functions and duties as necessary to assess the acceptance of goods, works and services or as may be prescribed in Circulars issued by the PPOA.

(d) Inspection and Acceptance Procedures: Procurement of Consultancy Services

The procuring entity shall decide whether to have a IAC for consultancy services contracts or whether to delegate such responsibilities to the management /administration committee for the contract depending on the type and circumstances of the consultancy's contract. This will clearly be stated in the contract and in the RFP document. Under any of the procurement method for consulting services the functions of the Inspection and Acceptance Committee shall include:

- i. Verify that the Head of the End User Department has endorsed the Service Provided.
- ii. Inspect, verify and ascertain that the services, and other products such as reports, maps, plans, manuals, designs, etc. have been delivered to the Procuring Entity in accordance with the terms of reference and the specifications of the Contract;
- iii. Verify that the quantities delivered, where relevant, are consistent with the quantities indicated on the contract such as man days, number of copies, etc.
- iv. Ensure that the Procuring Entity does not receive less value than contracted for or services that are of different quality than was contracted for;
- v. Declare provisional or definitive acceptance of services where appropriate;
- vi. Undertake any other functions and duties as necessary to assess the acceptance of services or as may be prescribed in Circulars issued by the PPOA

The management team for consultancy contracts must be very diligent in its performance to make the work of the IAC easy. If it is not inspection and acceptance of consultancy services can be very tricky.

TIP:

Use a check-list for establishing the controls and verifications to be made

Check-list:

- ❖ Endorsement of Head of End-User Department or User
- ❖ Quantities delivered;
- ❖ Technical standards specified in contract and bid,
- ❖ Completion is timely;
- ❖ All deliverables have been submitted;
- ❖ All manuals or other documentation have been delivered
- ❖ All Certifications of guarantee have been provided

**(PROCUREMENT ENTITY)
INSPECTION AND ACCEPTANCE COMMITTEE (IAC) PRO-
CUREMENT INSPECTION AND ACCEPTANCE
CERTIFICATE**

We the undersigned, being members of the IAC appointed by the Accounting Officer through letter Ref: _____ dated: _____

Confirm that we have performed the assignment diligently and issued this acceptance certificate for the procurement object indicated below:

Contract Title and No.: _____

Date of Contract: _____

Supplier/Contractor: _____

Value of Contract: _____

Particulars of the: _____

Contract items: _____ (list as necessary) _____

Contract delivery due date: _____

Actual delivery date: _____

Procuring Entity: _____

Contract Manager: _____

Signed:

1. Name: _____ Signature: _____

2. Name: _____ Signature: _____

3. Name: _____ Signature: _____

4. Name: _____ Signature: _____

5. Name: _____ Signature: _____

**INSPECTION AND ACCEPTANCE COMMITTEE (IAC)
(PROCURING ENTITY)**

**REPORT ON PROCUREMENT INSPECTION OF
(GOODS, WORKS, SERVICES AND CONSULTANCY SERVICES)**

We the undersigned being members of the IAC appointed by the Accounting Officer through letter Ref: _____ Dated: _____
Confirm that we have performed the assignment and are unable to issue an acceptance certificate due to reasons stated in the attached report for the procurement object indicated below:

Contract Name: _____

Contract Title and No.:

Date of Contract: _____

Supplier/Contractor: _____

Value of Contract: _____

Particulars of the contract: _____

Contract items: _____ (list as necessary) _____

Contract completion/delivery due date: _____

Actual completion/delivery date: _____

Procuring Entity: _____

Contract Manager: _____

Signed:

1. Name: _____ Signature: _____

2. Name: _____ Signature: _____

3. Name: _____ Signature: _____

4. Name: _____ Signature: _____

5. Name: _____ Signature: _____

Chapter 11

INVENTORY CONTROL, STORES MANAGEMENT AND DISTRIBUTION

11 INVENTORY CONTROL, STORES MANAGEMENT AND DISTRIBUTION

Topics
11.1 Responsibilities of the Head of Procurement Unit with Respect to Stores
11.2 Stores Management and Stock Control
11.3 Public Property Inventory Management
11.4 Management and Care of motor vehicles and Equipment
11.5 Procedures for Property and Inventory Verification
11.6 Temporary Removal and Missing Property
11.7 Assets and Inventory Management
11.8 Storage Facilities

INTRODUCTION

The objectives of supply management include preventing wastage and loss, continuing utilization of supplies, and obtaining a fair return of value upon disposal of supplies. In order to achieve those objectives, sound inspection, testing, warehousing, and inventory practices should be applied and effective means of transferring and disposing of property should be employed.

Stores represent cash, and the utmost economy in their use, and accuracy in all transactions relating to them, is essential. To avoid unprofitable lock-up of funds, stocks must be kept to the minimum necessary for the efficient conduct of the procuring entities.

The Procuring Entity may employ inventory management and control software to assist it meet the objectives of sound supply management.

11.1 RESPONSIBILITIES OF THE HEAD OF PROCUREMENT UNIT WITH RESPECT TO STORES

The Head of Procurement unit should amongst other things ensure that:

- a. An officer is appointed to be in charge of stores.
- b. All stores purchased are actually received and taken on charge, and should arrange for occasional visits of inspection to the stores, at least twice in each calendar year, by himself or by a representative in order to ensure that Storekeepers carry out their duties as laid down in this Chapter.
- c. That stores are not allowed to suffer deterioration from any preventable cause,
- d. That overstocking of any particular item is avoided,
- e. That adequate fire-fighting appliances as approved by the relevant fire authority are installed in the store premises, are maintained in good working order and are readily available for emergencies, and that watchmen and staff are instructed in their use.

Any instructions issued by the PPOA shall be obeyed.

Responsibilities of the Head Stores Officer

Key Terms

- ❖ Supply Chain Management
- ❖ Stores Management
- ❖ Inventory
- ❖ Asset
- ❖ Public Property

TIP:

Look up the meaning of key terms in the Glossary Section of the Manual.

Responsibilities of HoPU for Stores

- ❖ All stores purchased are actually received and taken on charge
- ❖ Occasional visits of inspection to the stores
- ❖ Stores are not allowed to suffer deterioration from any preventable cause
- ❖ Overstocking is avoided,
- ❖ Adequate fire-fighting appliances
- ❖ Security arranged

Responsibilities of Store Keeper

- ❖ Maintain store room clean, ventilated and in good condition for storing
- ❖ Ensure easy access
- ❖ Examine locks
- ❖ Check storing and stacking conditions
- ❖ Check storing periods
- ❖ Report part-worn and obsolete or deteriorated stores
- ❖ Separate explosive and inflammable stores
- ❖ Ensure FIFO is applied when issuing stores
- ❖ Keep tally cards
- ❖ Ensure security signs and non-smoking are

The Head Stores Officer shall amongst other things have the following responsibilities.

- a. Ensure that the store-rooms are kept clean, properly ventilated and in good condition and that the stores are well arranged and easy to access;
- b. Inspect the store regularly and report to the Head of the Procurement Unit any case of loss, leakage, damage or deterioration;
- c. Report half-yearly in writing to the Head of the Procurement Unit of any obsolete or unserviceable stores;
- d. Examine frequently the locks of doors and fastenings of windows; he will not permit the store-rooms to remain unattended when open for any purpose and will be solely responsible for the keys of all store-rooms and buildings and will not delegate the duty of locking up the rooms to any unauthorized person;
- e. Ensure the stores are properly stored, frequently examined and adequately protected. In particular, clothing and other stores subjected to deterioration by dampness or insects should be frequently examined and not be placed on the floor. Fluids contained in tins or drums should, whenever possible, be stored off the ground to enable leakage to be readily detected;
- f. Apply good storage and preservation practices for all store items.
- g. Damaged and expired stores for condemnation should be kept separately from unused stores;
- h. All stores of highly inflammable or explosive nature are kept in a separate storeroom;
- i. Issues are made from old consignments of stores before issuing new consignments. Special care should be taken to ensure that drugs are not allowed to expire through lapse of time. Such drugs should be frequently reviewed;
- j. Bin cards are properly kept for each item of stores and placed on or near the respective item; and
- k. Notices prohibiting smoking are prominently exhibited within the store premises.
- l. Access to the stores is restricted.

The Head Stores Officer will be responsible for the safe custody of all empty cases, drums, tins and packing materials that may be of any value. Quantity records in respect of such items should be kept.

Any instructions issued by the PPOA on management of stores shall be followed.

Stores management, stock control, distribution and assets management are not covered by the Act and the Regulation. It is however absolutely necessary for the purchased goods, works and services to be put in proper use as intended by the procuring entity. Permanent assets must also be properly maintained when in use and accounted for up to the point where they become uneconomical to maintain and they are identified for disposal in accordance with the Act and the Regulations.

This chapter shall therefore give instructions on the management of stores and assets from the time they are inspected and accepted by the IAC up to the time when they are handed over to the disposal committee.

11.2 STORES MANAGEMENT AND STOCK CONTROL

Each Procuring Entity has to establish and maintain such control of stores as will assure that the total cost involved will be kept to the minimum consistent with program needs.

For purposes of stock replenishment, inventories may be considered to be composed of active inventory which is that portion carried to satisfy average expected demand, and safety stock which is that portion carried for protection against stock depletion occurring when demand exceeds average expected demand, or when lead time is longer than anticipated.

In establishing active stores levels, consideration should be given to the average demand of individual items, space availability, procurement costs, and inventory carrying costs

In establishing safety stock levels, consideration should be given to demand and lead time fluctuations, essentiality of items, and the additional costs required to achieve additional availability

For the purpose of effective stock control, the following must be carefully considered.

- (a) **Stock Control** - This is maintenance of stocks at the appropriate levels to satisfy customer requirements at the minimum costs.
- (b) **Lead Time** - This is the length of time from the notification of non-availability of an item to the time the item is purchased and is in the store.
- (c) **Reserve (Buffer Stock)** - Extra stocks for critical items to take care of increased demand or lengthened lead time. It is calculated and specially approved.
- (d) **Dues-in** - These are orders which have been placed but the deliveries have not been made.
- (e) **Dues-out** - These are items which have been requisitioned for but cannot be issued because there are no stocks in the store or any other reason.
- (f) **Re-order level** - This is the quantity of stock for a particular item when action to place a new order is taken.
- (g) **Minimum stock level** - This is the quantity of stock below which stocks should not be allowed to fall before a new delivery is received to replenish the stocks.
- (h) **Maximum stock level** - This is the highest quantity of stock which is expected to be achieved when a new delivery for replenishment of stocks is received.
- (i) **Provisioning period** - This is the duration to be considered to be covered by the new order to be placed. It shall be arrived at taking into considering the average monthly issue rate (MIR) and lead time.
- (j) **Contingency reserves** - These are special extra stocks which may be authorised from time to time to meet such unexpected calamities as epidemics, draughts, floods and other natural disasters and specific situations of the procuring entity. These must always be maintained as approval and no issues should be made from them without a written approval by the head of the procuring entity.

Calculating the re-order quantity

Total Assets = Stocks + Dues in

Total Requirements = (MIR + Provisioning period) + Dues Out + Reserves

Reorder Quantity = Total requirements - Total Assets

Consider the following example.

- (A) Stocks = 15 } = Assets = 30
Dues in = 15 } = Assets = 30

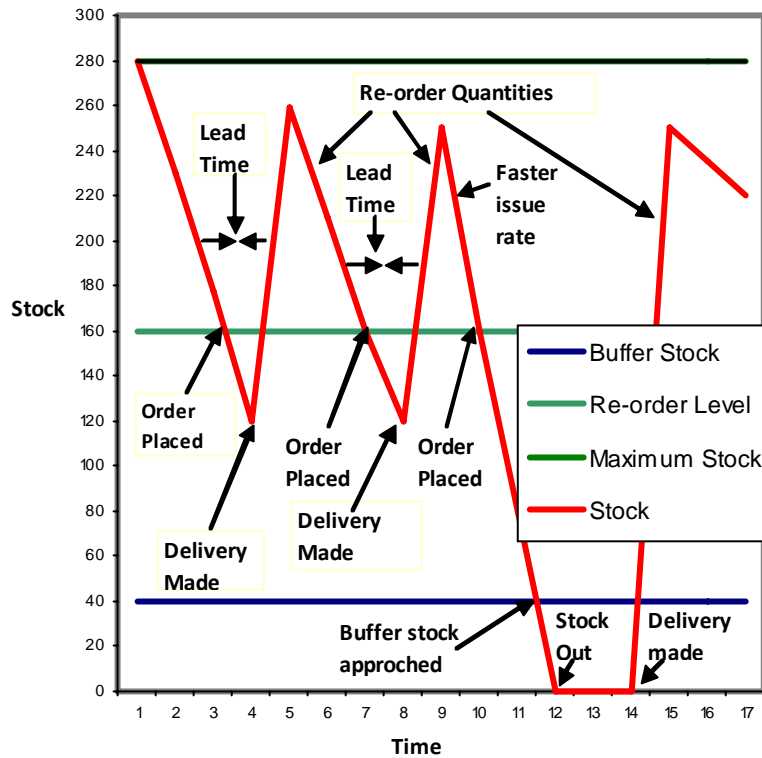
- (B) MIR = 40 } = (MIR x 6) = 240
Provisional Period = 6 } = (MIR x 6) = 240
Dues Out = 110

Total Requirements = 240 + 110 = 350
 RE-order quantities = Total requirements - Total Assets
 = 350 - 30 = 320

Stock Control levels Illustrated

Key Terms in Stock Control

- ❖ Lead Time
- ❖ Reserve Stock
- ❖ Dues-In
- ❖ Dues-Out
- ❖ Re-order Quantity
- ❖ Re-order Level
- ❖ Maximum Stock Level
- ❖ Minimum Stock Level
- ❖ Provisioning Period
- ❖ Contingency Reserves



The use of computers in procurement and stores management systems can make stock control much easier than the use of manual systems. Procuring entities are therefore encouraged to computerise their procurement process.

Categories of Stores

Stores are classified into the following major categories.

- (a) Permanent Stores
- (b) Consumable Stores
- (c) Expendable items

Permanent items are those items which have a long life and also are expensive. When in use they are expected to be maintained and when they become unserviceable they are also expected to have salvage value and they should be disposed of in accordance with the provisions of the Act and the Regulations. For the purpose of this manual permanent items are those items with a value of Ksh 5,000 and an expected life of 2 years.

When permanent items are issued from the stores after they are procured and inspected and accepted by IAC the officer to who they are issued is to enter them into an office inventory, use them and take care of them up to the time of their disposal. The stores staff shall also keep a master inventory of all such items and the items shall only be written off the records on disposal.

Consumable items are those items whose nature changes in use or are consumed and

are therefore issued only once and they are not to be entered into any inventory. Such items shall include, stationery, foodstuff, drugs, fuel etc.

All other items which are procured and can not be classified as permanent or consumable shall be placed in a class of their own i.e. expendable items. The management of expendable items is similar to that of permanent items. Such items include tools, cutlery, bulbs, tube lights, rulers, staplers, lamps etc. This category of stores does not need to be controlled from the stores and therefore there is no permanent record for them in the stores.

Separate categories of stores are also identified as follows:

- i. **Administrative and stationery supplies**, which should include office and computer supplies such as paper, pens, toner, printer cartridges, notebooks, and CDs. Such stores may be kept in locked facilities within the offices and do not require separate warehouse facilities;
- ii. **Shelf Life Store items** characterized by an expiry date less than five years beyond which the item cannot be used. These would include such items as drugs and medical supplies and chemicals. In the case of Shelf Life Store Items specialized storage facilities must be used and the Shelf Life Stores Register should include item identification code, location code, quantity, expiry date, date of acquisition, special storage instructions, if any, and cost value. Issuance of Shelf Life Items should be strictly on a first in first out basis.
- iii. **Durable Store Items** that do not have expiry dates such as spare parts and equipment consumables. In the case of Ordinary Store Items separate warehouse facilities should be utilized and the Ordinary Stores Register should include item identification code, location code, quantity, date of acquisition, special storage instructions, if any, and cost value;
- iv. **Foodstuff and other sensitive perishables** should be stored in a separate facility which are clean and do not permit contamination from chemicals and other toxic pollutants;
- v. **Fuel and Lubricants** should only be stored in special storage facilities approved specifically for fuel and lubricants and should be subject to the highest standards of safety and protection against environmental damage;
- vi. **Assets such as stores of a capital nature**, such as plant, machinery, vehicles, office and house furniture and equipment, books etc., excluding consumable stores, should be properly tagged, recorded in appropriate Asset Inventory Registers indicating the location and the Asset holder.

TIP:

Provide administrative guidelines for stores and assets management in each Procuring Entity

Categories of Stores

- ❖ Permanent Stores
- ❖ Consumable Stores
- ❖ Expandable Stores

11.3 PUBLIC PROPERTY INVENTORY MANAGEMENT

(a) Management of Public Property

The Head of a Procuring Entity should be:

- i. Personally responsible for the general supervision and control of public property and public property accounts in the Procuring Entities, and any lapses therein and should ensure that the members of the store-keeping staff perform their duties satisfactorily; and
- ii. Financially liable for any financial loss incurred through his or her failure to meet those responsibilities.

Public employees are personally responsible for the proper use and care of public property in their custody or subject to their control. Public Employees using public property, whether specifically assigned to them or not, are responsible for that property. Public employees should be diligent in caring for equipment in their possession and provide

Inventory Verification:

- ❖ Updated copy of the departmental inventory controlled a priori
- ❖ Head of End-User department certification on all items
- ❖ Physical verification
- ❖ Verification of original inventory list and of changes and their reporting

reasonable safeguards to secure it. If public property is lost, stolen, misplaced or damaged due to an employee's neglect or carelessness, they may be required to reimburse the Procuring Entity.

Inventory and Public Property Management shall be delegated to Inventory Management unit and in the absence of such a unit by the Procurement unit of the Procuring Entity.

Heads of Procuring Entities are delegated the responsibility of maintaining proper accountability and control of all the property within their jurisdiction. Fulfilment of these responsibilities on behalf of the Head of Procuring Entity may be delegated but the ultimate responsibility remains with the Head of the Procuring Entity. Specific responsibilities regarding public property are as follows:

- i. The Head of the Procuring Entity should know the location of all stores and equipment in their inventory and assure that such stores and equipment is reasonably secure from possible theft and other hazards.
- ii. The Head of the Procuring Entity should maintain reports on any changes in location. This is critical for proper stewardship and essential for insurance management purposes.
- iii. The Head of the Procuring Entity should ensure that assigned equipment is being used in the best interest of the Procuring Entity.
- iv. The Head of the Procuring Entity should provide assistance as needed to Inventory Management personnel who are taking inventory or placing identification tags on equipment.
- v. The Head of the Procuring Entity reviews verifies and responds to an annual inventory report of the status of departmental inventory provided by the Store Keeper and complete all required actions prompted by the findings of the annual inventory report within fourteen (14) days of receipt. Those actions include, but are not limited to, identifying any equipment not currently on the inventory list, preparing a written request to the Internal Auditor to investigate missing property, and preparing written documentation attesting to the disposition of any property due to loss, transfer, cannibalization, etc. In the event a response from the Department Head is not received regarding property that cannot be located within the allowed time, the Internal Auditor should report that property as missing for formal investigation.
- vi. Discourage theft and loss of public property by fixing responsibility.

Hheads of Procuring Entities must ensure that their staff are informed that property acquired for a specific individual's use remains public-owned property after the individual vacates office.

(b) Inventory and Public Property Records.

Stores of a capital nature, such as plant, machinery, vehicles, office and house furniture and equipment, books etc. excluding stationery, which are purchased or requisitioned for use in Government offices or houses, or by Government Officers in the performance of their duties will be recorded in appropriate Registers described under these regulations. The records may be electronic or manual.

The reference number of the supporting L.P.O. Stores Requisition and Issuance Vouchers or other such voucher must be shown in the Master Inventory, and the folio number of the Inventory must be inserted on the supporting voucher; such stores should remain on Inventory or Register charge until they are written off on any of the following grounds:

- i. When approval of their destruction or sale, or a write-off as deficiencies is given or

- ii. When transferred to another person or department.

In addition to the “Master Inventory” which should be kept on the lines of a Control Account, Inventory record Sheets must be kept for each room or other location.

The Procurement Unit should be responsible for keeping of the Inventory record Sheets. The Officer should make a physical check of stores under his control twice a year and render a certificate to the Officer responsible for the Master Inventory. Discrepancies, if any, will be shown on the certificate. Any movement of stores should be recorded on the relative Inventory Sheets. The Officers responsible for keeping of Inventories must keep them up to date and discrepancies must be investigated and adjusted accordingly.

Tools, survey instruments or plant issued to Officers, foremen etc. personally for the performance of their duties should be recorded in their personal account in a tools register or other appropriate register. Every Officer to whom tools, survey instruments or plant are issued should render annually a report to the Procurement Unit as to their condition. The report should be accompanied by a detailed list of the tools etc. in the charge of the Officer. If an Officer no longer needs the tools etc. for the discharge of his duties as a result of his transfer, promotion or retirement he should forthwith return them to his Head of Department. The cost of any tools etc. not returned may be deducted from his salary or pension.

Each procuring entity should keep a register of inventory it possesses and information contained in a register should be provided to the head of procurement unit annually at the end of a financial year.

All inventory records must have the signatures of inventory verification official and the inventory holder at the time

The Head of each Department has the responsibility to keep a register for all furniture and equipment held by their Department. The employees will be held personally liable for the equipment in their custody.

The Head of the Procuring Entity should ensure maintenance of a record for all the public furniture and equipment existing in the Procuring Entity.

11.4 MANAGEMENT AND CARE OF MOTOR VEHICLES AND EQUIPMENT

The Head of each End User Motor Department is held fully responsible for all the vehicles and machinery used by their Department.

Each Procuring Entity should discourage use of public property for private use, waste, abuse and neglect

The following documents should be maintained for each Procuring Entity’s vehicle motor and machinery:

- i. Work ticket recording the route of each vehicle or a machinery recording book,
- ii. Monthly cost sheet that records the fuel, lubricants and maintenance costs; and
- iii. Log book which shall include catalogue of tools, spare parts and movable equipment.

The above documents must always be up to date and available for review and inspection.

The Heads of the Departments or the staff authorized by them, should sign at the end of each month, the work tickets recording the route and the monthly cost sheets.

It is the duty of the Head of the End User Department to ensure that the government vehicles and machinery are:

- i. Properly maintained and repaired,
- ii. Driven only by authorized employees,
- iii. Used only for authorized trips and
- iv. Parked in safe places and protected against theft and loss; and
- v. Properly licensed and insured at all times if required.

The government vehicles are granted for use in order to achieve efficiency in the operations of the Public Sector at the minimum cost. No government vehicle should be used for private purposes.

The Head of the Department shall:

- i. Point out to their drivers the need for proper maintenance of their vehicle;
- ii. Warn their drivers, who have the duty and the obligation to use the government vehicles to drive safely and adhere to speed limits at all times; and
- iii. Forbid drivers to allow unauthorised passengers.

11.5 PROCEDURES FOR PROPERTY AND INVENTORY VERIFICATION

During the year, the Procurement Unit should be notified by the End User Department when changes which affect the accuracy of assigned inventory records occur.

All public property will be verified annually in the following manner:

- i. An updated copy of the departmental inventory listing will be furnished to each department annually by the procuring unit prior to performing a physical inventory verification.
- ii. The Head of the End User Department should verify and sign the certification statement indicating all the items have been physically located or proper paperwork has been initiated to correct any discrepancies.
- iii. The original inventory list, marked up with any changes necessary to building/room location or custodian, must be returned to the Procurement Unit.
- iv. A copy of the original, signed listing should be retained by the End User Department.
- v. Labelling/identification tag, bar-coding consistent with inventory records.

The property and inventory may be coded and labelled for ease of accountability and verification.

Upon completion of the physical inventory verification, any items determined to be missing will be reported to the Department Head by the Procurement unit

The Procurement Unit will coordinate annual stock-taking in liaison with the Department Head who will locate the property and arrange for visual confirmation. If the property is not located, and the Department Head has not already filed a missing property report with the Accounting Officer, the Procurement Unit should report the property missing to Accounting Officer and will forward a copy of the report to the Head of the End User Department responsible for the property.

Relief of accountability for property lost, missing, or stolen should be approved only after investigation by the Internal Auditor and with the concurrence of the Head of the Procuring Entity.

Public property may be insured for losses resulting from a catastrophic occurrence such as fire, wind, or water. Any occurrence and loss should be reported to the Head of the Procuring Entity for disposition. Catastrophic loss of inventory and property material should also be reported to the Procurement Unit.

11.6 TEMPORARY REMOVAL AND MISSING PROPERTY

Public property may be temporarily removed from the public entity's premises with written permission from the appropriate Department Head, when it is integral to a person's role for which they have been hired or aids them in accomplishing their primary mission. When there is a unique or special task or circumstance, outside of a person's regular duties, and it is determined that the temporary removal of property will advance official programs or activities, written permission may be granted by the appropriate Head of the User Department.

Permission should include a description of the equipment, condition, any serial number, and the property tag number with a copy kept on file by the department. The person or official representative of the entity to which the property is temporarily assigned must utilize the property for Government-related business or activities, and agree to assume responsibility for the property during the time it is removed.

Furthermore, the person or entity to which property is assigned, specifically for a task, or peripherally in their role, may be liable for any losses, damage or destruction, or impairment of function or useful life of the equipment that may result due to negligence or carelessness.

If property is discovered missing, an immediate request should be made of the Internal Auditor to have the loss investigated. A check must be made to see if there is insurance coverage for the loss.

A note that the property is missing should be inserted into the asset register and a copy of the police report kept on file. Appropriate action should then be taken in accordance with the procedure for handling losses in Public Financial Management.

11.7 ASSETS AND INVENTORY MANAGEMENT

(a) Management of Administrative and Stationery Supplies

Each Head of Department may assign a room or cupboard for the storage of administrative and stationery supplies.

All issues out of the administrative and stationery supplies stores must be recorded in a stores ledger indicating the item description, quantity and the name of the person making the requisition.

(b) Management of Shelf Life Items

In order to assure maximum use of shelf-life items, each Procuring Entity should:

- i. Identify shelf-life items, including any new items to be placed in inventory, which have a limited shelf-life period.
- ii. Establish the shelf-life period of such items and procedures for controlling their procurement, storage, and issue.
- iii. Inspect or test certain shelf-life items prior to deterioration to determine if the shelf-life period can be extended.
- iv. Conduct inventory management analyses to determine if shelf-life stocks are expected to be utilized prior to the expiration of the original or any extended shelf-life period, and, if not, arrange for transfer of such stock in sufficient time to

TIP:

Vehicles management should be given due attention and the Head of each End-User Department is held responsible for all vehicles and machinery in his department.

Terms regarding care of motor vehicles and equipment

- ❖ Maintenance and Repairs
- ❖ Authorised drivers and operators only
- ❖ Authorised Use
- ❖ Parking in safe place
- ❖ Proper Licensing and Insurance when required

- permit usage prior to deterioration.
- v. Make available for disposal any assets, property and stocks which cannot be utilized through normal supply channels.

In determining requirements for shelf-life items, the following elements should be taken into consideration:

- i. Assigned storage time periods; and
- ii. Appropriate contracting techniques for the particular item involved, including specification requirements, industry practices, and storage and delivery procedures.

Procuring Entities should establish the necessary controls to identify shelf-life items on their stock records.

Shelf-life items should be stored in such a way as to ensure that the oldest stock on hand is issued first. Procuring Entities should issue the oldest stock of shelf-life items first except when it is not feasible.

Any instructions, issued by the PPOA in respect of shell life items shall be followed.

(c) Management of Food Stuff and Perishables

In order to assure maximum use of food stuffs and perishable items, each Procuring Entity must:

- i. Establish the maximum period of such items and the appropriate procedures for controlling their procurement, storage, and safe issue;
- ii. Inspect or test the safety prior to issuance;

In determining requirements for food stuffs and perishable items, the following elements should be taken into consideration:

- i. Assigned storage time periods;
- ii. The toxicity of any fumigants applied;
- iii. Ventilation, temperature and humidity;
- iv. Susceptibility to bacterial and fungal infestation; and
- v. The packaging.
- vi. Refrigeration

Procuring Entities should establish the necessary controls to identify storage items on their stock records.

Food stuffs and perishable items should be stored in such a way as to ensure that the oldest stock on hand is issued first. This is called First in First out (FIFO).

(d) Management of Fuel and Toxic Chemicals

In order to assure safety in the use and storage of fuel and toxic chemicals Procuring Entity should:

- i. Identify all fuels, flammables and toxic chemicals that are placed in inventory.
- ii. Establish the required procedures for controlling their procurement, storage, and issue.
- iii. Measure regularly the inventory.
- iv. Test and calibrate regularly the measurement devices

Procuring Entities should establish the necessary controls to identify toxic chemicals on their stock records.

Fuel and toxic items should be stored in such a way as to ensure safety. Specialized fire fighting equipment and chemicals should be stored at all times for the initial containment of fires.

Any instructions issued by the PPOA in respect of fuels and toxic chemicals shall be

followed.

(e) Management of Durable Stores

The Head of a Procuring Entity should be:

- i. Primarily responsible for the general supervision and control of stores and stores accounts in the Procuring Entity, and any lapses therein, and should ensure that the members of the store-keeping staff perform their duties satisfactorily; and
- ii. Financially liable for any financial loss incurred through his or her failure to meet those responsibilities.

Store keepers are directly responsible for the receipt, issuance and proper management of stores in their custody or subject to their control. Store Keepers should be diligent in caring for stores in their possession and provide reasonable safeguards to secure it. If stores are lost, stolen, misplaced or damaged due to a store keeper's neglect or carelessness, they may be required to reimburse the Procuring Entity.

Heads of Procuring Entities are delegated the responsibility of maintaining proper accountability and control of all the stores within their jurisdiction. Fulfilment of these responsibilities on behalf of the Head of Procuring Entity may be delegated but the ultimate responsibility remains with the Head of the Procuring Entity. Specific responsibilities regarding stores are as follows:

- i. The Head Store Keeper should know the location and status of all stores in their inventory and assure that such stores are reasonably secure from possible theft and other hazards.
- ii. The Head Store Keeper should ensure that issued stores are being used in the best interest of the Procuring Entity.
- iii. The Head of the Procuring Entity should provide assistance as needed to Inventory Management personnel who are taking inventory or placing identification tags on stores.
- iv. The Head of the Procuring Entity should review, verify and respond to an annual inventory verification report of the status of stores provided by the Store Keeper and complete all required actions prompted by the findings of the annual inventory verification within fourteen (14) days of receipt. Those actions include, but are not limited to, identifying any store items not currently on the inventory list, preparing a written request to the Internal Auditor to investigate missing store items, and preparing written documentation attesting to the disposition of any stores due to loss, transfer, cannibalization, etc. In the event a response from the Department Head is not received regarding stores that cannot be located within a reasonable time, the Internal Auditor should report that property as missing for formal investigation.
- v. The Head of the Procuring Entity should prevent theft and loss of public stores by assigning responsibility for the management of stores.

(f) Deletion of Stock

Stocks of slow-moving items which are not otherwise determined to be eligible for stocking should be eliminated through normal attrition and should not be replenished. The successive actions indicated should be taken, as necessary to remove stocks of inactive items from inventory through:

- i. Transfer stock to other users where needed within the public entity.
- ii. Normal disposal as surplus stocks.

(g) Stores Records

The following instructions for keeping stores records should be observed:

- i. The headings or descriptions of articles will be arranged alphabetically or numerically as appropriate. Except where self indexing ledger cards or loose-leaf sheets are used the ledger will be indexed so as to permit ready reference to any

- particular article in the store.
- ii. At the top of each column of the ledger, or folio if there will be a separate one for each article, the unit of quantity will be shown as well as the maximum and minimum permissible stock, and the stores will be taken on charge and issued in that unit, or recognizable fractions of that unit.
- iii. Receipts and issues should be recorded in the ledger on the day of their receipt or issue.
- iv. When not in use the ledgers should be kept under lock and key in a safe place.
- v. The Stores Ledgers must be closed and balanced on the last day of each fiscal year and whenever a survey or handing over takes place.
- vi. Electronic records shall be managed in a similar manner.

(h) Annual Stock taking and Verification of Stocks

A procuring entity should carry out annual stocktaking of the stores, equipment and property; and should submit the annual stocktaking reports to the PPOA upon request. Stock taking shall be conducted by independent staff and not the stores officers.

A procuring entity should carry out stock verification, as a continuous exercise. Stock taking will be undertaken annually by appointed independent stock takers.

The duty of the Stock takers will be to make a physical check of the stores and to compare them with the ledger balances and record to the position.

The Stock takers will prepare the Report, and any surpluses or deficiencies should be documented. The storekeeper concerned will sign the form indicating his acceptance of the surpluses or deficiencies.

The Stock taking Report will be forwarded to the Head of Procuring Entity. The Head of Procuring Entity should reply to the observations of the Stock taker the soonest possible.

(i) Reporting of Losses or Damage

Losses and damages must be recorded and reported to the accounting officer, appropriate investigation should be carried out and police assistance may be sought immediately the a loss or damage is detected

Whenever Heads of Procuring Entities suspect that loss of stores was due to theft or fraud they should immediately request the Police to carry out an investigation. The report should summarize the case as it then stands and will show the date on which the suspected theft, fraud or irregularity was first brought to notice and the date on which the police investigation was requested.

On conclusion of the police investigation appropriate action shall be taken by the head of Procuring entity or the accounting officer.

If the loss of stores referenced is confirmed, the report should be accompanied with a statement of whether the loss was attributable to:

- i. Weakness in the regulations or accounting system;
- ii. Difficulty in the interpretation of the regulations or accounting system;
- iii. Inadequate arrangements for the safe custody of stores; or
- iv. Lack of adequate supervision or control, and
- v. The measures taken or considered necessary to prevent a repetition to be taken.

Losses shall be handled in accordance with the Procuring entity's policy on losses.

Where losses or deficiencies are due to fraud or negligence on behalf of a public officer,

such officer may be surcharged with the amount of such loss.

(j) Safety and Security of Stores.

The Head of the Procuring Entity should ensure that all the necessary safety, precautions and security is provided during storage and transportation of goods. Such precautions should include but not be limited to:

- i. Ordering periodic fumigation where and when necessary;
- ii. Ordering periodic fire fighting drills;
- iii. Ensuring that water is stored exclusively for the use of fire fighting;
- iv. Ensuring the availability and regular servicing of fire fighting equipment.
- v. Ensuring that all windows and doors are securely locked when the Stores are not being manned
- vi. Ensuring availability of protective gear for staff.

Stores and Stocks may be insured if found necessary.

11.8 STORAGE FACILITIES

Layout and Organization of Stores Facilities

Stores facilities should be organised for easy access to the storage and retrieval of items. The layout should facilitate the implementation of a simple item location system to properly record the identification, description and location of all stored items; The Stores facilities should accommodate bin card holders next to each item bin. The Stores facilities should be ventilated, well lit and free of all obstructions. The following should also be noted on storage facilities.

- a. Some items do not need to be stocked and in such circumstances, they are operated under Just in Time procedures (JIT).
- b. The citing of the store must be convenient and not prone to flooding
- c. The design of the stores should be prepared taking into consideration the type of stores, quantities and handling equipment to be used in the stores.. Preferably, the stores facilities should be considered when a building is being designed.
- d. The facilities should be well lit and ventilated.
- e. The doors and windows should be preferably be burglar proof and lockable for security.
- f. Large stores facilities should be secured with a perimeter wall or fence. And guarded
- g. Appropriate stores handling equipment should be provided
- h. Offices should also be made available for the stores staff with the facilities.
- i. Cleanliness of the facilities should be observed.

Chapter 12

DISPOSAL OF STORES, EQUIPMENTS AND OTHER ASSETS

CHAPTER 12 DISPOSAL OF STORES, EQUIPMENT AND OTHER ASSETS

12 Topics
12.1 Introduction
12.2 Items for disposal
12.3 Authority to dispose
12.4 disposal plan
12.5 Sale by open tender
12.6 Sale and Public Auction
12.7 Transfer to another public entity
12.8 Destruction, Dumping, or Burying
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12.10 Disposal To Public Servant
12.11 Summary and Additional Instructions

Key Terms

- ❖ Disposal
- ❖ By open tender
- ❖ By public auction
- ❖ Transfer
- ❖ Dumping, burning , burying
- ❖ Reserve Price
- ❖ Tender
- ❖ Surplus Stores
- ❖ Equipment
- ❖ Assets
- ❖ Obsolete stores
- ❖ Unserviceable
- ❖ Valuation

12.1 INTRODUCTION

Disposal is a critical element of the stores, equipment and other assets management of a Procuring Entity. When any equipment is obsolete, its keeping, through maintenance costs, storage, parking, insurance, etc., may well exceed the returns that can be derived from that piece of equipment and the investment of additional monies . When stores are perishable, keeping them run risks of misuse, using shelf space unduly and not signalling requirements for what may be life savings products. Disposal is thus one of the element of managing procurement and supply and distribution. It focuses on safe-guarding assets and on sending information for decision making.

Disposing is thus a function that is necessary to guarantee that public monies are not applied to useless or obsolete equipment and assets and that when stores are disposed of, they are sold at the best achievable value in the market.

Disposal may be considered as the third life of any items acquired by a Procuring Entity;

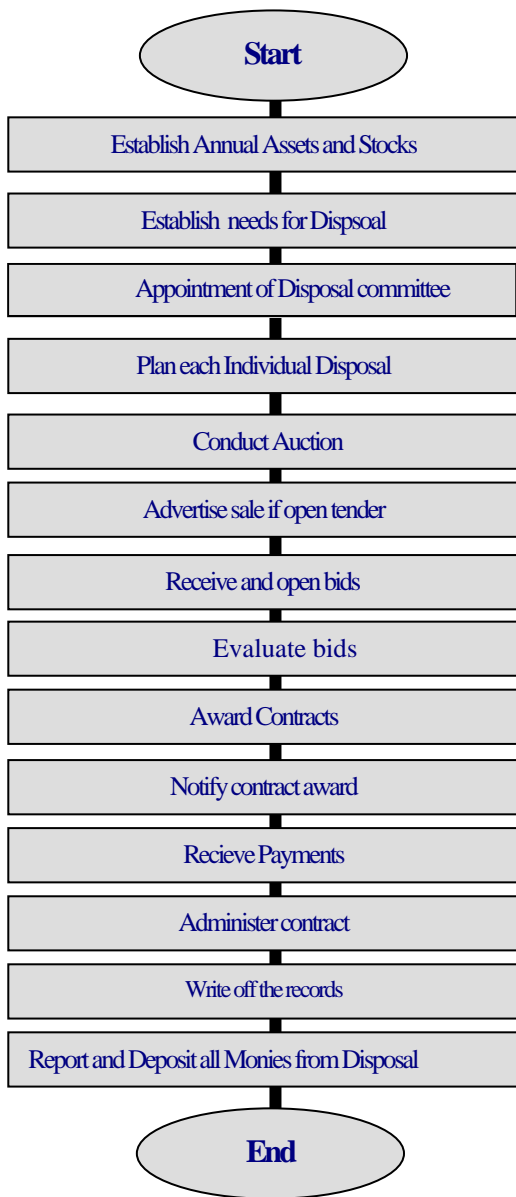
- i. First, it is procured and accepted (the procurement cycle);
- ii. Second it is utilised by the Procuring Entity in the discharge of its duties (the usage life cycle, often referred to as life cycle);
- iii. Third and finally, it has then to be disposed off (the disposal cycle).

Because disposal involves residual values that may be received and can contribute to the cost of renewal, it involves deciding when to dispose of a certain item and may involve health and safety standards issues. It has to be regulated and managed as provided for by the Act and the Regulations.

Reference:

The section has references to sections 126 to 132 of the Public Procurement and Disposal Act 2005 and Regulations 92 and 93.

Figure No.The Complete Disposal Cycle



Disposal Committee Roles

- ❖ Review and approve disposal plan;
- ❖ Approve for each disposal requirement initiated the method of disposal chosen;
- ❖ Select the winning candidates;
- ❖ Negotiate disposal where necessary and in compliance with the Regulations;
- ❖ Nominate the Evaluation and other ad-hoc Committees for the purpose of selection; and
- ❖ Advise the Head of the Procuring Entity on

This chapter gives further clarifications and instructions on disposal of Stores, Equipment and other Assets.

12.2 ITEMS FOR DISPOSAL

Part X of the Act deals solely on Disposal of Stores and Equipment of a public entity that are unserviceable, obsolete or surplus. Regulations 2 define “Asset” as movable and immovable property, tangible and intangible, including immovable property stores, equipment, shares, intellectual rights vested in the state or proprietary rights.

It is here therefore clarified that disposal of assets which are not stores or equipment shall not be disposed of under this part although the disposal procedure or method provided in the part may be adopted. For greater clarity where fixed assets like buildings are condemned and are to be disposed of, they shall be disposed of under this part but the land on which they stand is not to be disposed of.

For further clarification, land, shares and rights are not to be disposed of under this part. Where a procuring entity has a problem in deciding whether any of its asset or property is disposable under this part, the PPOA shall be consulted.

It also here clarified that items which are sold by a procuring entity in its normal business should not be treated as disposal e.g. sale of meat by the Kenya Meat Commission or furniture and farm produce by the Kenya Prisons Services.

12.3 AUTHORITY TO DISPOSE

This chapter applies with respect to the disposal of stores, assets and equipment of a Procuring Entity that are unserviceable, obsolete or surplus in compliance with Part X of the Public Procurement and Disposal Act 2005. The Accounting Officer of a Public Entity shall be primarily responsible for ensuring that the Procuring Entity fulfils its obligations under the Act, the Regulations and this Manual.

The user department shall have the responsibility of identification of items to be disposed of. The disposal committee shall recommend the disposal including the disposal method.

The accounting officer has the final authority of accepting or rejecting the recommendations of the disposal committee. Where items become unserviceable for reasons other than normal wear and tear such as through accidents or expiry the set procedure for handling losses shall be followed before the disposal process.

Obsolescence should be avoided by procuring entities by disposal of items as surplus before they become obsolete. The causes of having excess surplus items in the stores shall also Require to be investigated and justified.

12.4 DISPOSAL PLAN

- (a) The head or the user department shall be responsible for identifying any items which are due for disposal and where possible assemble them together. It shall be expected that a proper inventory record shall be maintained by every user

department. The head of stores shall be responsible for identification of stocked items which are candidates for disposal. The lists of all items identified for disposal shall be submitted to the head of procurement unit or the head of the assets management unit depending on the internal organisation of the procuring entity. These submissions shall form the basis of the annual disposal plan. Where a procuring entity has departments which are also located in different parts of the country, disposal may be arranged at the stations with different disposal committees being appointed to conduct the exercise. Where it is possible procuring entities are encouraged to establish disposal of stores and yards.

The procuring entity should design a disposal form which shall contain the following information: -

- i. Item No.
- ii. Description of item
- iii. Unit of issue
- iv. Quantity
- v. Date of purchase
- vi. Purchase unit price
- vii. Total purchase price
- viii. General condition
- ix. Disposal recommendation of the disposal committee
- x. Estimated current value
- xi. Decision of the Accounting Officer

The standard disposal form if issued by the PPOA shall be used by the procuring entities.

(b) Annual Disposal Planning of Stores and Equipment

A Procuring Entity should undertake annual stocktaking of stores and valuation of assets and equipment and maintain an up to date inventory register. Procuring Entities should prepare a disposal plan for each fiscal year.

Annual disposal planning should be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate, for any disposal linked to replacement. The Disposal Planning shall be done at the same time as the Procurement Planning.

(c) Contents of Annual Disposal Plan

The annual disposal plan shall be prepared by the disposal committee in consultation with the head of the procurement unit and the heads of user departments. Every procuring entity shall establish a disposal committee in accordance with Regulation 92 (1).

Regulation 92 (3) provides that the disposal committee shall first meet within 14 days of its appointment and subsequently at least once in every quarter.

It is here clarified that what is critical is not the meetings of the disposal committee but the tasks it shall undertake to ensure that the disposal plan is implemented. Procuring entities shall dispose off their stores and equipment at least once every year.

Content of Annual Disposal Plan

- ❖ Detailed breakdown of the stores, assets and equipments to be disposed of;
- ❖ Schedule of the disposal;
- ❖ Indication of the justification for disposal;
- ❖ Estimate of the value of each store, asset or equipment;
- ❖ Reference to the asset register or records of the stores;
- ❖ Indication of the method of disposal envisaged
- ❖ Indication of whether the disposal of the stores, assets or equipment will be managed by the Procuring Entity or any special agency designated or hired
- ❖ Indication of the resources available

Type of Disposal Methods:

- ❖ Public Tender Sale
- ❖ Public Auction Sale
- ❖ Transfer to Another Public Entity
- ❖ Trade-In
- ❖ Destruction, Dumping or Burying
- ❖ Disposal to a Public Service Officer

The annual disposal plan for each Procuring Entity should include:

- i. A detailed breakdown of the stores, assets and equipments to be disposed of;
- ii. A schedule of the disposal;
- iii. An indication of the justification for disposal;
- iv. An estimate of the value of each store, asset or equipment;
- v. A reference to the asset register or records of the stores;
- vi. An indication of the method of disposal envisaged for each disposal requirement, including any need for pre-qualification, and the anticipated time for the complete disposal cycle, taking into account the applicable approval requirements;
- vii. An indication of whether the disposal of the stores, assets or equipment will be managed by the Procuring Entity or any special agency designated or hired;
- viii. An indication of the resources available for managing the disposal workload.

(d) Justification and Delineation of the Disposal Requirement

The Disposal Committee should take appropriate measures to effectively ensure that each disposal requirement is justified and does not present a risk for the on-going delivery of the public service nor a loss of public monies.

The Disposal Committee should ensure that each disposal requirement is well delineated so as to avoid any possible confusion between disposal procedures and procurement procedures in the case where the two processes may be integrated as in the case of trade-in.

(e) Choice of Disposal Method

Subject to specific conditions, a Procuring Entity may choose any disposal method provided in Section 129 (3) of the Act which are: -

- (i) Transfer to another public entity
- (ii) Sale by open tender
- (iii) Sale by public auction
- (iv) Destruction, dumping or burying
- (v) Trade in
- (vi) Disposal to Public Service Officer

It is here clarified that the Act does not provide a condition of reserve prices when disposal is by sale by open tender or sale by public auction. However procuring entities are encouraged to apply reserve prices where it is found necessary to ensure a fair price is achieved. Under the circumstances care must be taken in the establishment of the reserve prices. Where disposal is by public auction, the auctions must be by registered auctioneers and the rates charged shall be those approved by the regulating authority.

(f) Budgeting and Allocation of Funds

The Procuring Entity should ensure that adequate funds are budgeted and allocated, prior to initiating the disposal proceedings, taking into account all costs involved in the disposal. The costs involved may include the following:

- i. Valuation of stores, assets or equipments;
- ii. Consultancy costs for preparation of a disposal proposal;
- iii. Disposal proceedings management and supervision costs in the case that a disposal agent may be hired; or
- iv. Costs relating to facilities, services or resources to be provided by the Procuring Entity, such as office space or communication facilities for consultants or counterpart staff, access to the stores, assets and equipments in the case of pre-bid site visits and conferences.

The Procuring Entity should also ensure that adequate funds are available for managing the disposal proceedings, including, but not limited to, any funds required for publication of notices.

(g) Independent Valuation of Stores, Assets and Equipment for Disposing

The Disposal Committee should be responsible for the valuation of the items indicated in the disposal plan. Where a procuring entity has no capacity to value the items for disposal it may use the services of:

- (i) Another procuring entity
- (ii) An evaluation agent

The Procuring Entity should ensure that it has made sufficient budget provisions to meet the costs of the valuation as part of its disposal plan. The procuring entity should hire the agents in compliance with the Act and the Regulations.

(h) Award of Disposal Proceedings

The Procuring Entity should award the disposal proceedings in compliance with the procedures described for each disposal method. No disposal should be awarded without due process of the disposal procedures. Where the disposal is through sale by open tender the contracts shall be awarded by the tender committee for all the items irrespective of the value.

(i) Cancellation of Disposal Proceedings

The cancellation of Disposal proceedings should be avoided whenever possible, but may be permitted where:

- i. The disposal need has ceased to exist or changed significantly;
- ii. Insufficient funding is available for covering the transactions costs of disposing of the stores, assets or equipment;
- iii. There is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
- iv. Insufficient, or no responsive bids are received;
- v. There is evidence of collusion among bidders; or
- vi. It is otherwise in the public interest.

Where disposal proceedings are cancelled prior to bid opening, any bids received should be returned unopened. For this purpose, bids are to be submitted in an inner

envelope indicating the full address of the bidder and an outer envelope indicating the address of the procuring entity only. A Procuring Entity may, at any time, terminate disposal proceedings without entering into a contract.

The Procuring Entity should give prompt notice of a termination to each person who submitted a bid or, if transfer or trade-in were being used, to each person with whom the Procuring Entity was negotiating. On the request of a person, the Procuring Entity should give its reasons for terminating the disposal proceedings within fourteen days of the request. The Procuring Entity shall not be liable to any person for a termination under this part.

A Procuring Entity that terminates disposal proceedings should give the PPOA a written report on the termination. A report should include the reasons for the termination and should be made in accordance with any instructions issued by the PPOA with respect to the contents of the report and when it is due.

(j) Unsuccessful Proceedings

Where no responsive bids are received or disposal proceedings are otherwise unsuccessful, the Procurement Unit should investigate the failed disposal proceedings and prepare a report for the Disposal Committee and the tender committee. The report should include the reasons why the disposal was unsuccessful and recommendations on how any new disposal proceedings should be managed to avoid such failings. The investigation should consider all relevant issues, which may include:

- i. Whether the announcement period in the case of public auction sale or the bidding period in the case of public tender sale was sufficient, considering the factors listed in regulation 40;
- ii. Whether the requirements of the tender document and the terms and conditions of the proposed contract were reasonable and not so excessive as to deter competition;
- iii. Whether sufficient time was allotted for negotiations in the case of transfer and trade-in and whether the terms and conditions of the proposed contract were reasonable and not so excessive as to deter competition;
- iv. Whether any invitation notice was published in an appropriate publication and on the required date;
- v. Whether any amendments or clarifications to the solicitation allowed sufficient time for bidders to take them into account in preparing their bids;
- vi. Whether there were other extraneous events or circumstances, which may have affected the ability of bidders to respond;
- vii. Whether the evaluation process was conducted in accordance with the Regulations and the tender evaluation criteria and whether staff responsible for the evaluation had adequate skills and resources;
- viii. Whether there is any suspicion of collusion between potential bidders; and
- ix. Whether the original choice of disposal method was appropriate.

The Procurement Unit should make any appropriate recommendations, which may include:

- i. The use of an alternative method of disposal;
- ii. Amendments to solicitation document, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;
- iii. Alternative publication of any solicitation document; and
- iv. The introduction of international competition.

(k) Documentation of Disposal Procedures

All Procuring Entities should document the Disposal Cycle .

For each Disposal Method, the Procuring Entities should document:

- i. The initiation of a disposal requirement clearly establishing the need for disposing of the stores, assets or equipment, the justification of the disposal method and the reference to the Disposal Plan;
- ii. The Selection process to account transparently on the compliance to the disposal procedures set forth in the Regulations, notably but not limited to the choice and the enforcement of the appropriate disposal method for selecting the winning candidate securing the best value for money;
- iii. The Contract Award to establish without ambiguity the commitments taken by the Contractor/Buyer and the Procuring Entity to secure efficient and effective disposal;
- iv. The Certification of Completion of the Disposal to ensure the contractor has discharged of its obligations;
- v. The Receipt of Monies as provided in the disposal documents.

12.5 SALE BY OPEN TENDER

Procuring Entities should ensure that the disposal method is properly approved by the Accounting Officer. A Procuring Entity that conducts disposal using sale by open tender shall conduct the process as in the case of procurement by open tender..

(a) Inviting Bids

Bids should be invited through the publication of an announcement of tendering proceedings. No pre-qualification should be conducted for disposing of stores, assets or equipment. Pre-qualification may only be resulted to with the prior approval of the PPOA.

(b) Contents of Announcement of Public Tender Sale Proceedings

Where the Procuring Entity publishes an announcement of tendering proceedings, this should be published in the form of an invitation to tender notice, inviting all potential bidders to submit bids. Invitation to tender notices should include:

- i. The name, address and contact details of the Procuring Entity;
- ii. The nature of the disposal requirement, including the quantity and / or dimensions of stores, assets and equipment and the location and timetable for disposing of the stores, assets and equipment to the selected bidder;
- iii. A statement of any key technical requirements, qualification requirements and evaluation criteria, such as a evidence of qualification to dispose of the stores, assets or equipment in the context of public health and safety and envi-

TIP:

Stores, equipment and assets to be disposed of should be valued and if necessary by an independent valuation agent.

TIP:

Reserve Price is a mechanism designed to ensure that the Procuring Entity secures money for value when the valuation of the stores, equipment or asset to be disposed of cannot be sufficiently precise and only boundaries may be well-determined. It is the local saleable value

- ronmental protection or the application of a margin of preference;
- iv. Instructions on obtaining the bidding documents, including any price payable and the language of the documents; and
- v. Instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value of those;
- vi. Instructions on the location and deadline for submission of bids.

(C) Publication of Announcement in Public Tender Sale Proceedings

The invitation to tender notice should be:

Published at least once in a daily newspaper, which must be of nation-wide circulation to reach sufficient bidders to ensure effective competition; and may in addition be:

- i. Broadcast over the radio or television, on the stations and programmes and at a time most likely to target potential bidders;
- ii. To the extent feasible, published on the internet, including any website established by the PPOA.
- iii. Published on the notice board of the procuring entity.

Where tendering is international, the notice should also be published in media of wide international circulation or on widely read internet sites, in the English language. In addition, where the Procuring Entity believes it is necessary to ensure wide competition, it may send the notice directly to potential bidders. The Procuring Entity should keep a record of any bidders to whom the notice is sent directly, which should form part of the disposal record.

(d) Contents of Bidding Documents for the Public Tender Sale Method

Procuring Entities should use the appropriate standard disposal bidding document issued by the PPOA in preparing bidding documents.

The bidding documents should provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the Procuring Entity. In particular, the bidding documents should include:

- i. A clear description of the stores, assets or equipment;
- ii. An indication of the reserve price where the Procuring Entity decides to use it;
- iii. Instructions on the preparation of bids, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- iv. Instructions on the sealing, labelling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or replacement of bids;
- v. Instructions on participation to pre-bid conferences, site visits and on access to the stores, assets or equipment such a dates, time and conditions;
- vi. Information on the methodology for the evaluation of bids, any evaluation

criteria to be applied and the manner in which the criteria should be applied;

- vii. Information on the procedure for contract award, including the requirement for publication of a notice of proposed award and the bidders' right to appeal;
- viii. The type of contract to be awarded;
- ix. The terms and conditions of the proposed contract; and
- x. Information on the Bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

(e) Eligibility Criteria for the Public Tender Sale Method

The Procuring Entity should ensure that the compliance criteria does not discriminate any person or entity.

The eligibility criteria may require evidence of the qualification or certification or registration of the potential bidders to prove their capability to dispose of stores, assets and equipment that may present a public health and safety threat, an environmental risk or any other cause that may require such evidence.

The eligibility criteria should be detailed in the bidding documents and instructions to bidders.

(f) Evaluation Methodology and Criteria for the Public Tender Sale Method

The methodology for the evaluation of bids should consist of:

- i. Eligibility of the bidder.
- ii. Compliance with the conditions of sale;
- iii. The bid price quoted

Where appropriate, the Procuring Entity may include additional evaluation criteria in the bidding document, which should be taken into account in determining the evaluated price of each bid. The contracts shall be awarded to the highest evaluated bid price for each item or lot subject to the reserved price.

(g) Minimum Bidding Periods for the Public Tender Sale Method

The bidding period should start on the date of the publication of the announcement and should end on the date of the bid submission deadline. In determining the appropriate bidding period for each requirement, the Procuring Entity should take into account, in addition to the minimum bidding period which shall be 21 days for national tenders and 30 days for international tenders:

- i. The time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
- ii. Any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such docu-

TIP:

The format and the content of the Disposal Tender Documents and Specifications and Instructions to bidders must comply with the requirements of chapter V and VI and should be based on the Standard Bidding Documents issued by the PPOA. Check the PPOA Website www.ppoa.go.ke

ments;

- iii. The location of short-listed or potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the Procuring Entity;

(h) Issue and Sale of Bidding Documents for the Public Tender Sale Method

Bidding documents should be issued, as appropriate to all bidders responding to the invitation to tender notice. The Procuring Entity should maintain a record of all bidders to whom the documents are issued.

The Procuring Entity may charge a fee for the bidding documents, but the price should be calculated to cover the costs related to printing, copying and distribution of the documents only and should not include any element of profit. Where bidding documents are sold, the Procuring Entity should:

- i. issue signed receipts for the documents and bidders may be required to submit a copy of the receipt with their bid.
- ii. allow potential bidders to inspect the documents, prior to purchasing the document.

(i) Deposits for items on sale by open Tender

A Procuring Entity may require deposits to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids. The bidding documents should state any requirement for a bid security.

The value of any required bid deposit should be expressed as a fixed amount and not as a percentage. The amount should not be more than two percent of the estimated value of the stores, assets or equipment. In determining the amount of bid deposit required, the Procuring Entity should take into account the cost to bidders of obtaining a bid deposit, the estimated value of the stores, assets or equipment and the risk of bidders failing to fulfil the conditions of their bids. The amount should be high enough to deter irresponsible bids, but not so high as to discourage competition. The bidding documents should state that bid deposits must be:

- i in accordance with the format and wording provided in the bidding document;
- ii In a form acceptable to the Procuring Entity, which may be:
- iii cash;
- iv a bank guarantee;
- v an equivalent instrument, such as a stand-by letter of credit;
- vi an insurance company security; or
- vii any alternative form acceptable to the Procuring Entity, including any forms permitted under schemes issued by the PPOA to facilitate access to securities by small enterprises; and
- viii From an institution acceptable to the Procuring Entity in the case of instruments issued by financial institutions;

TIP:

As a working basis and best practice monies received in respect of the disposals of stores, assets or equipment should be remitted to the Exchequer, unless the Procuring Entity has been permitted to retain revenues by the Minister for Finance.

Reference:

Filing and Archiving

- ❖ The Government Financial Management Act
- ❖ The Public Procurement and Disposal Act:

The conditions for forfeiture of a bid deposit should be specified in the bidding document. The Procuring Entity should release bid deposits promptly to unsuccessful bidders upon expiry of the term of the deposit or it may form part of the winning bidders purchase price.

(j) Clarification and Amendment of Bidding Documents for the Public Tender Sale Method

The bidding document should state that a Bidder may seek clarification of the bidding document and should state the final date after which such clarification may not be sought. Such date should allow adequate time for potential bidders, including foreign bidders, to receive and study the bidding document.

Where a request for clarification is received, the Procuring Entity should promptly provide a clarification in writing. The clarification should be published and copied to all bidders and should include a description of the inquiry, but without identifying the source.

At any time prior to the deadline for submission of bids, the Procuring Entity may, either at its own initiative or in response to a request for clarification from a Bidder, amend the bidding document by issuing an addendum. Any addendum should be issued in writing and the same information should be provided to all Bidders at the same time. All addenda should be numbered sequentially. All clarifications and addenda to the bidding document should be binding on bidders.

(k) Extension of Bidding Period for the Public Tender Sale Method

To give Bidders reasonable time in which to take a clarification or addendum to the bidding documents into account in preparing their bids, the Procuring Entity, may, at its discretion, extend the deadline for the submission of bids, through the issue of an addendum

(l) Withdrawal, Substitution or Modification of Bids for the Public Tender Sale Method

The bidding documents should state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting any bid security. The bidding documents should state the procedures to be followed for withdrawal, substitution or modification.

(m) Pre-bid Conferences and Site Visits for the Public Tender Sale Method

The Procuring Entity may organise:

- i A pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or
- ii A site visit, to enable bidders to gain access to the stores, access or equipment to make their own evaluation of the price.

Details of pre-bid conferences and site visits, including the date, time and location, should be included in the bidding document and, where possible, in the invitation to bid notice. The date of any pre-bid conference or site visit should be sufficiently early in the

TIP:

An “active dossier” is defined, in the context of the Procurement and Financial Management cycle, as a procurement requirement that has not completed its full cycle as defined in this manual and for which payments are still due.

bidding period, to enable bidders to take the information into account in preparing their bids, but should not be so early as to make attendance difficult for any potential bidders.

The Procuring Entity should prepare minutes of any pre-bid conference and should promptly send them to all bidders to whom the bidding documents have been issued. The minutes should include:

- i. All information provided as part of any briefing;
- ii. Details of any clarifications requested, but without identifying the source of the inquiry; and
- iii. The details of responses provided to clarifications.

Following any pre-bid conference or site visit, the Procuring Entity should, where required, issue clarifications or amend the bidding document

(n) Receipt of Bids for the Public Tender Sale Method

The Procuring Entity should make arrangements for the receipt and safe-keeping of bids up until the deadline for submission of bids, which may include:

- i. The use of a tender box, in which bidders are responsible for depositing their bids directly and which should remain locked until the time for bid opening; or
- ii. The receipt of bids by staff of the Procuring Entity, who should be responsible for issuing signed receipts, showing the precise date and time of receipt and keeping bids in a secure location until the time for bid opening.

Where any bid is too large for the bid box, the Procuring Entity should receive and keep the bid, or samples. Where the Procuring Entity is receiving bids and issuing receipts, it should maintain a record of all bids received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt.

Bids should only be received electronically, or by other means which do not permit sealed bids, where authorised by the PPOA.

The Procuring Entity should not be held liable for the loss or delay in delivery of any bid delivered by mail or courier.

The Procuring Entity should ensure that appropriate staffs are available at the location for submission of bids or that bidders have access to the bid box, at all period of time indicated in the bid documents. The Procuring Entity should not disclose the number or identity of bids received, prior to the bid opening, other than to public officials who require the information as part of their official duties.

(o) Bid Closing for the Public Tender Sale Method

Bids shall be opened not later than two hours after the tender date and time of the deadline for submission of bids stated in the bidding document. Where a tender box is used for the receipt of bids, the Procuring Entity should seal the tender box at the precise date and time of the deadline and ensure that no further bids are placed in the tender box.

The Procuring Entity should assign suitable, experienced staff to manage the bid clos-

ing. Any bid that is received after the date and time of the deadline for submission of bids should not be accepted, but should be declared late and rejected.

Late bids should be labelled as late, stating the date and time of receipt and should be returned unopened to the bidder. Any late bid which is not labelled with the bidder's name should be left unopened and destroyed. A bidder submitting a late bid should be asked to go back with it.

Where a bid is submitted using a two envelope system, the Procuring Entity may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes. The inner envelopes should not be opened, but should be returned unopened to the bidder or left unopened and destroyed. Immediately after the bid closing, the bid box or bids received should be taken to the location for bid opening.

(p) Public Opening of Bids for the Public Tender Sale Method

The Procuring Entity should open in public all bids received on time at the date, time and location indicated in the bidding document. The time for bid opening should be the same as, or immediately after, the time of the deadline for submission of bids and in any case not later than two hours of the closing time.

The opening of bids shall be managed by the Disposal Committee. Bidders, or their representatives, should be permitted to attend the opening and details of the bid opening should be included in the bidding document. The Procuring Entity should first open any envelopes marked "withdrawal" and the corresponding bids should be located and returned unopened to the bidder.

Opening shall be by a bid opening committee appointed by the disposal committee from among its members. The committee shall have not less than three members. All the envelopes, including substitutions and modifications and alternative bids should be opened and the details indicated in the bidding document read out. All bids opened should be stamped on key pages and signed or initialled by all the members of the opening committee

With the exception of late bids, no bids should be accepted, rejected or evaluated in any way at the bid opening. Any discrepancies or missing documents should be noted in the record of bid opening.

The Procuring Entity should make a record of the bid opening, which should be kept as part of the disposal record. The record should include at least:

- i. The name of all bidders whose bids were opened;
- ii. The presence or absence of a bid deposit, if one was required;
- iii. The total price of the bid, including the currency, except where the opening is of technical bids only;
- iv. The names of all staff and bidders' representatives attending the opening.

All Bidders' representatives attending the bid opening should be requested to sign the record, but the absence of any signature should not invalidate the record. The opened bids should immediately be taken to a secure location, where they should be kept until the evaluation begins.

TIP: Standard Bidding Documents

Templates for the Instructions to Bidders and other standard bidding documents can be obtained on the PPOA Website (www.ppoa.go.ke).

Explanations on the application of the standard bidding document can be obtained from the PPOA helpdesk.

You may check on the web for other Standard Bidding Documents as designed by the World Bank, European Commission or South African Government to understand the different approach but common rational.

Check-list for setting the period for bid preparation:

- ❖ Is it national or international?: delays in mailing
- ❖ Does it involve preparing a methodology, schedules, maps or other specialised professional diligences?
- ❖ Does it include options and the possibility of variante?
- ❖ Does it necessitate authentic legal documents to obtain from national administration?
- ❖ Does it include very specific requirements for pricing that necessitates specific calculations, obtained quotes from other vendors?
- ❖ Is there a complex or unusual specification? For example in terms of environmental protection or historical patrimony.
- ❖ Is the level of sub-contracting expected to be important?
- ❖ Special restrictions and requirements

(q) Evaluation Committees – Public Tender Sale Method

The Accounting Officer shall appoint an evaluation committee. to evaluate the bids. The evaluation committee shall have not less than three members. Members of the opening committee may be appointed as members of the evaluation committee. A member of the tender committee may be appointed as a member of the disposal committee but not a member of the evaluation committee. The Evaluation Committee should be responsible for the evaluation of bids and the preparation of evaluation report and recommendations for contract awards by the tender committee. The number and level of members of the Evaluation Committee should depend on the value and complexity of the disposal requirement, but should in all cases be a minimum of three members. The Evaluation Committee should include skills, knowledge and experience relevant to the disposal requirement, which may include:

- i. Technical skills relevant to the disposal requirement;
- ii. End user representation;
- iii. Procurement and contracting skills;
- iv. Financial management or analysis skills; or
- v. Legal expertise.

(r) Assessing Responsiveness of Bids – Public Tender Sale Method

The Procuring Entity’s determination of a bid’s responsiveness should be based on the contents of the bid itself, subject to any clarifications received.

A substantially responsive bid is one which conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.

A material deviation, reservation, or omission is one that:

- i. Affects in any substantial way the disposal of the stores, assets or equipment specified in the bidding documents; or
- ii. Would limit in any substantial way, inconsistent with the bidding documents, the Procuring Entity’s rights or the bidder’s obligations under any resulting Contract; or
- iii. If corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

Any bid which contains a material deviation, reservation or omission, and is therefore not substantially responsive, should be rejected and may not subsequently be made responsive by the bidder or the Procuring Entity. The classification of a deviation, reservation or omission as material or nonmaterial should be determined by the objectives and requirements of the individual disposal requirement, as stated in the bidding document, and should take into account the impact on key factors, such as cost, risk, time and quality. Material deviations, reservations or omissions may typically include:

- i. Unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
- ii. Unacceptable alternative technical details for disposing of stores, assets or equipments; or
- iii. Unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-

contracting or warranty.

The classification of deviations, reservations and omissions as material or nonmaterial should be consistently applied to all bids.

(s) Correction of Non-Conformities, Errors and Omissions

Where a bid is substantially responsive, the Procuring Entity may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation. The non-conformity, error or omission should be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids. Bidders should be notified of any financial adjustments made and requested, in writing, to agree to the correction. Any Bidder who does not accept the adjustment shall be disqualified but shall not forfeit the bid deposit.

(t) Clarification of Bids – Public Tender Sale Method

The Procuring Entity may seek clarification from a bidder of its bid. The request and the clarification should only be in writing. The request for clarification should not seek and the bidder should not be permitted to:

- i. Amend its bid price, except to accept the financial adjustment;
- ii. Change the substance of the bid; or
- iii. Substantially alter anything which is a deciding factor in the evaluation.

Any clarification received, which is not in response to a request from the Procuring Entity, should not be taken into account. The failure of a bidder to reply to a request for clarification may result in the rejection of its bid.

(u) Preliminary Examination – Public Tender Sale Method

The Evaluation Committee should conduct a preliminary examination to determine whether bids are complete and are responsive to the basic instructions and requirements of the bidding document. The preliminary examination should determine whether:

- i. The bid has been submitted in the correct format;
- ii. Any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
- iii. The bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- iv. The bid has been correctly signed and authorised;
- v. The correct number of copies of the bid have been submitted;
- vi. The bid is valid for at least the period required;
- vii. All key documents and information have been submitted; and
- viii. The bid meets any other key requirements of the bidding document.

Any deviations, which are considered to be material deviations, should result in rejection of the bid and such bids should not be subject to technical evaluation. Deviations which are considered to be non material should not result in rejection of the bid. The preliminary examination should also determine whether Bidders are eligible, where this has not been determined prior to inviting bids.

TIP : **Bid Securities: Costs**

Keeping costs down is justified by the need to maintain transaction costs at an acceptable level to avoid bidders applying costs loaders that affect the financial of the project which in case of a disposal would mean that the Treasury receives less money for the Stores and Assets. The objective of Bid Securities is to avoid frivolous bids where many bidders exist as this would create undue work and might bias competition. Fixed imposed percentage is not acceptable as it permit inferring the bid price and this can bias the technical evaluation and thus create undue influences.

TIP :

Note that it is important to ensure that all communications between the Procuring Entity and a vendor seeking a contract for the procurement are in writing. Electronic communications may be used provided that signed hard copies are maintained and filed as detailed in the chapter 17.

TIP:
Submission

Note that electronic submissions are not permitted unless otherwise specified by the PPOA through circulars when specific conditions are met.

(v) Technical Evaluation – Public Tender Sale Method

The Evaluation Committee should conduct a technical evaluation by comparing each bid to the technical requirements of the disposal in the bidding document where applying, to determine whether the bids are substantially responsive.

The technical evaluation may determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document and should not be used to assess the relative quality of bids or to award points in any way. The factors taken into account should be those indicated in the bidding document only and may include:

- i. Conformity to specifications, standards, without material deviation or reservation;
- ii. Satisfactory understanding of a disposal requirement, as demonstrated by any methodology or design; or
- iii. Suitable staffing or arrangements for supervision or management of the disposal.

The evaluation should not take into account any requirements which were not included in the Bidding Document. Any material deviations should result in rejection of the bid and such bids should not be subject to financial evaluation and comparison. Non-material deviations may be corrected. Where technical evaluation is not necessary it shall be skipped.

(w) Alternative Bids – Public Tender Sale Method

Alternative bids should not be permitted, except where specifically indicated in the bidding document. This has the meaning that a bidder shall only be allowed to quote only on price for each item or lot.

(x) Financial Evaluation and Comparison – Public Tender Sale Method

The Evaluation Committee should conduct a financial evaluation and comparison to determine the evaluated price of each bid and determine the highest evaluated bid, which is substantially responsive to the requirements of the bidding document. The evaluated price for each bid should be determined by:

- i. Taking the bid price, as read out at the bid opening;
- ii. Making adjustments for any non-material non-conformity, error or omission;
- iii. Applying any additional evaluation criteria, through an increase or decrease to the bid price;
- iv. Converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- v. Bids should be compared by ranking them according to their evaluated price and determining the bid with the highest evaluated price.

(y) Post-qualification – Public Tender Sale Method

Where so indicated in the bidding documents, the Procuring Entity may conducted a

post-qualification of the bidder who submitted the highest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively. The criteria for qualification should be as set out in the bidding document.

Where a bidder is determined not to be qualified, the bid should be rejected and a post-qualification conducted on the bidder who submitted the next highest evaluated responsive bid. Where a pre-qualification has been conducted, the Procuring Entity may verify the information submitted by the bidder who submitted the highest evaluated responsive bid. Where the bidder no longer meets the qualification criteria, the bidder should be rejected and the qualifications of the next bidder verified.

(z) Evaluation Reports and Recommendations

The Evaluation Committee should prepare an evaluation report for submission to the Tender Committee. The evaluation report should include:

- i. A summary of the bids received and opened;
- ii. The results of the preliminary examination;
- iii. The results of the technical evaluation;
- iv. Reasons why bids were declared non responsive;
- v. Details of any non material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- vi. The evaluated price of each bid, showing any adjustments to the bid price and any conversion to a common currency;
- vii. The ranking of the bids, according to their total evaluated price;
- viii. A statement of the highest evaluated substantially responsive bid, for each lot where applicable;
- ix. A summary of the application of any conditional bonus and the highest evaluated combination of bids, where applicable;
- x. The results of any post-qualification; and
- xi. A recommendation to award the contract or contracts to the highest evaluated responsive bid or combination of bids, or other appropriate recommendation, such as the cancellation of the disposal process.

The evaluation report and recommendations shall be dated and signed by all the members of the evaluation committee. The evaluation shall be completed within 30 days from the date of bid opening.

(a) Contract Award

The tender committee shall award the contracts taking into consideration the evaluation report and the agenda prepared by the secretary of the tender committee. Notification of contract award shall be made to the winning bidders and at the same time the other bidders shall be informed that their bids were not successful. The bidders shall be given a period of fourteen days from the date of notification of award within which to pay and collect the items failure to which the contract award shall lapse.

In case of failure to pay for and collect the items awarded, the bidder shall forfeit the deposit and the items shall be offered to the next highest evaluated bidder. Proper records for all transactions shall be kept. The items sold shall be written off the records.

TIP: **Bids Received**

Note that it is the responsibility of the Procuring Entity to ensure that an appropriate storage facility is used to keep securely the opened bids until the evaluation begins.

12.6 SALE BY PUBLIC AUCTION

(a) Public Auction Sale Procedures

Procuring Entities should ensure that they have complied with all relevant requirements prior to initiating disposal procedures in accordance with this part. A Procuring Entity that conducts disposal using the Public Auction Sale Method should ensure that the procedure has been approved by the Accounting Officer. The auctioneer shall also be appointed through the public procurement process.

(b) Inviting Bids under the Public Auction Sale Method

Bids should be invited through the publication of an announcement of auction sale. No pre-qualification may be conducted for disposing of stores, assets or equipment under this method.

(c) Contents of Announcement of Public Auction Sale Proceedings

Where the Procuring Entity publishes an announcement of auction sale, this should be published in the form of an auction notice, inviting all potential bidders to participate in the sale. Invitation notices should include:

- i. The name, address and contact details of the Procuring Entity;
- ii. The nature of the disposal requirement, including the quantity and / or dimensions of stores, assets and equipment and the location and timetable for disposing of the stores, assets and equipment to the selected bidder;
- iii. A statement of any key eligibility requirements to participate to the auction sale, such as official identification paper for individuals, company registration, cash or bank draft, evidence of qualification to dispose of the stores, assets or equipment in the context of public health and safety and environmental protection; and
- iv. Instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value of those; and
- v. Instructions on the location and time of the auction.

(d) Publication of Announcement in Public Auction Sale Proceedings

The invitation to the auction sale notice should be:

- i. Published in the printed media, in at least one daily newspaper, which must be of wide enough circulation to reach sufficient bidders to ensure effective competition;
- ii. Broadcast over the radio or television, on the stations and programmes and at a time most likely to target potential bidders if found necessary;
- iii. To the extent feasible, published on the internet, including any website established by the PPOA.

(e) Contents of Auction List for the Public Auction Sale Method

TIP:
Responsiveness

In Public Tender Sales, this stage of verification also aims at verifying the compliance criteria that determines eligibility.

TIP:

Examples of Material Deviations, Reservations and Omissions

- ❖ Unacceptable time schedules for disposing of the assets or stores which will induce costs and delays to the Procuring Entity and, where it is stated in the bidding document that time is of the essence;
- ❖ Unacceptable alternative technical details, such as environmental or health standards, or impact on the Procuring Entity working conditions; or
- ❖ Unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

Procuring entities should prepare an auction list containing all the items to be auctioned. The auction list should provide bidders with all the information that they require in order to participate with sufficient information in the auction sale. In particular, the auction list should include:

- i. A clear description of the stores, assets or equipment;
- ii. An indication of the reserve price where the Procuring Entity decides to use it.
- iii. Instructions on the auction sale rules such as official documentation required, proof of solvability, bid security, form of payment authorised, increment thresholds during the auction sale, time lapse eluded to declare winner and any other instructions that the PPOA may prescribe by Circular;
- iv. Instructions on participation to pre-bid conferences, site visits and on access to the stores, assets or equipment such as dates, time and conditions;
- v. Any qualification criteria and the procedure for post-qualification or verification of qualification information;
- vi. The type of contract to be awarded;
- vii. The terms and conditions of the proposed contract and
- viii. Information on the Bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

(f) Eligibility Criteria for the Public Auction Sale Method

The Procuring Entity should ensure that these eligibility criteria do not discriminate any person or entity.

The eligibility criteria may require evidence of the qualification or certification or registration of the potential bidders to prove their capability to dispose of stores, assets and equipment that may present a public health and safety threat, an environmental risk or any other cause that may require such evidence.

The eligibility criteria should include an invitation to participate to the auction sale, based on proof of solvency in order to deter any frivolous bid and collusion. The eligibility criteria should be detailed in the bidding documents and instructions to bidders that should be approved by the Disposal Committee.

(g) Minimum Notice Period for the Public Auction Sale Method

The notice period should start on the date of the first publication of the announcement and should end on the date of the auction sale. In determining the appropriate notice period for each requirement, the Procuring Entity should take into account, in addition to the minimum bidding period:

- i. The time required for all potential bidders to access the stores, assets and equipment; and
- ii. Any restrictions relating to the time the stores, assets and equipment can be evaluated directly by the potential bidders.

(h) Public Auction Sale, Administration and awards

The auction shall be conducted by a registered auctioneer who shall be contracted by the procuring entity. The auction may also be conducted by the staff of the procuring entity or staff of another public .

The auction shall be conducted professionally with all the participating bidders being given chances to bid up to the time the highest bidder is determined.

Bidders who shall have provided auction deposits shall be given auction bidding numbers which they shall be stating when announcing their bids. The participating bidders shall also have acquired copies of the auction list. The deposit shall be placed for each item or lot of the auction. The auction deposit shall not exceed 1% of the total cost of the estimated cost of the auction item or lot. The auctioneer shall have staff who shall keep the record of the winning bidders per item or lot. The procuring entity shall also have its own staff who shall also keep the same record of the winning bidders.

At the end of the auction the two lists of winners shall be tallied and signed by the representatives of the auctioneer and the procuring entity. Where the auction is conducted by the staff of the procuring entity, the records shall be recorded by two different persons for the purpose of tallying at the end of the auction and it shall also be signed by both parties.

(i) Payment for and Collection of Items

The bidders who win items in the auction shall be given a period of 14 days from the date of the auction to pay for the items and take possession of them and remove them from the procuring entities premises. Failure to do this, the bidders shall forfeit the bid deposits and the items offered to the second highest bidders.

12.7 TRANSFER TO ANOTHER PUBLIC ENTITY

(a) Use of this Method

Procuring Entities should ensure that they have complied with all relevant requirements and approval of disposal method is approved by the accounting officer or the head of the procuring entity

Transfer to another public entity method of disposal shall apply only when a Procuring Entity may dispose of stores, assets or equipment to another Procuring Entity, hereafter named the receiving Procuring Entity or the other party, which should always be a public entity as defined by section 3 of the Act . The transfer may be as a result of a request by the receiving entity or the proposal by a procuring entity.

(b) Justification for the Transfer to Another Public Entity

The transfer should be justified by the Disposal Committee when preparing the disposal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the need of the Procuring Entity to dispose of the stores, assets or equipment.

The receiving entity may pay an agreed amount of money for the items or may be

issued with the items free of charge.

Any instructions that may be issued by the PPOA must be followed.

(c) Authority for Disposal

Where disposal is through transfer to another public entity free of charge, the approval of the accounting officer or the head of a procuring entity shall be adequate and the approval of the tender committee shall not be required.

Where the transfer is subject to payment of any money the transfer shall be effected only after the money has been paid by the receiving entity and subject to approval by the tender committee.

12.8 DESTRUCTION, DUMPING OR BURYING

(a) Use of this Method

Procuring Entities should ensure that they have complied with all relevant requirements prior to initiating disposal procedures in accordance with this part including approval of use of the method by the accounting officer.

A Procuring Entity that conducts disposal using the Destruction, Dumping or Burying Method should be cautious of the fact that there are other laws regarding safety and health to be observed in the disposal.

Destruction, Dumping or Burying method of disposal should be subject to the laws pertaining to public health and safety, environmental protection and instructions issued by the PPOA on this method of disposal .

(b) Justification for the Destruction, Dumping or Burying

All destruction, dumping or burying should be justified by the disposal committee. When preparing the Disposal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the need of the Procuring Entity to dispose of the stores, assets or equipment.

(c) Evaluation – Destruction, Dumping or Burying Method

The Disposal Committee should conduct a evaluation to determine if the Procuring Entity is capable of disposing of the stores, assets or equipment itself or if it should seek the assistance of an agent or contract a qualified entity.

The Disposal Committee should determine if the destruction, dumping or burying method presents a risk of non compliance to public health and safety and environmental protection laws and standards.

(d) Financial Evaluation and Comparison – Destruction, Dumping or Burying Method

The Disposal Committee should conduct a financial evaluation and comparison to determine if the destruction, dumping or burying method is most economical method and efficient use of public funds. An evaluation of the costs and benefits should be performed to assess:

Reference:

Article 42 and 137 of the Public Procurement and Disposal Act: Collusions and Penalties

Note that after the deadline for the submission of tenders, proposals or quotations:

- ❖ No vendor who submitted a tender, proposal or quotation shall make any unsolicited communications to the Procuring Entity or any person involved in the procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of tenders, proposals or quotations; and
- ❖ No person who is not officially involved in the evaluation and comparison of tenders, proposals or quotations shall attempt, in any way, to influence that evaluation and comparison.

A person who contravenes to these rules may be guilty of an offence and shall be liable on conviction:

- ❖ If the person is an individual, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding three years or to both; or
- ❖ if the person is a corporation, to a fine not exceeding ten million shillings.

These articles apply to both procurement and disposal requirements.

TIP:

The format and the content of the Public Tender Sales and all other disposal standard Documents and Specifications and Instructions to bidders must comply with the requirements of chapter V and VI and should be based on the Standard Bidding Documents issued by the PPOA. Check the PPOA Website www.ppoa.go.ke

Check-list of documents to be kept:

- ❖ Disposal Initiation Form
- ❖ Tender Committee Minutes (initiation, nomination of committees and approval of bidding documents)
- ❖ Complete Tender Documents and Specifications and Instruction to Bidders
- ❖ Publication Notice
- ❖ Receipt of Sale of Tender Documents
- ❖ Receipt of Bids
- ❖ Bid Opening Minutes
- ❖ Evaluation Committee Minutes and Reports and Recommendations
- ❖ Negotiations Minutes
- ❖ Tender Committee Minutes
- ❖ List of Bidders
- ❖ Bids Received
- ❖ Letter of Notification
- ❖ Signed Contract (may be endorsed by PS/MoF)
- ❖ Certificate of Disposal of Stores and Assets

- i. Transactions costs;
- ii. costs of destruction, dumping or burying, including costs of contracting out the supervision, management and / or execution;
- iii. benefits to the receiving Procuring Entity;
- iv. potential disruption of public service;
- v. other costs such as health and environmental costs; and
- vi. any other considerations that may inform the decision on Disposal

(e) Recourse to a Third Party

The Procuring Entity may chose, upon approval of the Disposal Committee, to contract out studies, supervision, management or execution of the disposal.

In any case of contracting out, the Public Procurement and Disposal Act 2005 and the Regulations should be adhered to.

(f) Evaluation Reports and Recommendations

The Disposal Committee should prepare an evaluation report for submission to the accounting officer or head of procuring entity. The evaluation report should include:

- i. a summary of the economic and financial evaluations and comparisons and their parameters;
- ii. the results of the evaluation;
- iii. a recommendation on the destruction, dumping or burying or other disposal method to be used; and
- iv. the financial estimation, including estimated costs of contracting out.

The evaluation report and recommendations should be approved by the appropriate award authority, prior to proceeding with disposal,

(g) Documents required for the Destruction, Dumping, Burying Disposal Cycle

As a matter of principle, all Procuring Entities should prepare a Disposal Plan in accordance with the Public Procurement and Disposal Act and Regulations. Procuring Entities should document the initiation of the disposal requirement with an Initiation Form. Procuring Entities Disposal Committee Minutes should be prepared.

After the execution of the disposal, a disposal/destruction certificate shall be issued and signed by those conducting the disposal.

12.9 TRADE-IN

(a) Use of Trade-In Method

Procuring Entities should ensure that they have complied with all relevant requirements prior to initiating disposal procedures in accordance with this part including disposal through trade-in by the tender committee.

(b) Justification for the Trade-In

All trade-ins should be justified by the Disposal Committee when preparing the Dis-

posal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the combination of the need of the Procuring Entity to dispose of the stores, assets or equipment and of a disposal requirement where the stores, assets or equipment and the immediate need for replacement.

The disposal of the stores, assets and equipment shall be a means for a Procuring Entity to obtain a discount as part of a disposal requirement. Specific economic and financial analysis may be required to demonstrate the advantage of the transfer compared to public tender disposal.

(c) Linkage to Procurement

A disposal requirement executed using the trade-in method should always link directly to a procurement requirement. The intention of the Procuring Entity to dispose of the stores, assets and equipment as trade-in as part of a procurement requirement should be clearly stipulated in the procurement requirement announcements and bidding documentation.

The trade-in method disposal cycle is hence de facto intrinsically linked to a procurement cycle. A trade-in may be initiated and negotiated with the selected bidder of a procurement requirement as direct procurement subject to justification and approval by the tender committee. It may also be opened to all bidders participating in the procurement in which case the bidders shall quote the value of the item to be traded-in. Where direct procurement is used, the value of the item to be traded in shall be negotiated by the parties.

(d) Financial Evaluation and Comparison – Trade-In Method

The disposal Committee should conduct a financial evaluation and comparison to determine if the trade-in method is the most economical method and if it secures value for money and efficient use of public funds. An evaluation of the costs and benefits of the trade-in should be performed to assess:

- i. Costs of trade-in if different from procurement requirement transactions costs;
- ii. Transactions costs without trade-in, such as sales or destruction, for the Procuring Entity;
- iii. Comparison of the estimated sale value of the stores, assets or equipment with the estimated discount as part of the procurement requirement; or
- iv. Any other considerations that may inform the decision of the Disposal Committee to ensure value for money and efficiency in the use of public funds.

(e) Evaluation Reports and Recommendations

The disposal committee should prepare an evaluation report for submission to the accounting officer or head of the procuring entity and any other required award authority. The evaluation report should include:

- i. A summary of the economic and financial evaluations and comparisons and their parameters;
- ii. The results of the evaluation;
- iii. A recommendation on the trade-in or other disposal method to be used to;

REFERENCE:

Refer to Public Tender Sale, section 16.6, for issues concerning:

- ❖ The Government Financial Management Act
- ❖ Issue and sale of bidding document
- ❖ Bid securities
- ❖ Clarifications and Amendments
- ❖ Extension of bidding period
- ❖ Withdrawal of submissions and bids
- ❖ Pre-bid Conference and Site Visits
- ❖ Reserve price
- ❖ Documentation and records management and filing

- and
- iv. The financial conditions, including reserve price to be applied as part of the procurement process.

(f) Reserve Price

A Procuring Entity may establish a reserve price in the case of trade-in below which the stores, assets or equipment will not be disposed of the reserve price if applicable shall be disclosed to the bidder or bidders. If the discount obtainable as part of the procurement requirement in which the stores, assets or equipment were traded-in does not meet the reserve price, the Procuring Entity may choose to award the procurement contract at the full price quoted and retain the trade-in item.

The Procuring Entity may also choose to proceed to direct negotiations with the selected bidders of the procurement requirement. Negotiations as part of the procurement procedures shall be on the value of the trade-in item subject to approval by the tender committee.

(g) Negotiations

The Procuring Entity may negotiate with the selected bidder of the procurement proceedings where the reserve price is not accepted. If the negotiations do not result in an agreement, the Procuring Entity should cancel all disposal proceedings, without cancelling the procurement proceedings subject to approval by the tender committee.

(h) Procedure for Negotiations

Negotiations should not be conducted until after the Financial Evaluation Report of the procurement requirement has been approved by the relevant authority.

The Procuring Entity should prepare a plan for the negotiations, which should specify the issues to be negotiated and objectives to be achieved and should, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters. The negotiations should be conducted by a minimum of two staff of the Procuring Entity, who should not commit the Procuring Entity to any proposed arrangements or agreements, but should seek the approval of the relevant authority, prior to confirming any agreement reached.

Staff conducting the negotiations should prepare minutes of the negotiations, which should form part of the record of the disposal and should obtain the other party written agreement that they are a true and accurate record of the negotiations held.

(i) Documents required for the Trade-In Disposal Cycle

As a matter of principle, all Procuring Entities should prepare a Disposal Plan in accordance with the Public Procurement and Disposal Act and Regulations. Procuring Entities should document the initiation of the disposal requirement with an Initiation Form. Procuring Entities Disposal Committee Minutes should be prepared:

Any instructions issued by the PPOA on trade-in shall be followed.

12.10 DISPOSAL TO PUBLIC SERVANTS

(a) Restriction on Disposal to Public Officers

A Procuring Entity should not dispose of unserviceable, obsolete or surplus stores, assets and equipment to an employee of the Procuring Entity, or a member of a board or committee of the public entity under Regulation 93 (1), and subject to recommendation by the Disposal committee and approval by the Accounting Officer. It is here clarified that participation in disposal through open tender or Public Auction is allowed provided the participant is not involved in any part of the disposal cycle.

The restriction extends to the relatives of the person. For greater clarity, “relative” is defined as the spouse or children. In exceptional circumstances disposal to public servants may be permitted for the disposal of unserviceable or obsolete assets and equipment only under the following conditions:

- i. Where the Procuring Entity set aside items to be disposed of through internal tender process; or
- ii. Where the disposal of an asset or equipment would directly benefit the performance of a public officer in the execution of his or her duties within a Procuring Entity. This shall be done where the disposal committee makes a strong case and recommendation and approval is given by the accounting officer or the head of the procuring entity in accordance with section 130 of the Act and Regulation 93.

(b) Procedures for Internal Tender Process

The Procuring Entity should announce the disposal of the stores, assets or equipment on the notice board of the Procuring Entity fourteen days prior to the date of bid closing.

A Procuring Entity should request for written sealed bids from public officers. A receipt should be provided to an officer for a bid received by the procuring unit. Evaluation for sale to public officers should be based on price only. A post-bid negotiation should not be permitted. The award should be by the Tender Committee irrespective of the value of the disposal item. Every disposal to public servants of the procuring entity should be reported promptly to the PPOA within 14 days of the disposal.

(c) Filing of Documents

All procuring entities should file the documents relating to disposals. In the case where the disposal requirement involved feasibility studies and surveys directly carried out or accepted by the procuring entity to prepare the tender documents, the reports and other documents resulting from these studies and surveys are subject to the Regulations.

Notwithstanding the above, the procuring entities should ensure that all documents are adequately filed in the disposal requirement files and referenced in their paper and electronic records. The procuring entities should ensure that all disposal files are safely stored and archived for not less than six years. Files should be protected from: theft, fire, flooding and rain; access by unauthorised persons and any other possible causes of alteration of the records.

Restrictions:

Restrictions apply to Disposals to Employees as stipulated by Section 131 of the Public Procurement and Disposal Act and are regulated by article 93 of the Regulations.

Procuring entities should ensure that all disposal files are accessible and can be made available to any authority empowered to have access within an appropriate time frame for the requesting authority to perform its duties. Procuring entities should ensure that they maintain adequate and accurate records of the disposal process in compliance with the Act and the Regulations.

Any instructions issued by the PPOA shall be followed.

12.11 SUMMARY AND ADDITIONAL INSTRUCTIONS

- (a) Disposal of stores and equipment which are obsolete, unserviceable or surplus to requirement of a procuring entity shall be disposed of in accordance with the Act, the Regulations and this part of the Manual.
- (b) Disposal of other assets where disposal has been approved by the competent authority under any law shall be in accordance with the Act, the Regulations and this part of the Manual unless there is any law referred providing for the procedure of disposal.
- (c) Where disposal of any stores, equipment, property or any asset is ordered by a court of law, disposal shall be in accordance with the Act, the Regulations and this part of the Manual unless the court of law has provided or ordered the procedure of disposal.
- (d) Disposal of any stores, equipment, property or any asset may, with the approval of the tender committee, after disposal has been approved by a competent authority may be executed through a combination of open tender and public auction, where a pre-qualification is done through open tender and public auction is conducted thereafter in which only the pre-qualified candidates shall qualify to participate in the auction.
- (e) Sale of manufactured goods, farm produce or domestic animals, bred as business by a procuring entity shall not qualify as disposal under the act, this manual or Regulations.

Disposal may also be implemented through any other method subject to prior approval by the PPOA.

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