



USER GUIDE

TO

**THE PUBLIC PROCUREMENT AND DISPOSAL
ACT, 2005,**

AND

**THE PUBLIC PROCUREMENT AND DISPOSAL
REGULATIONS, 2006**

**December
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ACRONYMS

AO	Accounting Officer
HPE	Head of Procuring Entity
HPU	Head of Procurement Unit
DG	Director General
APP	Annual Procurement Plan
PPARB	Public Procurement Administrative Review Board
CEO	Chief Executive Officer
DC	Disposal Committee
EC	Evaluation Committee
GOK	Government of Kenya
IAC	Inspection and Acceptance Committee
MOF	Ministry of Finance
PC	Procurement Committee
PE	Procuring Entity
PEs	Procuring Entities
PPOA	Public Procurement Oversight Authority
PPOAB	Public Procurement Oversight Advisory Board
PPP	Public Private Partnership
PU	Procurement Unit
RFP	Request for Proposals
SBD	Standard Bidding Document
TC	Tender Committee
TOC	Tender Opening Committee
TOR	Terms of Referenc

INTRODUCTION

This User Guide is designed to assist the employees in Procuring Entities in the efficient and effective execution of their duties by providing guidelines on how to conduct public procurement in compliance with the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006. It is intended for use by those who play a supplementary part in the procurement process, e.g. as occasional members of Evaluation Committees, and for other stakeholders who seek a general understanding of the procurement law. Those seeking a more detailed understanding of the public procurement system in Kenya and those who engage in procurement as a principal part of their duties should also study the Public Procurement and Disposal General Manual and other manuals/guidelines issued by the Public Procurement Oversight Authority (PPOA), which can be found on the website www.ppoa.go.ke.

This User Guide should be read together with Public Procurement and Disposal Act and the Public Procurement and Disposal Regulations. It is not a legally binding document and the Act, the Regulations and the General Manual take precedence in case of any conflict.

a. Purpose of the Act

The Purpose of the Act is to establish procedures for the procurement and disposal of unserviceable, obsolete or surplus stores and equipment by public entities, to achieve the following objectives:

- I. To maximize economy and efficiency;
- II. To promote competition and ensure that competitors are treated fairly;
- III. To promote the integrity and fairness of these procedures;
- IV. To increase transparency and accountability;
- V. To increase public confidence in the procurement system; and
- VI. To facilitate the promotion of local industry and economic development.

b. Structure of the Act and the Regulations

The **Act** is divided into 11 parts while the **Regulations** are divided into 7 parts each covering different subject areas and each part further divided into topics within the subject area. The following parts are in the Act and in the Regulations:

ACT			REGULATIONS		
Part	Section	Content	Part	Regulation	Content
I	1-7	Preliminary part giving the short title, commencement of the Act, purpose of the Act, definitions, application of the Act & conflict of the Act with other Acts, international agreements & conditions on donated funds.	I	1-6	Preliminary part giving citation, commencement, interpretations of terms, meaning of Public Entity, amount chargeable for Capacity Building Levy, membership of the Advisory Board & the Threshold matrix.
II	8-25	Bodies involved in the regulation of public procurement i.e. PPOA, PPOAB & PPARB.			
III	26-28	Internal Organization of the Public Entities relating to procurement.	II	7-22	Internal organizations of the Procuring Entities & roles of different departments and Committees
IV	29-49	General Procurement Rules	III	23-34	General procurement rules
V	50-71	Requirement & process of Open Tendering	IV	35-52	Requirement & process of Open Tendering.
VI	72-92	Alternative Procurement Procedures	V	53-66	Alternative Procurement Procedures
VII	93-100	Grounds & procedures for Administrative Review of Procurement Proceedings	VI	67-88	Grounds and the procedures for Administrative Review of Procurement Proceedings.
VIII	101-114	Power of the Public Procurement Oversight Authority	VII	89-93	Grounds for debarment of Tenderer, composition of the Disposal committee and instances of Disposal to employees by PEs.
IX	115-125	Debarment of Tenderers	First Schedule		Threshold Matrix for Class A, B and C Procuring Entities
X	126-132	Disposal of stores & equipment	Second Schedule		Composition of Tender Committees
XI	133-144	miscellaneous	Third Schedule		List of the Standard Tender Document
First Schedule		Members of the Advisory Board	Fourth Schedule		forms for Review Fees for Review
Second Schedule		Conduct of business and affairs of the Advisory Board			
Third Schedule		Transitional provisions			
Fourth Schedule		Consequential amendments			

KEY:  Act  Regulations

c. Application of the Act and the Regulations

The Act and the Regulation apply to:

1. Procurement by a Public Entity;
2. Contract management;
3. Supply chain management, including inventory and distribution;
4. Disposal by a public entity of stores and equipment that are unserviceable obsolete or surplus;
5. The renting of premises, except the acquiring of services provided by the Government or a department of the Government;
6. The appointing, other than the authority of an Act, of an individual to a committee, task force or other body if the individual will be paid an amount other than for expenses; and
7. The acquiring of real property (real estate).

However, the Act does not apply to the following:

1. Retaining of services of an individual for a limited term if, in providing those services, the individual works primarily as though he were an employee;
2. Acquiring of stores or equipment if the stores or equipment are being disposed of by a public entity through transfer to another Public Entity;
3. Acquiring of services provided by the Government or a department of the Government;

d. Conflict with other Acts and with International Agreements

The Act and the Regulations shall prevail over any Act or Regulation in matters relating to procurement and disposal. However, if there is a conflict with a condition imposed by the donor of funds, the condition shall prevail with respect to a procurement that uses those funds and no other; this provision does not apply if the donor of funds is a Public Entity.

WHO DOES WHAT?

a. Public Procurement Oversight Authority

Established as a body corporate with the following functions:

1. Ensuring that the procurement procedures established under the Act are complied with;
2. Monitoring the public procurement system and reporting on its overall functioning to the Minister of Finance;
3. Assisting in the implementation and operation of the public procurement system by:
 - i. Preparing & distributing manuals and standard documents;
 - ii. Providing advice and assistance to PEs;
 - iii. Developing, promoting and supporting the training and professional development of persons involved in procurement;
 - iv. Issuing of written directions to PEs with respect to procurement, conduct of procurement proceedings and dissemination of information on procurements; and
 - v. Ensuring that PEs engage procurement professionals in their procurement units.
4. Initiating public procurement policy and proposing amendments to the Act or Regulations; and
5. Performance of such other functions and duties as are provided for under the Act.

b. Public Procurement Oversight Advisory Board

Established as an unincorporated body and consisting of the Director-General plus nine members nominated by a prescribed organization, appointed by the Minister for Finance and approved by Parliament with key functions of:

1. General advice to the Authority on the exercise of its powers and performance of its functions;
2. Approving the Authority's estimates of revenue and expenditure;
3. Recommending the appointment or termination of the DG;
4. Performance of such other functions and duties as are provided for under the Act or Regulations.

c. Public Procurement Administrative Review Board

This Board is a continuation of the Public Procurement Complaints, Review and Appeals Board which was established under the Exchequer and Audit (Public Procurement) Regulations, 2001. The

Board is made up of six members nominated from various professional associations and three other members appointed by the Minister for Finance. Its main function is to receive and adjudicate upon applications for administrative review from persons who claim to have suffered or to risk suffering loss or damage due to a breach of duty by a PE.

d. Procuring Entities

Procuring Entities are any Public Entity making a procurement to which the Act and the Regulations apply, namely, the Government or any department of the Government, the courts, local authorities under the Local Government Act, the commissions established under the Constitution, state corporations within the meaning of the State Corporations Act, the Central Bank of Kenya, co-operative societies, public schools, universities, colleges and other prescribed bodies. They include any body that uses public assets in any form of contractual undertaking, including public private partnerships, companies owned by public entities to carry out functions otherwise performed by the public entities and any body in which the Government has a controlling interest.

Public Entities are classified below as;

<i>Class A</i>	<i>Class B</i>	<i>Class C</i>
<i>State Corporations</i>	<i>City Council (Nairobi, Mombasa and Kisumu)</i>	<i>Other local Authorities (municipal, County, Town Councils)</i>
<i>Ministries</i>	<i>Cooperative societies</i>	<i>Schools</i>
	<i>Universities</i>	<i>District Hospitals, Sub-District Hospitals</i>
	<i>Colleges</i>	<i>Health centres/Dispensaries</i>
	<i>Judiciary</i>	<i>Constituency Development Fund Committees</i>
	<i>Commissions</i>	<i>Voluntary Organizations/Institutions</i>
	<i>Parliament</i>	
	<i>Districts</i>	
	<i>Provincial Hospitals</i>	
	<i>Semi-Autonomous Government Agencies</i>	

PEs must carry out their procurement and disposal activities in accordance with the Public Procurement and Disposal Act, the Regulations, Standard Tendering Documents, Manuals and any directions of the PPOA. To ensure compliance PEs must, among other functions, prepare and follow their procurement plans, have a Procurement Unit staffed with procurement professionals, have Procurement, Evaluation and Tender Committees, ensure all procurement procedures are properly documented and records properly maintained, ensure all contracts are complied with, implement circulars issued by PPOA, report to PPOA in accordance with its directives and cooperate fully with all investigations launched by the PPOA.

e. Accounting Officer

The Accounting Officer has the overall responsibility of ensuring that the PE fulfils its obligations under the Act, the Regulations and that any directions of the PPOA are complied with respect to each of its procurements. The Accounting Officer also ensures that the PE establishes a Tender Committee, a Procurement Committee and a Procurement Unit; that procurement plans and proper documents of procurement proceedings are prepared; and that records are properly managed well. The AO also executes contracts for procurement on behalf of the PE.

f. Tender Committee

The Tender Committee in the Procuring Entity has a wide range of functions among which are:

Reviewing, verifying and ascertaining that all procurement and disposals have been undertaken in accordance with the Act and Regulations;

Approving the selection of the successful tender or proposal;

Awarding procurement contracts;

Ensuring that funds are available for the procurement under consideration;

Ensuring that the Procuring Entity does not pay in excess of prevailing market prices;

Reviewing and approving the procurement method to be used;

Approving the list of tenderers in case of Restricted Tendering, prequalified persons and list of persons to be given request for proposals;

Approving amendments of contracts previously awarded by the Tender Committee; and

Reviewing the quarterly reports on quotations that have been awarded by the Procurement Committee.

g. Procurement Committee

This committee comprises an official delegated by the Head of the Procuring Entity or the Accounting Officer who serves as the chairman of the committee; the finance officer or an officer carrying out the related functions; the secretary and three other members also appointed by the Accounting Officer or the Head of the Procuring Entity. Procurement Committees are responsible for contracts below the Tender Committee thresholds as set out in the first schedule of the Regulations and ensure that the selection of companies invited to submit quotations are based on fair competition and in compliance with the legal and regulatory framework for the supply of goods, works and services.

h. Tender Opening Committee

The Tender Opening Committee is composed of at least three members, one of whom shall not be involved in the processing or evaluation of the tenders. This committee's main functions are:

To open all tenders received by the appointed time;

To sign each tender on one or more pages as determined by the committee and initial in each tender against quotations of the price & any modifications or discounts; and

To prepare tender opening minutes, which shall be signed by each member and which set out the record of the procedure followed in opening of the tenders and particulars of those submitting the tenders or their representatives who attended the opening of tenders.

i. Evaluation Committee

The Evaluation Committee's function is to carry out the technical and financial evaluation of tenders or proposals. This committee consists of a chairman and at least two other members, none of whom may be a member of the Tender Committee. All members are appointed by the Accounting Officer or the Head of the Procuring Entity upon recommendation by the Procurement Unit. The committee members should be knowledgeable in the operational, technical and financial aspects of the procurement. The committee prepares a report to the Tender Committee which includes an analysis of the tenders received, together with minutes of the tender opening, the results of the preliminary evaluation with reasons why any tenders were rejected, scores awarded by each evaluator for each tender, a summary of the relative strengths and weaknesses of each tender, final ratings given to each tender and a recommendation to award the tender to the lowest evaluated tenderer or, under the Request for Proposals procurement method, to the person who submitted the proposal with the highest total score.

j. Procurement Units

The Procurement Units in the Procuring Entities should be established with qualified and experienced procurement professionals as prescribed under section 26(9) of the Act. The functions of the Procurement Unit include:

Maintaining and updating annually the standing lists of registered tenderers;

Preparing, publishing and distributing procurement and disposal opportunities, including invitations to tender, pre-qualification documents and invitations for expressions of interest;

Co-ordinating the receiving and opening of tender documents;

Maintaining procurement and disposal records;

Short listing pre-qualified tenderers for approval;

Proposing membership of the Evaluation Committee to the Accounting Officer;

Co-ordinating evaluation of tenders, quotations and proposals;

Preparing notices of awards, rejection letters, contract documents and variations of contracts;

Acting as the secretariat to the tender, procurement and disposal committees; and

Preparing consolidated procurement and disposal plans.

k. User Departments

User departments are responsible for:

Initiating procurement and disposal requirements and forwarding them to the Procurement Unit;

Participating in the evaluation of tenders, proposals or quotations;

Reporting departures from the terms and conditions of the contract;

Giving details of any required variations to the Procurement Unit;

Maintaining records of contract management;

Endorsing goods, works and services received notes;

Preparing the technical specifications;

Assisting in preparation of procurement and disposal plans; and

Making clarifications on tenders, requests for quotations and any other matter as may be required.

l. Inspection and Acceptance Committee

This committee is 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. The main functions of this committee are:

To inspect and, where necessary, test the goods received;

To inspect and review the goods, works or services and accept or reject them on behalf of the PE immediately after delivery of the goods, works or services;

To ensure that the correct quantity is received, that the technical standards have been met, that timely delivery or completion and any delay is duly noted and all required manuals or documentations are received;

To issue interim or completion certificates or goods received notes, as appropriate.

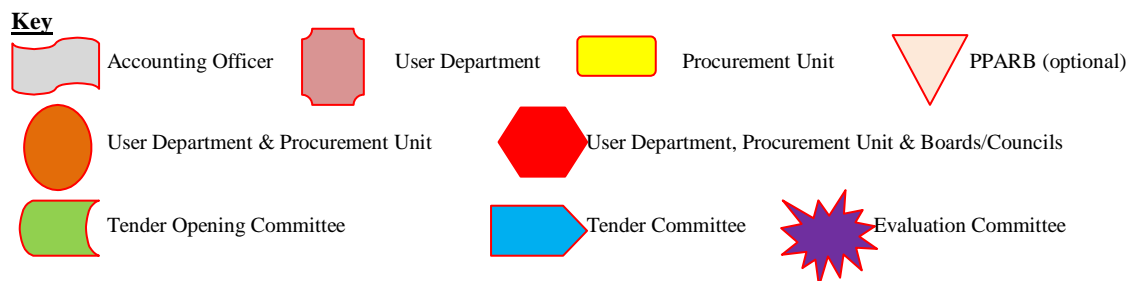
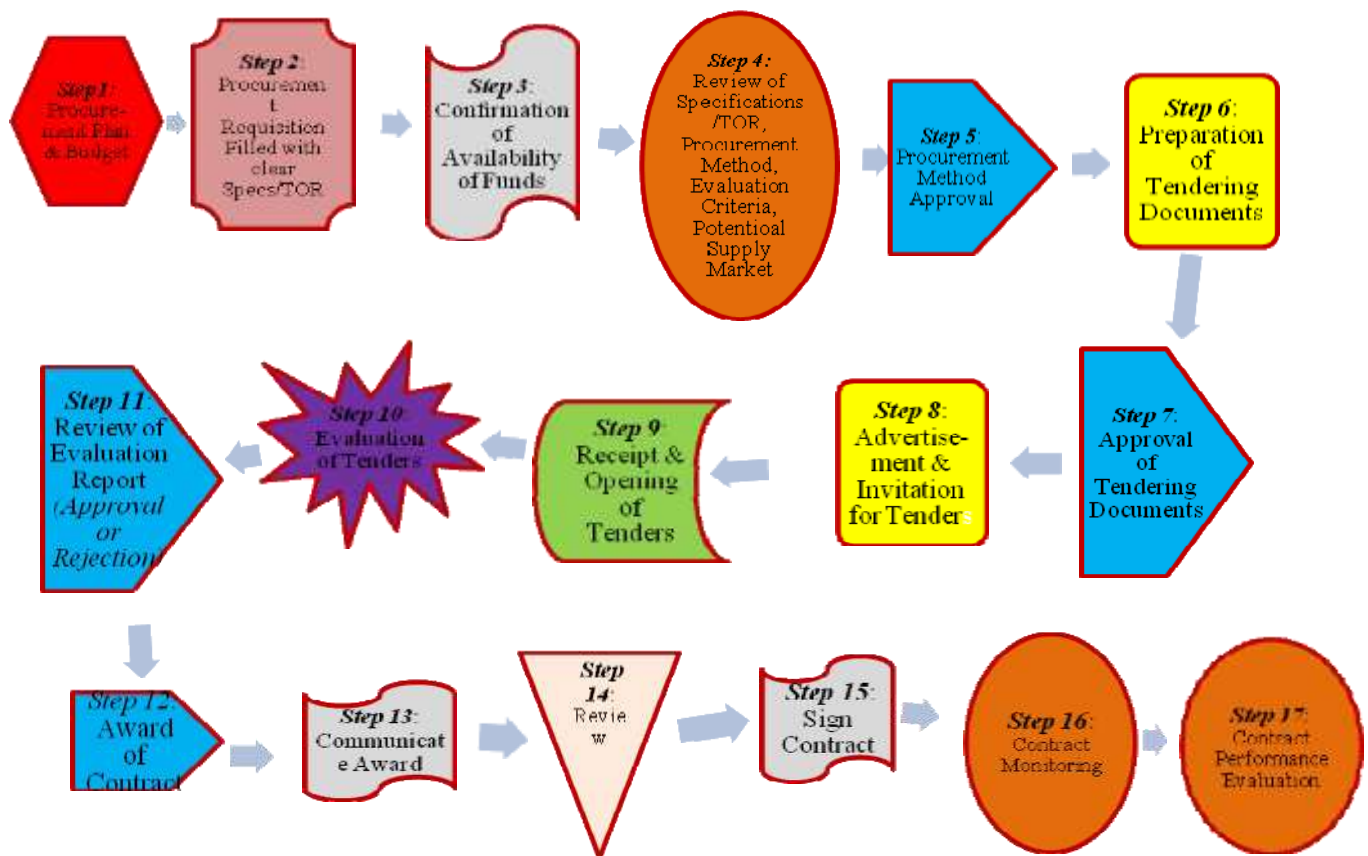
m. Disposal Committee

This committee's main function is to recommend to the Public Entity the best method of disposing of unserviceable, obsolete or surplus stores or equipment. It comprises at least five (5) members: the officer in charge of finance; the head of the Procurement Unit who shall be the Secretary; the head of the accounting department and two heads of end-user departments, of whom one shall be the head of the end-user department disposing of the stores or equipment. The committee selects a chairman from among its members and meets within 14 (fourteen) days of its appointment and subsequently at least once in every quarter.

HOW TO CONDUCT PROCUREMENT

Parts IV, V and VI of the Act and Parts III, IV and V of the Regulations cover the basic procurement processes to be followed by all Procuring Entities. Although the procurement processes and rules may vary slightly for different methods of procurement, depending on whether the requirement is for supplies, works or services, all processes usually follow the same basic steps. Below are brief descriptions of the steps taken when conducting the procurement processes:-

ROLES AND RESPONSIBILITIES IN THE PROCUREMENT CYCLE



a. Procurement Planning

Each Procuring Entity is required to produce an annual plan of all the procurements it intends to carry out in the next financial year, as is prescribed in Section 26(3) (a) of the Act and Regulations 20 & 21,

which make procurement planning mandatory. Procurement planning is important as it enables Entities to aggregate requirements into large contracts, gain economies of scale and avoid emergency procurement wherever possible. It enables Entities to spread the procurement workload according to their resources and also undertake joint procurements when they are purchasing similar items. A consolidated annual procurement plan is prepared by the Procurement Unit and approved by the Head of the Procuring Entity and, where applicable, by the board of directors or a similar body.

The procurement plan shall include but is not limited to the following information:-

1. A detailed breakdown of the goods, works or services required;
2. A schedule of the planned delivery, implementation or completion dates for all goods, works or services required;
3. An estimate of the value of each procurement package of goods, works, consultancies and other services and the source of funding, if different from other packages;
4. Source of funding;
5. Indication of items or sections of the services, consultancies or works that can be aggregated for procurement as a single package;
6. Procurement method;
7. Details of any committed or planned procurement expenditure under existing multi-year contracts;
8. Price adjustment mechanism for long projects (those lasting more than one year); and
9. Timelines for critical stages of the delivery or implementation programme.

PPOA has issued instructions to the Procuring Entities on the format for preparing procurement plans and these are available in the General Manual.

b. Initiating Procurement Requirements

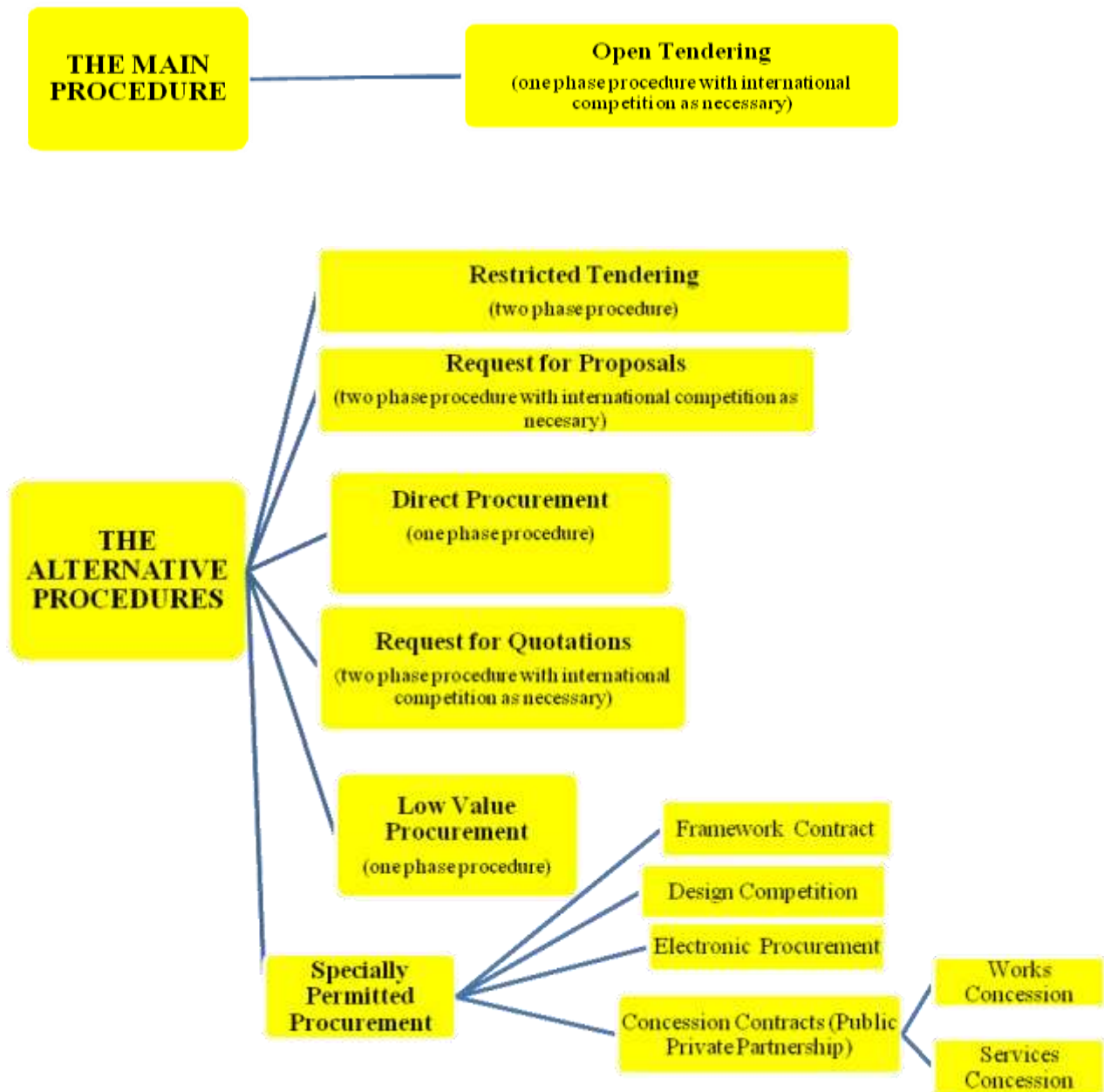
A procurement process can only be started after confirmation that funds are available for the procurement and signed approval from the authorizing official has been obtained. Procurement requirements are initiated using a requisition form filled by the user department and submitted to the Procurement Unit, which then forwards the form to the relevant persons in charge of appending their confirmation signatures, indicating availability of funds and approval for the procurement to proceed. The process of requisition and obtaining of authorization is provided under Regulation 22.

c. Selecting a Procurement Method

There are seven (7) different methods of procurement, each with different conditions of use. There are certain factors which help determine which procurement method to use. These factors include, but are not limited to, the estimated value of the goods, works or services, the urgency of the requirement,

and even the limited number of providers. However, procurement must not be split to avoid the use of the proper procurement method and should be planned in order to avoid emergency procurement as far as possible. A diagrammatic illustration of the methods of procurement and their conditions of use are summarized below:-

CONTRACT PROCEDURES IN KENYA



1. **Open Tendering** - applies to both local [covered by Section 54(2) of the Act] and international tenders [covered by Section 71 of the Act], is the preferred method of procurement open to all tenderers who feel competent to purchase the tender

documents, fill them and then submit them as specified in the tender document. It is advertised publicly and involves maximum competition.

2. **Restricted Tendering** – an alternative method of procurement other than Open Tendering [*covered by Section 73 of the Act*] which can be used by Entities only after obtaining written approval from its Tender Committee and if it has recorded in writing the reasons for using the alternative procedure. Conditions to be satisfied for approval to use this alternative method of procurement are:

Competition for contract because of its complexity or specialized nature limited to prequalified contractors [section 73(2)(a)];

Time and costs required to examine & evaluate a large number of tenders would be disproportionate to the value of the procurement [section 73(2)(b)];

There are only a few known suppliers for a particular type of procurement [section 73(2) (c)].

3. **Direct Procurement** – an alternative method of procurement other than Open Tendering [*covered by Section 74 of the Act*] which can be used by Entities only after obtaining written approval from its Tender Committee and if it has recorded in writing the reasons for using the alternative procedure. Procuring Entities can use this alternative method of procurement, as long as the purpose is not to avoid competition, if:

There is only one person who can supply the good, works or services being procured;

There is no reasonable alternative or substitute for the goods, works or services;

There is an urgent need for the goods, works or services being procured;

Because of the urgency the other available methods of procurement are impracticable; and

The circumstances that gave rise to the urgency were not foreseeable and were not the result of dilatory conduct on the part of the PE.

4. **Request for Proposals** – an alternative method of procurement other than Open Tendering [*covered by Section 76 of the Act*] which can be used by Entities if:

The procurement is of services or a combination of goods & services; and

The services to be procured are advisory or otherwise of a predominately intellectual nature.

5. **Request for Quotations** – an alternative method of procurement other than Open Tendering [*covered by Section 88 of the Act*] which can be used by Entities if:

The procurement is for goods which are readily available and for which there is an established market; and

The estimated value of the goods being procured is less than or equal to the prescribed maximum value for using Request for Quotations.

6. **Procedure for Low-Value Procurement** – an alternative method of procurement other than Open Tendering [*covered by Section 88 of the Act*] which can be used by Entities if:

The estimated value of the goods, works or services being procured are less than or equal to the prescribed maximum value for this procedure;

No benefit accrues to the PE in terms of time or costs if it uses this procedure;

The procedure is not being used for purpose of avoiding competition; and

The procedure has been recommended by the Procurement Committee after a market survey.

7. **Specially Permitted Procurement Procedure** – an alternative method of procurement other than Open Tendering [*covered by Section 92 of the Act*] which must be specially permitted by the Authority. It may include concessioning & design competition. This procedure can be used by Entities:

Where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and the Regulations; or

For specialized or particular requirements that are regulated or governed by harmonizing international standards or practices.

THRESHOLD FOR PROCUREMENT OF GOODS

Procurement Method	Procuring Entity					
	Class A		Class B		Class C	
	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>
International Open Tenders	Determined by funds allocated in the budget	No minimum	Determined by funds allocated in the budget	No minimum	Determined by funds allocated in the budget	No minimum
National Open Tenders	Determined by funds allocated in the budget	6,000,000	Determined by funds allocated in the budget	4,000,000	Determined by funds allocated in the budget	3,000,000
Restricted Tender	<p><u>Sec.73(2)(a):</u> Determined by funds allocated in the budget</p> <p><u>Sec.73(2)(b):</u> 20,000,000 (above this use open tender)</p> <p><u>Sec.73(2)(c):</u> 20,000,000 (above this use open tender)</p>	<p><u>Sec.73(2)(a):</u> 20,000,000 (below this use open tender)</p> <p><u>Sec.73(2)(b):</u> 1,000,000 (below this use request for quotations)</p> <p><u>Sec.73(2)(c):</u> 1,000,000 (below this use request for quotations)</p>	<p><u>Sec.73(2)(a):</u> Determined by funds allocated in the budget</p> <p><u>Sec.73(2)(b):</u> 4,000,000 (above this use open tender)</p> <p><u>Sec.73(2)(c):</u> 4,000,000 (above this use open tender)</p>	<p><u>Sec.73(2)(a):</u> 5,000,000 (below this use open tender)</p> <p><u>Sec.73(2)(b):</u> 1,000,000 (below this use request for quotations)</p> <p><u>Sec.73(2)(c):</u> 1,000,000 (below this use request for quotations)</p>	<p><u>Sec.73(2)(a):</u> Determined by funds allocated in the budget</p> <p><u>Sec.73(2)(b):</u> 3,000,000 (above this use open tender)</p> <p><u>Sec.73(2)(c):</u> 3,000,000 (above this use open tender)</p>	<p><u>Sec.73(2)(a):</u> 500,000 (below use request for quotations)</p> <p><u>Sec.73(2)(b):</u> 500,000 (below this use request for quotations)</p> <p><u>Sec.73(2)(c):</u> 500,000 (below this use request for quotations)</p>
Request for proposals	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Direct procurement	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met
Request for quotations	1,000,000	-	1,000,000	-	500,000	-
Low-value procurement	30,000 per procurement per item	No minimum	10,000 per procurement per item	No minimum	5,000 per procurement per item	No minimum

THRESHOLD FOR PROCUREMENT OF WORKS

Procurement Method	Procuring Entity					
	Class A		Class B		Class C	
	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>
International Open Tenders	Determined by funds allocated in the budget	No Minimum	Determined by funds allocated in the budget	No minimum	Determined by funds allocated in the budget	No minimum

National Open Tenders	Determined by funds allocated in the budget	6,000,000	Determined by funds allocated in the budget	4,000,000	Determined by funds allocated in the budget	3,000,000
Restricted Tender	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 20,000,000 (above this use open tender) <u>Sec.73(2)(c):</u> 20,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 20,000,000 (below this use open tender) <u>Sec.73(2)(b):</u> 2,000,000 (below this use request for quotations) <u>Sec.73(2)(c):</u> 2,000,000 (below this use request for quotations)	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 4,000,000 (above this use open tender) <u>Sec.73(2)(c):</u> 4,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 5,000,000 (below this use open tender) <u>Sec.73(2)(b):</u> 2,000,000 (below this use request for quotations) <u>Sec.73(2)(c):</u> 2,000,000 (below this use request for quotations)	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 3,000,000 (above this use open tender) <u>Sec.73(2)(c):</u> 3,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 500,000 (below use request for quotations) <u>Sec.73(2)(b):</u> 500,000 (below this use request for quotations) <u>Sec.73(2)(c):</u> 500,000 (below this use request for quotations)
Request for proposals	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Direct procurement	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met
Request for quotations	2,000,000	-	2,000,000	-	500,000	-
Low-value procurement	30,000 per procurement per item	No minimum	10,000 per procurement per item	No minimum	5,000 per procurement per item	No minimum

THRESHOLD FOR PROCUREMENT OF SERVICES

Procurement Method	Procuring Entity					
	Class A		Class B		Class C	
	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>	<i>Maximum expenditure(Ksh)</i>	<i>Minimum expenditure(Ksh)</i>
International Open Tenders	Determined by funds allocated in the budget	No Minimum	Determined by funds allocated in the budget	No minimum	Determined by funds allocated in the budget	No minimum
National Open Tenders	Determined by funds allocated in the budget	3,000,000	Determined by funds allocated in the budget	2,000,000	Determined by funds allocated in the budget	1,000,000
Restricted Tender	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 20,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 20,000,000 (below this use open tender) <u>Sec.73(2)(b):</u> 1,000,000 (below this use request for quotations)	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 4,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 5,000,000 (below this use open tender) <u>Sec.73(2)(b):</u> 1,000,000 (below this use open tender)	<u>Sec.73(2)(a):</u> Determined by funds allocated in the budget <u>Sec.73(2)(b):</u> 3,000,000 (above this use open tender)	<u>Sec.73(2)(a):</u> 500,000 (below use request for quotations) <u>Sec.73(2)(b):</u> 500,000 (below this use request for quotations)

	<i>open tender)</i> Sec.73(2)(c): 20,000,000 <i>(above this use open tender)</i>	<i>quotations)</i> Sec.73(2)(c): 1,000,000 <i>(below this use request for quotations)</i>	<i>open tender)</i> Sec.73(2)(c): 4,000,000 <i>(above this use open tender)</i>	<i>request for quotations)</i> Sec.73(2)(c): 1,000,000 <i>(below this use request for quotations)</i>	<i>open tender)</i> Sec.73(2)(c): 1,000,000 <i>(above this use open tender)</i>	<i>for quotations)</i> Sec.73(2)(c): 500,000 <i>(below this use request for quotations)</i>
Request for proposals	No maximum provided conditions met	No minimum provided conditions met	Determined by funds allocated in the budget	No minimum provided conditions met	Determined by funds allocated in the budget	No minimum provided conditions met
Direct procurement	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met	No maximum provided conditions met	No minimum provided conditions met
Request for quotations	1,000,000	-	1,000,000	-	500,000	-
Low-value procurement	30,000 per procurement per item	No minimum	10,000 per procurement per item	No minimum	5,000 per procurement per item	No minimum

d. Standard Tender Documents

The Standard Tender Document for procurement of goods, works and services are available on the PPOA website (www.ppoa.go.ke) for use by all PEs. The Instructions to Tenderers and the General Conditions of Contract should remain unchanged by PEs; any amendments to them should be done in the Tender Data Sheet and the Contract Data Sheet, respectively. The specific requirements and the technical specifications should be filled by the PE according to the specifications which they want Tenderers to meet. Specifications must allow open competition, follow international standards where these are available and must not name specific brands. If a PE does not have the expertise to write its own specifications it should consider using another PE which does have that expertise, a procurement agent (authorized by PPOA) or a consultant.

A list of the procurement forms and the Standard Tender Documents available in the PPOA website including details of when to use each document are in **Appendix A**.

e. Inviting Tenderers

The method for selecting and inviting tenderers varies, depending on the procurement method used by the Procuring Entity.

Procurement method	Invitation/selection of suppliers
Open Tendering	Advertisement at least twice in a newspaper, on the PEs website (if available) and at any conspicuous place reserved for advertisement purposes in the PEs premise.
Restricted Tendering	73(2)(a) – from an approved pre-qualified list 73(2)(b) – from an updated annual standing list of registered tenderers

	73(2)(c) – from all the known suppliers of the goods, works or services
Request for Proposals	Notice inviting tenderers to submit expression of interest
Request for Quotations	Drawn from list maintained of registered suppliers or companies
Direct Procurement	One person or company selected from a number of possible suppliers, e.g. in an emergency situation or on a sole source basis (e.g. in a monopoly)
Low-Value Procurement	From a reputable outlet or provider through direct shopping

Note: The tender document should contain enough information to allow fair competition among those who may wish to submit tenders.
The minimum time for the preparation of tenders for National tendering is a period of 21 days and International tendering is 30 days.

f. Receiving Tenders

Procuring Entities should ensure that the tender box where tenders must be submitted is open and accessible and that the tender box has two locks, with each key to the lock kept by a different officer and that the tender box remains locked until the time for tender opening. Each tender that is delivered shall be placed unopened in the tender box by the person delivering the tender or by the staff of the PE immediately upon receipt of the tender if it is delivered by post. If a tender is too large to be placed in the tender box, it shall be received in the manner determined by the Procuring Entity if no other manner is set out in the tender document.

g. Opening of Tenders

This is done by the Tender Opening Committee immediately after the deadline for submission of tenders. Each tender opened will have the name of the person submitting the tender, the total price of the tender and what has been given as a tender security (if applicable) read out loud and recorded in the Tender Opening Register. Those submitting their tenders or their representative may attend the opening of tenders.

h. Evaluation

This is the process by which the best evaluated tender is selected for award of contract from among all the tenders received. It's done by the Evaluation Committee within a period of 30 (thirty) days after the opening of the tenders. Where two separate committees (the Technical Evaluation Committee and the Financial Evaluation Committee) are appointed, the technical evaluation shall be done within 30 days after the opening of the tenders and the financial evaluation shall be done within 5 days after the completion of the technical evaluation. The evaluation shall be done using the procedure and the criteria set out in the tender documents.

Evaluation consists of the following stages:

A preliminary evaluation is undertaken soon after opening tenders to ascertain that the tender has been submitted in the correct format, has been signed by the authorised person, and that the correct number of copies, tender security (if required), validity and any required samples have been provided. Any tender that does not meet the requirements is rejected.

Technical evaluation is then conducted on tenders that pass the preliminary evaluation for technical conformity. The technical evaluation precedes the financial evaluation. If the tender does not meet the technical requirements, it is not responsive and does not proceed to financial evaluation.

Financial evaluation which considers prices read out at tender opening, corrections for arithmetic errors, currency, discounts etc is undertaken. Tenders are then ranked according to their evaluated price and the successful tender is the lowest evaluated price.

However, for some tenders, particularly those based on Requests for Proposals, a marking scheme may be used. The recommendation for contract award by the Evaluation Committee will be submitted to the Tender Committee for approval (Procurement Committee for lower-value offers).

i. Confirmation of Qualifications

A Procuring Entity may prior to the award of the tender confirm the qualifications of the tenderer who submitted the lowest evaluated responsive tender, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with the qualifications listed in section 31(1) of the Act. If the lowest evaluated tenderer is determined not to be qualified in accordance with the Act, that tender will be rejected and the next lowest evaluated responsive tenderer will be subjected to similar confirmation of qualifications.

Note: This criterion is only to be used if it is provided in the Standard Tender Document.

j. Award Decision and Communication

Any recommendation to award a contract by the Evaluation Committee (with the exception of Low-Value Procurement) must be submitted to the Tender Committee for approval.

The Tender Committee awards the contract to the tenderer recommended by the Evaluation Committee. If the Tender Committee feels that the evaluation report is unsatisfactory, it should return the report for re-evaluation. The Tender Committee must not attempt to carry out evaluation itself.

If an award is made by the Tender Committee, the Procuring Entity must then notify the successful and unsuccessful tenderers of the result at the same time. It must then wait a minimum of 14 days before signing a contract with the successful tenderer.

Tenderers may make an appeal to the Administrative Review Board (ARB) within this 14 days appeal window, if they do not agree with the decision of the Tender Committee and have serious concerns

that the Act or the Regulations were breached. In this event the PE must halt all action on the procurement and await the decision of the ARB.

k. Administrative Review of Procurement Proceedings

Tenderers who claim to have suffered or risk suffering, loss or damage due to the breach of a duty imposed on a Procuring Entity by the Public Procurement and Disposal Act or the Public Procurement and Disposal Regulations, may seek administrative review by the Administrative Review Board. The right to request a review is in addition to any other legal remedy a tenderer may have.

The application for review should be made within fourteen days of the occurrence of the breach complained of where the request is made before the making of an award or within fourteen days of the notification of award of contract.

The parties to a review shall be:-

The person who requested the review;

The Procuring Entity;

If the Procuring Entity has notified a person that the person's tender, proposal or quotation was successful, that person; and

Such other persons as the Review Board may determine.

Upon completing a review the Administrative Review Board may do any one or more of the following:-

Annul anything the Procuring Entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;

Give directions to the Procuring Entity with respect to anything to be done or redone in the procurement proceedings;

Substitute the decision of the Review Board for any decision of the Procuring Entity in the procurement proceedings; and

Order the payment of costs as between parties to the review.

l. Creation of Contract

The person submitting the successful tender and the Procuring Entity shall enter into a written contract based on the tender documents, any clarifications and any corrections of arithmetic errors made therein, within the period specified in the notification but not until at least fourteen (14) days have elapsed following the giving of that notification. No contract is formed between the person submitting the successful tender and the Procuring Entity until the written contract is entered into.

m. Contract Management

Once a contract has been placed, it must be managed to ensure that the provider performs in accordance with the terms and conditions of the contract and that the PE meets all its obligations under the contract. Contract management is the responsibility of the User Department, but an external contract manager should be appointed if the user department does not have the appropriate expertise.

The contract manager or other official stated in the contract may issue contract variations or change orders where required in accordance with the conditions of the contract. No variation should be issued unless the PE is aware of the effect on the price and the programme for delivery. All changes and variations to contract must be approved by the TC in advance. Variations in quantity must not increase the original contract value by more than 10% for supplies and services or 15% for works. Variations in price must be based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya.

The PE must monitor the contractor's progress in delivering the contract regularly and take action in accordance with the contract as soon as any problem is noticed.

n. Inspection and Acceptance of the Goods, Works or Services

This is done by the Inspection and Acceptance Committee to ensure that the correct quantity is received and the technical standards have been met.

Notwithstanding the appointment of a Contract Manager who will manage the project on a day to day basis, it is the Inspection and Acceptance Committee who issue Interim / Progress / Completion / Final Certificates as required and who confirm that payment may be made. The appointment letter for the Inspection and Acceptance Committee members should make clear the duties of those members and insist that they satisfy themselves personally that work has been done in accordance with the contract before authorising payments.

HOW TO CONDUCT DISPOSAL OF STORES AND EQUIPMENT

A Public Entity must ensure that the Act, the Regulations and any directions of the Authority are complied with in respect to each of its disposal. The Entity's employee in charge of unserviceable, obsolete or surplus stores or equipment shall bring the matter to the attention of the disposal committee within a reasonable time.

The following disposal methods may be recommended by the disposal committee:

Transfer to another public entity or part of a public entity, with or without financial adjustment;

Sale by public tender;

Sale by public auction;

Destruction, dumping or burying; or

Trade-in.

A Procuring Entity may dispose of its unserviceable, obsolete or surplus stores/equipment to its employee, a member of a board or its committee if the time and cost required to dispose to any other person would be disproportionate to the value of the stores/equipment to be disposed or the employee is in possession of the stores or equipment to be disposed and may be given the first priority to purchase the same. Disposal to employees or to board/committee members must be reported to the Authority within fourteen (14) days of the disposal by the Accounting Officer or Head of the Procuring Entity.

Appendix A

WHAT DOCUMENTS DO I HAVE TO USE AND WHEN?

a. Public Procurement Forms

PP form no.	Form name	Purpose of form
01	Procurement Requisition	For use by User Department for Initiating the procurement process
02	Quotation Register	For in-house Use by PEs to keep a record of all quotations done from the date of quote invitation to award or rejection of quote
03	Request for Quotations	For use when requesting Tenderers to submit their quotations for a particular procurement
04	Procurement Order	Issued to Tenderers with detailed information on goods/works/services to be delivered by Tenderers
05	Order Amendment	For use when making any amendments to an order of goods/works/services to be delivered by the Tenderer
06	Procurement Order Register	For in-house use by PEs to keep a record of all procurement orders done including the description of the goods/works/services, the date of order completion or cancellation etc
07	Register of Samples	For use when recording samples received from and returned back to Tenderers
08	Suppliers/Vendors register	List of suppliers/vendors and their addresses
09	Tender Document Issue Register	List of Tenderers who have bought (if applicable) and/or been given the Tender Document
10a	Tender Opening Register (also for Quotations/Request for Proposals/EOI). (Record of Tender/Quotation opening and Details read out)	Record of details read out from the Tender Document on the Tender Opening Day
10b	Tender Opening Register (also for Quotations/Request for Proposals/EOI). (Record of Attendance)	Record & address of those Tenderers/Tenderers Representatives who attended the Tender opening day
11	Requisition and Issue Voucher	For in-house use by PEs when recording items issued from the stores
12	Receipt Voucher/Goods Received Note	Issued to suppliers acknowledging receipt of goods/works/services
13	Inspection & Acceptance Report Form	For use by the Inspection and Acceptance Committee when inspecting the quality of

		goods/works/services
14	Rejection Voucher	For use when returning goods or rejecting works/services
15	Tender Register	For in-house use by PEs to keep a record of all procurements done including the method of procurement used, award or termination of the procurement etc
16	Contracts Register	For in-house use by PEs to keep a record of all contracts awarded to Tenderers including the date of commencement, date of completion, the contract value etc
17	Disposal Requisition	For use by User Department when initiating disposal process
18	Request for Approval of Disposal Method	For use by Disposal Committee when requesting for approval of a recommended disposal method
19	Disposal Certificate	For use to certify disposal of assets/items as approved and or instructed
20	Destruction Certificate	For use to certify destruction of assets/items as approved and or instructed

b. Standard Tender Documents

No.	Standard Tender Document	Purpose of the Tender Document
1.	Standard Tender Document for Procurement of Works a) Large works b) Small works	a) For use by PEs in the procurement of Works through International Competitive Bidding (ICB) procedures and National Competitive Bidding (NCB) worth KShs 20M and above. b) For use by PEs in the procurement of Works of less than KShs 20M through National Competitive Bidding (NCB) procedures
2.	Standard Tender Document for procurement of Goods	For use by public entities when procuring for Goods and related services in Kenya
3.	Standard tender document request for proposals -selection and employment of consultants a) Complex Time Based Contract b) Lump Sum Contract	a) For use by PEs in the procurement of Consultancy for complex assignments for which remuneration is being determined on the basis of the time actually spent by the Consultant in carrying out the services b) For use by PEs in the procurement of Consultancy for complex assignments for which remuneration is being determined on the basis of a lump-sum to be paid to the Consultant for carrying out the services
4.	Standard tender document for procurement of Non-Intellectual services	For use by PEs in the procurement of Non-Consultant Services
5.	Standard tender document for disposal	For use by Procuring Entities for the disposal of public items by open tender
6.	Standard tender document for	For use by the Procuring Entities in Kenya in the procurement of Concessions through National

	concessions	Competitive Tendering (NCB) procedures
7.	Standard tender document for insurance services.	For use by PEs in the procurement of all types of insurance covers as per the PPDA (2005)
8.	Standard tender document for information technology	For use by PEs when procuring Information Technology Software and includes but is not limited to software design, development, implementation support and/or management of any computer based information systems; and particularly to software applications and use of software to convert, store, protect, process, retrieve with security or transmit any information
9.	Standard tender document for maintenance services.	For use by PEs in the procurement of Maintenance Services through National Competitive Tendering (NCB) procedures
10.	Standard tender document for design and build (turnkey)	For use by PEs in procurement of all types of Turnkey projects. With necessary modifications the document may also be used for Projects involving Financing, Construction, Operation and Maintenance of infrastructure (e.g. Build and Transfer (BT), Build-Lease and Transfer (BLT), Build Operate and Transfer (BOT), Build-Own and Operate (BOO), Build Transfer and Operate (BTO) Rehabilitate Operate and Transfer (ROT), Rehabilitate Own and Operate (ROO)
11.	Standard tender document for supply and Installation	For use by PEs when procuring for the supply, installation and commissioning of plant and equipment
12.	Standard tender document for specialized goods and services	For use by public entities in Kenya when procuring specialized goods which are goods made to order and not available off-the-shelf
13.	Standard tender documents for pre-qualification; a) of works b) of goods/supply & installation of plant & equipment	a) For use by the PEs in the pre-qualification for procurement of works primarily through competitive bidding b) For use by PEs in the pre-qualification for procurement of Goods or Supply & Installation of Plant & Equipment primarily through International Competitive Bidding (ICB) and National Competitive Bidding (NCB)
14.	Standard tender documents for management contracts	For use by the Procuring Entities in Kenya in the procurement of facilities management contract through National Competitive Tendering (NCB) procedures

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