

(Legislative Supplement No. 22)

LEGAL NOTICE NO. 60

THE PUBLIC PROCUREMENT AND DISPOSAL ACT

(No. 3 of 2005)

IN EXERCISE of the powers conferred by section 140 of the Public Procurement and Disposal Act, 2005, the Minister for Finance makes the following Regulations:—

THE PUBLIC PROCUREMENT AND DISPOSAL (COUNTY GOVERNMENTS) REGULATIONS, 2013

1. These Regulations may be cited as the Public Procurement and Disposal (County Governments) Regulations, 2013.

Citation.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Public Procurement and Disposal Act, 2005;

No. 3 of 2005.

“Authority” means the Public Procurement Oversight Authority established under section 8 of the Public Procurement and Disposal Act, 2005;

No. 3 of 2005.

“city” means an area conferred with the status of a city under section 8 of the Urban Areas and Cities Act, 2011;

No. 13 of 2011.

“county assembly” means a county assembly established under Article 176 of the Constitution;

“county government” means the county government provided for under Article 176 of the Constitution;

“County executive committee” means the county executive committee provided for under Article 179 of the Constitution;

“county government entities” means entities under a county government which include county corporations and institutions as may be determined to be county government entities by the county executive committee;

“county procuring entity” means a public entity within the county making a procurement as provided for in the Act;

““Directorate of Supply Chain Management Services” means the public procurement and asset disposal policy department of the National Treasury;

“institute” means Kenya Institute of Supplies Management established under section 3 of the Supplies Practitioners Management Act, 2007; No. 17 of 2007.

“local preference” means the right or opportunity to select a person from an identified target group that is considered more desirable than another in a constituency, city, urban area or county;

“National Treasury” means the national treasury established under section 11 of the Public Finance Management Act, 2012; No. 18 of 2012.

“micro enterprises” means a business undertaking with an initial—

- (a) staff establishment of not more than ten employees; and
- (b) annual turnover or investment not exceeding five hundred thousand shillings.

“Preference” means the right or opportunity to select a person from an identified target group that is considered more desirable than another;

“reservations” means setting aside goods, works, or services to a defined target group in a county within a specified threshold;

“Review Board” means the Public Procurement Administrative Review Board established under section 25 of the Public Procurement and Disposal Act, 2005; No. 3 of 2005.

“service delivery co-ordination unit” means the unit established under section 14 of the National Government Co-ordination Act, 2012 for the purpose of co-ordinating national government functions at county level; No. 1 of 2012.

“small enterprises” means a business undertaking with an initial-

- (a) staff establishment of not less than eleven and not more than fifty employees; and
- (b) annual turnover or investment not exceeding five million shillings; and

“urban area” means an area designated as such under the Urban Areas and Cities Act, 2011 as contemplated in Article 184 of the Constitution. No. 13 of 2011.

3. These Regulations shall be applicable to procurements and asset disposals by public entities within a county. Application.

4. The purpose of these Regulations is to operationalise the application of the Public Procurement and Disposal Act, 2005 in the county governments, promote local industry and support socio-economic development in the counties. Purpose of the Regulations. No. 3 of 2005.

5. For the purpose of section 3 (1)(k) and 3(2) of the Act, public entities within a county shall include-

County public entities.

- (a) county government, or entity of the county government;
- (b) county assembly;
- (c) city;
- (d) urban area; or
- (e) county service delivery co-ordinating unit.

6. (1) A county procuring entity shall independently as a devolved unit be responsible for all its procurement and asset disposal decisions and shall ensure that they are made in a systematic, corporate and structured manner.

Corporate decisions, segregation of responsibilities and threshold matrix.

(2) All procurement shall be handled by different officers in respect of procurement initiation, processing and receipt of goods, works or services as set forth in the Threshold Matrix of the First Schedule of the Public Procurement and Disposal Regulations, 2006.

LN. 174/2006.

7. (1) For the purpose of ensuring that procurement and asset disposal decisions are made in a systematic, corporate and structured manner, a county procuring entity shall establish the following standing committees from within its members of staff—

Establishment of Committees.

- (a) tender committees specified in the Schedule to these Regulations;
- (b) disposal committee; and
- (c) such other bodies as prescribed under the Act.

(2) For greater certainty, a county procuring entity shall establish the following *ad hoc* committees—

- (a) tender opening committee;
- (b) tender evaluation committee;
- (c) negotiation committee; and
- (d) inspection and acceptance committee.

(3) Where a county public entity lacks capacity to comply with paragraph (2), the accounting officer shall seek advice from the Authority.

8. (1) The membership of the tender committees shall be as set out in the Schedule.

Composition of tender committees.

(2) The accounting officer shall inform the Authority on the composition of the county public entity's tender committee and respective alternates within fourteen days from the date of appointment in a format as prescribed under these Regulations.

(3) The accounting officer or head of the procuring entity shall appoint an alternate member for each member of the county and designated tender committee and only the alternate shall attend any meeting of the county and designated tender committee whenever the member is unable to attend.

9. In addition to the responsibilities set out under section 27(2) of the Act, a County Accounting Officer shall—

Responsibilities of
County Accounting
Officers.

- (a) establish procuring entities within the counties;
- (b) establish a county tender committee which may be classified under threshold matrix A; and
- (c) establish designated tender committees which may be classified under thresholds matrix A, B or C as set out in the Public Procurement and Disposal Regulations, 2006.

LN 174 of 2006.

10. A county procuring entity shall ensure that it complies with the provisions of the Act, all the Public Procurement and Disposal Regulations, 2006, these Regulations, the directions of the Authority and the Administrative Review Board in respect of its procurement and disposal activities.

Compliance.

LN 174 of 2006.

11. County governments shall apply preference and reservations to small and micro enterprises and other disadvantaged groups that are located and operate within the counties as specified in the Public Procurement (Preference and Reservations) Regulations, 2011.

County preference
and reservations.

L.N 58 of 2011.

12. All existing procurement and contractual records and responsibilities by—

Transfer of
procurement and
contractual records
and responsibilities.

- (a) local authorities under the repealed Local Government Act; or
- (b) district commissioners under the Districts and Provinces Act, shall be transferred to the respective county service delivery coordinating unit.

Cap. 265.

No. 5 of 1992.

13. (1) Any procurement and disposal proceedings commenced but not finalized by any local authority, district, any health unit other than a referral hospital, the roads development fund, or any constituency development fund committee, before the coming into operation of these Regulations are terminated.

Termination of
procurement and
disposal
proceedings.

(2) For the purposes of this regulation, a procurement and disposal proceeding is finalized when a contract has been entered into between the parties in accordance with section 67 and 68 of the Act.

14. Any procurement officer or supply chain management staff currently employed by the Public Service Commission and who is currently employed in a local authority, district, a health unit other than a referral hospital, the roads development fund, or any constituency development fund committee shall report to the Interim County Head of Supply Chain Management for deployment upon commencement of these Regulations.

Deployment of
supply chain
management staff.

SCHEDULE

TENDER COMMITTEES AND THEIR COMPOSITION (rr. 7 (1) (a) and 8 (1))

1. *County Government Tender Committee*

| | |
|--|--------------------|
| An officer appointed in writing by the Secretary of the county. | Chairperson |
| County Chief Officer (head of department) appointed in writing by the chief secretary of the county; | Deputy Chairperson |
| Five county chief officers (heads of departments) appointed in writing by the chief secretary of the county; and | Members |
| The procurement professional heading the procurement unit of the county Government. | Secretary |

2. *County Government Entities Tender Committee*

| | |
|---|--------------------|
| An officer appointed in writing by the accounting officer of the county government entity; | Chairperson |
| County government entity chief officer (head of department) appointed in writing by the accounting officer; | Deputy Chairperson |
| Five county government entity chief officers (heads of departments) appointed in writing by the accounting officer; and | Members |
| The procurement professional heading the procurement unit of the county government entity. | Secretary |

3. *County Assembly Tender Committee*

| | |
|--|--------------------|
| An officer appointed in writing by the county assembly clerk; | Chairperson |
| Head of department of the county assembly appointed in writing by the county assembly clerk; | Deputy Chairperson |
| Five heads of departments appointed in writing by the county assembly clerk; | Members |
| The procurement professional heading the procurement unit of the county assembly | Secretary |

4. *City Tender Committee*

| | |
|--|--------------------|
| An officer appointed in writing by the city manager; | Chairperson |
| Head of department of the city appointed in writing by the city manager; | Deputy Chairperson |
| Five heads of departments appointed in writing by the city manager; and | Members |
| The procurement professional heading the procurement unit of the city. | Secretary |

5. *Urban Area Tender Committee*

| | |
|---|--------------------|
| An officer appointed in writing by the municipal or town manager; | Chairperson |
| Head of department of the urban area appointed in writing by the municipal or town manager; | Deputy Chairperson |
| Five heads of departments appointed in writing by the municipal or town manager; | Members |
| The procurement professional heading the procurement unit of the urban area. | Secretary |

6. *County Service Delivery Co-ordinating Unit Tender Committee*

| | |
|--|--------------------|
| An officer appointed in writing by the county commissioner; | Chairperson |
| Head of department of the service delivery co-ordinating unit of the county appointed in writing by the county commissioner; | Deputy Chairperson |
| Five heads of departments appointed in writing by the county commissioner; and | Members |
| The procurement professional heading the procurement unit of the service delivery co-ordinating unit of the county; | Secretary |

Dated the 25th March, 2013.

NJERU GITHAE,
Minister for Finance.

LEGAL NOTICE NO. 61

THE INSURANCE ACT

(Cap. 487)

EXEMPTION

IN EXERCISE of the powers conferred by section 181 of the Insurance Act, the Minister for Finance on the advice of the Board of the Insurance Regulatory Authority exempts GAB Takaful Insurance Agency from the provisions of section 153 (5) (c) of the Insurance Act.

Dated the 20th March, 2013.

NJERU GITHAE,
Minister for Finance.