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The Public Procurement and Asset Disposal Regulations, 2020

Legal Notice 69 of 2020

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PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL REGULATIONS, 2020

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Part I – PRELIMINARY

1. Citation

These Regulations shall be cited as the Public Procurement and Asset Disposal Regulations, 2020.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"**access codes**" means the user identification and password collectively;

"**accounting officer**" has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);

"**classified procurement and asset disposal**" means procurement and asset disposal whose information on source, ownership and use is limited to particular authorized officers;

"**corporate governance**" means the process and structure used to direct and manage business affairs of national or county government entities towards enhancing prosperity and good governance with the ultimate objective of realizing national long term value while taking into account the interest of all stakeholders;

"**county government entity**" has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012;

"**County Treasury**" has the meaning assigned to it in section 2 of the Public Finance Management Act 2012;

"**digital signature**" means an electronic signature based on cryptographic methods of originator authentication, computed by a set of rules and parameters such that the identity of the signer and the integrity of the data can be verified;

"**electronic document transmission**" means the electronic transmission of information via computerized systems;

"**electronic**" means any electrical, digital, magnetic, optical, electromagnetic or other form of technology that entails capabilities similar to these technologies;

"**e-procurement system**" means a system or technology that can be used to automate the internal and external processes associated with supply chain management including strategic sourcing, purchasing and inventory management of goods, works and services;

"**e-tender**" means an electronic bid submitted by a candidate to the procuring entity for the supply of goods, works and services;

"**e-tender documents**" includes electronic tender documents issued by a procuring entity specifying the goods, works or services it intends to purchase, the contractual terms, conditions for the tender and instructions for responding to bids;

"**malware**" means any form of hostile or intrusive software, not limited to computer viruses, worms, trojan horses or other malicious programs and includes executable code, scripts, active content, and other software;

"**micro enterprise**" means a business undertaking with an initial staff establishment of not more than ten employees and annual turnover or investment not exceeding five hundred thousand shillings;

"**national government entity**" has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012;

"**password**" means the secret information in the form of characters which, in combination with the User Identification allows the authentication by the procuring entity's server;

"**performance security**" means any security provided by a supplier or contractor solely for the protection of the procuring entity, against non-performance for the supply of goods, works or services;

"**procuring entity**" has the meaning assigned to it under section 2 of the Act;

"**professional opinion**" means an advice given by the head of a procurement function to the accounting officer of a procuring entity in respect of a procurement matter;

"**public entity**" has the meaning assigned to it in section 2 of the Act;

"**records**" includes electronic and manual archives containing the data, documents and information relating to procurement and disposal processes;

"**small enterprise**" means a business undertaking with an initial staff establishment of not less than eleven and not more than fifty employees and annual turnover or investment not exceeding five million shillings;

"**supplier registration**" means the process by which a supplier registers their interest in receiving tenders from a procuring entity;

"**system**" means the solutions and electronic instruments that allow the use of computerized application cited in these Regulations;

"**state corporation**" means a state corporation within the meaning of the State Corporations Act (Cap. 446);

"**state portal**" means the electronic online platform developed by the Authority;

"**user authorization**" means the results of the process that allows the supplier, through the allocation of a user identification and password, to access the system, obtain qualification and participate in e-tenders;

"**user identification**" means the electronic means to determine and identify an authorized supplier or contractor used when accessing the system;

"**value for money**" means the undertaking by a procuring entity that results in a benefit accruing to that procuring entity defined in terms of cost, price, quality, quantity, timeliness and risk transfer; and

"**vote**" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.

3. Application

These Regulations shall, unless otherwise provided for in the Act, apply to—

(a) national government and national government entities; and

(b) county government and county government entities.

4. Object and purpose of these Regulations

(1) The object and purpose of these Regulations is to operationalize the Public Procurement and Asset Disposal Act, 2015 on the coordination of procurement and disposal procedures by procuring entities.

(2) Without prejudice to the generality of the foregoing, these Regulations shall—

(a) provide means of administering the powers vested in the Cabinet Secretary for the National Treasury and Planning under the Constitution, the Act and any other related legislation;

(b) harmonize and standardize application of government service in controlling and managing the procurement function in government;

(c) set out a standardized public procurement and asset disposal management system for use in Government service; and

(d) ensure accountability, efficiency, transparency and effective application and utilization of public resources.

5. Bilateral and multilateral agreements

(1) Where any bilateral or multilateral agreements are financed through negotiated loans for the procurement of goods, works or services, the Act shall not apply where the agreement specifies the procurement and asset disposal procedures to be followed.

(2) All bilateral and multilateral agreements whose implementation is through procurement in part or in whole shall involve procurement professionals from the respective procuring entity at the initial stages of project preparation and negotiations for the purposes of ensuring that the public procurement and asset disposal interests of Kenya are considered.

(3) An accounting officer shall subject to the provisions of the bilateral and multilateral agreements between the Government of Kenya and any other foreign government, agency, entity or multilateral agency ensure that tender documents contain requirements that the tenderer shall—

(a) include a plan of technology and knowledge transfer by training and mentoring of Kenyan citizens;

(b) reserve at least 50% employment opportunities for Kenyan citizens; and

(c) include a plan for building linkages with local industries which ensures at least 40% inputs are sourced from local markets.

(4) For greater certainty, where the requirements of paragraph (3) cannot be met, an accounting officer shall cause a report to be prepared detailing evidence of the inability to meet this provision and measures to be undertaken to ensure compliance with this regulation, and submit the report to the National Treasury to grant a waiver of the requirement.

Part II – RESPONSIBILITIES OF BODIES INVOLVED IN PUBLIC PROCUREMENT AND RELATED PROVISIONS

6. Responsibilities of the National Treasury

(1) The National Treasury shall be responsible for training and capacity building for procurement and supply chain management services at the national government level.

(2) Despite the provisions of paragraph (1), the National Treasury shall assist county governments in training and capacity building for procurement and supply chain management pursuant to section 14 of the Public Finance Management Act, 2012.

(3) The National Treasury shall publish a list of common user items for utilization and management at least once a year, in accordance with the provisions of section 7(2)(h) of the Act.

7. Functions of the Authority

In addition to the functions of the Authority provided for under section 9 of the Act, the Authority shall develop, promote and support the training of persons involved in public procurement and asset disposal.

8. Nomination of members of the Public Procurement Regulatory Board

When nominating members to be appointed to the Regulatory Board under section 10(1)(b) of the Act, each organization referred therein shall submit to the Cabinet Secretary the curriculum vitae of three members being nominated, of whom one shall be of the opposite gender and shall reflect regional balance.

9. Accessibility of Review Board Services

(1) Subject to section 27(2) of the Act, the Review Board shall ensure reasonable accessibility of its services in all parts of the Republic by establishing review panels consisting of at least five members, three of whom shall form a quorum.

(2) The panels referred to in paragraph (1), may be established by the Review Board to carry out its functions at national and county levels as provided for in the Act;

(3) For greater certainty, the decisions of a panel shall be treated as the decisions of the Review Board.

10. Qualification and nomination of Review Board members

(1) Pursuant to section 29(1)(b) of the Act, the qualification and experience of the Review Board members shall be as provided in section 30 of the Act.

(2) When nominating persons for appointment to the Review Board as provided for under section 29(2) of the Act, each organization referred to in that section shall submit to the Cabinet Secretary the curriculum vitae of three members being nominated for each slot, of whom one shall be of opposite gender and shall reflect regional balance.

11. Full board meeting of the Review Board

(1) The Review Board shall conduct a full Review Board meeting at least once every quarter of each financial year.

(2) When conducting a full Review Board meeting the Review Board may include in its deliberations—

(a) the progress review of its performance including the trend of regional panels decisions;

(b) approval and review of the Review Board's operational budgets and plans.

(3) The quorum of a full Review Board meeting as envisaged in the Act shall be nine members including the Chairperson or the Vice-Chairperson.

12. Resignation of the Chairperson or a member of the Review Board

The Chairperson or any other member of the Review Board may at any time, by notice to the appointing authority, resign from the office.

13. Removal of Review Board Chairperson or member

(1) The Cabinet Secretary may terminate a person's appointment as a Chairperson or member of the Review Board, if the person—

(a) is unable to perform the functions of his or her office by reason of mental or physical infirmity;

(b) is adjudged bankrupt;

(c) is convicted of an offence and imprisoned for a term of more than six months;

(d) violates the provisions of Chapter Six of the Constitution;

(e) is absent for three consecutive meetings of the Review Board to which the member has been invited without reasonable excuse; or

(f) is found to have engaged in professional misconduct and the matter has been determined by the relevant professional body.

(2) The Cabinet Secretary shall not terminate the service of a Chairperson or member unless he or she has given such person an opportunity for a fair hearing.

14. Appointment of Review Board Secretary

(1) Pursuant to section 28(3) of the Act, there shall be a secretary of the Review Board who shall be at the level of a head of department of the Authority appointed in writing by the Director-General with the approval of the Review Board.

(2) A person shall be appointed the Review Board Secretary if that person—

(a) has a university degree in procurement, supply chain management, law, finance, commerce, business administration, economics, or a related field of study from a recognized university;

(b) has a post-graduate degree in a related field of study from a recognized university;

(c) has a professional qualification in supply chain management from a recognized institution;

(d) is a full member of a procurement professional body and of good standing;

(e) has at least ten years' experience in public procurement and supply chain management; and

(f) meets the requirements of Chapter Six of the Constitution.

15. Functions of the Review Board Secretary

Subject to the general supervision and direction of the Review Board, the Review Board Secretary shall be responsible for the—

(a) management of the operation of the Review Board;

(b) management of funds, property and business of the Review Board;

(c) administration, organization and control of officers and staff of the Review Board.

16. Acting Review Board Secretary

The Director-General in consultation with the Chairperson of the Review Board may designate a member of the staff of the Authority to act as the Board Secretary in case of a vacancy in the office.

17. Employees of the Review Board

The Director- General of the Authority shall in consultation with the Secretary of the Review Board deploy such number and categories of staff as necessary for the effective functioning of the Review Board.

18. Funds and operations costs of the Review Board

(1) The Cabinet Secretary shall ensure adequate funds are allocated to facilitate the operations of the Review Board, including—

(a) monies appropriated by Parliament;

(b) grants;

(c) fees collected from applicants;

(d) forfeited deposits; and

(e) any other monies received or made available to it for purposes of its functions.

(2) The Review Board shall prepare and submit estimates of revenue and expenditure for the following financial year not later than the 30th December each year to the Authority for review and approval with a copy to the Cabinet Secretary.

19. Annual performance reports

(1) For each financial year, the Review Board Secretary shall cause one annual report of its performance to be prepared.

(2) The Review Board shall submit an annual report to the Cabinet Secretary, within three months after the end of the year to which the report relates.

(3) The report shall contain, in respect of the period to which it relates—

(a) a description of the activities of the Review Board;

(b) an analysis of cases heard and determined;

(c) the successes and challenges of the Review Board; and

(d) any recommendations on the way forward.

(4) The Review Board Secretary shall with the approval of the Director-General hold the authority to incur expenditure on behalf of the Review Board.

Part III – COUNTY GOVERNMENT RESPONSIBILITIES WITH RESPECT TO PUBLIC PROCUREMENT AND ASSET DISPOSAL

20. Additional responsibilities of county treasury

In addition to the county treasury functions under section 33(1) of the Act, the county treasury procurement shall—

(a) develop county-specific procurement and inventory strategies which shall be consistent with the national policy on public procurement and asset disposal matters;

(b) maintain linkages between the county treasury and the National Treasury;

(c) coordinate procurement and asset disposal activities of the county; and

(d) prepare consolidated procurement and disposal plans for the county.

Part IV – POWERS TO ENSURE COMPLIANCE AND DEBARMENT PROCEDURES

21. Powers of investigators

(1) In addition to the requirements provided for under section 36 (1) of the Act, the investigator may require suppliers, contractors or tenderers to provide—

(a) relevant documents;

(b) explanations;

(c) written submissions; or

(d) any other relevant information.

(2) Pursuant to section 36(1)(c) of the Act, where an investigator intends to remove original documents from a procuring entity, the investigator shall—

(a) request for the documents in writing;

(b) sign for the documents in a register including their particulars; and

(c) undertake in writing to return the original documents after investigations.

(3) Powers of an investigator shall include conducting interviews with persons involved in the subject procurement and asset disposal.

(4) The investigator shall not in the course of the investigation advise a procuring entity on any matter relating to the procurement or asset disposal proceedings.

22. Request for debarment and debarment proceedings

(1) A request for debarment may be initiated—

(a) by the accounting officer of a procuring entity, or any other person with knowledge of facts that may support one or more grounds for debarment;

(b) by the Director-General on his or her own motion based on findings from investigations, inspections, or reviews; or

(c) on the recommendation of a law enforcement agency with an investigative mandate.

(2) Where the request for debarment is initiated through the recommendation of a law enforcement agency with an investigative mandate, or by an investigator duly appointed by the Authority on its own motion, the Board shall notify the person of the intended debarment and provide details of the findings of the investigator or law enforcement agency.

(3) The request for debarment shall be made in the format provided in the First Schedule.

(4) The Board shall constitute a debarment committee to hear and determine debarment requests that have been submitted to the Authority.

(5) For purposes of section 41(5) of the Act and this regulation, debarment procedures shall be as follows—

(a) upon receipt of a request for debarment, the Board shall analyze the case within thirty days to determine whether there is a *prima facie* case for debarment;

(b) if the analysis establishes a *prima facie* case for debarment, the Board shall issue a notice of intended debarment to the party, who shall be the subject of the debarment proceedings requiring him or her to file a written response with the Board;

(c) the notice of intended debarment issued under paragraph (b) shall contain the grounds of debarment, a brief statement of the facts in support of debarment and the consequences that may arise from the debarment;

(d) the respondent shall within fourteen days of receipt of a notice of intended debarment, file a written response with the Board;

(e) where the facts of the intended debarment are contested, the debarment committee shall within twenty-one days of receipt of the response in paragraph (d) hold a debarment hearing to determine the disputed facts;

(f) a seven (7) days' notice shall be given to the parties to appear before the debarment committee;

(g) the debarment committee shall prepare a report of its findings and recommendations, and make a determination on the request for debarment within thirty days from the date of hearing;

(h) where the request for debarment is approved, such debarment shall be for a period of not less than three years;

(i) the decision to debar a person shall promptly be communicated to the parties involved in the debarment proceedings;

(j) after the expiry of twenty-one days from the date of the debarment decision, the Authority shall publish the details of the person debarred and the corresponding period of debarment;

(k) the Authority shall forward the details of the debarred person to the Cabinet Secretary for gazettement.

(6) A decision to debar a person shall not relieve the debarred person of the obligations under any contract entered into with a procuring entity before the debarment.

(7) Debarment of a person shall also apply to the successor in interest of the debarred person and where the debarred person is a company or partnership, the debarment shall apply to the directors and partners of that company or partnership.

(8) Where a person is debarred from participating in procurement proceedings under section 41 of the Act, the debarment shall extend to any legal entity in which the debarred person has a controlling interest.

Part V – INTERNAL ORGANIZATION OF PROCURING ENTITIES

23. Responsibilities of the accounting officer

In addition to responsibilities provided for under section 44 (2) and in accordance with section 44(2)(j) of the Act, an accounting officer shall—

(a) ensure that procurement and asset disposal contracts are entered into lawfully and implemented accordingly;

(b) bring any matter to the attention of the Cabinet Secretary, or county executive member responsible for the entity, or the Chief Justice, or the Speaker of the National Assembly, or county assembly, or board of directors as the case may be, if in the accounting officer's opinion a decision or policy or proposed decision or policy of the entity may result in resources being used for the implementation of procurement plans in a way that is unlawful, unauthorized, inefficient, ineffective or uneconomical;

(c) take appropriate measures to resolve any issues arising from investigations, inspections, assessments and reviews pursuant to sections 38 and 43 of the Act;

(d) ensure the implementation of directions as issued by the National Treasury, the Authority or the Review Board from time to time;

(e) provide information to the National Treasury or the Authority pursuant to section 34 of the Act;

(f) ensure the preparation and timely submission of reports to the National Treasury and the Authority required under the Act, these Regulations and guidelines of the Authority.

24. Minimum requirements of a procuring entity

(1) For the purpose of section 45 of the Act and for a procuring entity to be able to make corporate decisions and for purposes of internal controls, the procuring entity shall have segregated responsibilities including the following minimum requirements—

(a) an accounting officer;

(b) a procurement function headed and staffed by procurement professionals;

(c) establishment of all relevant committees under section 44(2)(b) of the Act and adherence to section 44(2)(h) of the Act;

(d) a vote where the budget is approved by National Assembly or a county assembly or by a governing body of a public entity.

(2) Where a procuring entity or a county treasury is unable to satisfy the requirements under paragraph (1), the procuring entity or the county treasury may seek assistance from the National Treasury, or its respective county treasury in case of a county procuring entity.

25. Appointment of tender opening committee

The accounting officer shall appoint a tender opening committee in accordance with section 78 of the Act.

26. Threshold matrix

Subject to section 45(3)(b) of the Act, the threshold matrix shall be as provided for under the Second Schedule.

27. Low value procurements

For purposes of section 46(8) of the Act, low value procurements as per the threshold matrix under the Second Schedule shall not require an evaluation committee.

28. Establishment of evaluation committee

(1) Pursuant to section 46 of the Act, an *ad hoc* evaluation committee shall be established for each procurement within the threshold specified in the matrix under the Second Schedule except for low value procurements.

(2) The accounting officer of a procuring entity shall appoint an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals.

29. Composition of an evaluation committee

(1) The *ad hoc* evaluation committee established and appointed under regulation 28 of these Regulations shall consists of—

(a) at least three members appointed on rotational basis comprising heads of user departments or their representatives; and

(b) a professional or consultant, where required.

(2) The accounting officer shall designate one of the members of the evaluation committee as the chairperson.

(3) The quorum for the conduct of business of the evaluation committee shall be at least three persons including the chairperson.

(4) The person in charge of the procurement function shall be the secretary of the *ad hoc* evaluation committee.

(5) The role of the secretary of the *ad hoc* evaluation committee shall be—

(a) to provide technical input in terms of compliance with the Act and these Regulations;

(b) to avail all the relevant documents to the evaluation committee;

(c) to facilitate official communication with tenderers where clarification is required;

(d) to provide logistical support to the evaluation committee;

(e) to provide secretariat services to evaluation committee.

30. Conduct of members of evaluation committee

In discharging the mandate provided for under the Act, members of the evaluation committee shall—

(a) conduct the technical and financial evaluation of the tenders or proposals availed in strict adherence to the compliance and evaluation criteria set out in the tender documents.

(b) perform the evaluation or negotiation with due diligence.

(c) conduct the evaluation within the periods specified in the Act.

(d) not enter into direct communication with any of the tenderers participating in a tender or proposal that such evaluation committee is considering.

(e) seek any clarifications on tenders or proposals under consideration through the head of the procurement function, and

(f) prepare a report on the analysis of the tenders availed, and final ratings assigned to each tender and make recommendations and submit the report to the head of the procurement function.

31. Independent evaluation

(1) Each member of the evaluation committee shall evaluate independently from the other members prior to sharing his or her analysis questions and evaluation including his or her rating with the other members of the technical evaluation committee.

(2) The individual score sheets shall be kept as records of a procurement proceeding.

(3) Upon sharing of individual evaluators ratings, the committee shall moderate the analysis to arrive at an average rating.

(4) Where technical and financial bids are submitted in separate envelopes, a technical report shall be prepared and submitted to the head of procurement for review and invitation of bidders for the opening of financial proposals.

32. Compliance and evaluation criteria

The financial evaluation of the tenders or proposals received shall be in strict adherence to the compliance and evaluation criteria set out in the tender documents or request for proposals.

33. Establishment and role of the procurement function

(1) A procuring entity shall establish a procurement function in accordance with section 47 of the Act.

(2) The procurement function shall be handled by the procurement professionals whose qualification and experience are recognized in Kenya.

(3) The role of the procurement function shall be—

(a) to maintain and continually update standing lists of registered suppliers for the procuring entity under sections 57 and 71 of the Act;

(b) to liaise with the Authority in respect of the Authority's register of procuring agents;

(c) to prepare tender and asset disposal documents to facilitate fair competition;

(d) to prepare, publish and distribute procurement and disposal opportunities including invitations to tender, request for quotations and proposals, pre-qualification documents and invitations for expressions of interest;

(e) coordinate the receiving and opening of tender documents;

(f) to submit a list of registered or prequalified suppliers or contractors or consultants to the accounting officer for approval;

(g) to issue procurement and asset disposal documents to candidates in accordance with the Act and these Regulations;

(h) to propose the membership of relevant committees under the Act to the accounting officer for consideration and appointment;

(i) to coordinate the evaluation of tenders, quotations and proposals;

(j) to recommend for consideration of the negotiation of a procurement by the evaluation committee where negotiations are allowed by the Act and these Regulations and participate in negotiations;

(k) to prepare and publish tender awards;

(l) to prepare contract documents in line with the award decision;

(m) to prepare and issue debriefing letters;

(n) to prepare contract variations and modifications documents;

(o) to maintain and archive procurement and asset disposal documents and records for the required period;

(p) to provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures;

(q) to implement the decisions of the accounting officer, including disposal committee and coordinating all procurement activities;

(r) to act as a secretariat to the evaluation, inspection and acceptance, and disposal committees;

(s) to liaise with the National Treasury or relevant county treasury and the Authority on matters related to procurement and asset disposal;

(t) to prepare and submit to the National Treasury or relevant county treasury and the Authority reports required under the Act, these Regulations and guidelines of the Authority;

(u) to monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;

(v) to report any significant departures from the terms and conditions of the contract to the head of the procuring entity or accounting officer;

(w) to recommend for transfer of a procurement or asset disposal responsibility to another procuring entity by the head of the procuring entity when need arises;

(x) to prepare consolidated procurement and asset disposal plans;

(y) to advise the procuring entity on aggregation of procurement to promote economies of scale;

(z) to co-ordinate internal monitoring and evaluation of the procurement and supply chain function;

(aa) to carry out market surveys to inform the placing of orders or adjudication by the relevant awarding authority;

(bb) to conduct periodic and annual stock taking;

(cc) to certify the invoices and vouchers to facilitate processing of payment to suppliers;

(dd) to recommend extension of the tender validity period;

(ee) to verify that the available stock levels warrant initiating a procurement process; and

(ff) to carry out any other functions and duties as are provided under the Act and these Regulations and any other functions that might be stipulated by the National Treasury or relevant county treasury, or the Authority.

34. Role of the user department

Subject to the Act, a user department of a procuring entity shall be responsible for—

(a) initiating procurement and asset disposal requirements and forward them to the head of procurement function;

(b) participating in the evaluation of tenders, proposals and quotations;

(c) managing, monitoring and reporting any departure from the terms and conditions of the contract to the head of procurement function;

(d) forwarding details of any required amendments or variations to contracts including extensions to the head of procurement function for consideration and action;

(e) maintaining and archiving copies of records of contract management;

(f) preparing any reports required to the head of procurement function for submission to the accounting officer;

(g) undertaking conformity assessments of supplied goods, works and services with the specifications of the contract documents;

(h) preparing and submitting technical specifications for goods, works and services to the procurement function;

(i) preparing departmental procurement and asset disposal plans and submit to the procurement function;

(j) making clarifications on tenders, requests for quotations and any other matter through the head of procurement function as may be required; and

(k) carrying out any other functions and duties as provided for under the Act or these Regulations.

35. Appointment and role of the inspection and acceptance committee

(1) Where the accounting officer appoints an *ad hoc* inspection and acceptance committee in accordance with section 48(1) of the Act, the accounting officer shall take into account —

(a) the recommendations of the head of the procurement function;

(b) the value of the contract;

(c) the threshold matrix in the Second Schedule; and

(d) the technical specifications of the goods, works and services to be procured.

(2) When constituting the inspection and acceptance committee the accounting officer shall ensure that the following persons are included—

(a) the user department;

(b) the technical department;

(c) the head of the procurement function; and

(d) any other person as may be deemed fit.

(3) Where the procuring entity lacks internal technical expertise to carry out the inspection and acceptance, the accounting officer shall request another procuring entity to nominate an officer with the relevant technical expertise to assist or procure a professional with the relevant technical expertise and that person shall be appointed by the accounting officer in writing to form part of the inspection and acceptance committee.

(4) The technical person referred to in paragraph (3) shall issue a certificate to the accounting officer confirming the right quality and quantity of goods, works or services.

(5) The inspection and acceptance committee shall take into account all the necessary certificates prior to issuing a certificate of acceptance.

(6) Pursuant to section 48(4) of the Act, the inspection and acceptance committee shall prepare and issue a report, interim or completion of inspection and acceptance certificate and submit to the head of procurement function.

36. Sector-specific procuring and disposal agencies

(1) Where a sector-specific procuring and disposal agency is established under section 49 of the Act, a procuring entity or entities may engage the services of that agency for purposes of procurement and distribution of goods, works and services.

(2) A public entity with no procurement capacity in a specific-sector, may engage the services of its respective sector-specific agency established in paragraph (1) to procure the specific sector goods, works or services.

(3) A public sector of common interest referred in paragraph (1) may include—

(a) education;

(b) health;

(c) trade;

(d) agriculture;

(e) livestock; and

(f) any other sector as approved by the Cabinet Secretary.

(4) The sector-specific agencies shall be headed by a chief executive officer with experience in finance or supply chain management or accounting.

(5) The sector-specific agencies shall have a procurement department staffed with procurement professionals and any other appropriate staff.

(6) The funds for managing these sector-specific agencies may be—

(a) appropriated by Parliament or respective county assembly;

(b) commissions from principal procuring entities;

(c) grants; and

(d) fees for services rendered.

(7) Subject to the provisions of the Act and these Regulations, the sector-specific agency shall report at least quarterly to the Authority and the Cabinet Secretary or respective county executive committee members responsible for the subject sector in a format provided for by the Authority.

37. Consortium buying

(1) Where a consortium buying is entered into under section 50 of the Act, the accounting officers of the procuring entities concerned shall agree on—

(a) the type of goods, works or services to be procured under the consortium which shall be in the respective procuring entities' procurement plans;

(b) the mandate of the consortium;

(c) the mechanism for implementation of the consortium arrangement;

(d) the reporting and monitoring procedures and responsibilities;

(e) any limitations or exceptions to the consortium arrangement;

(f) any operational costs to be borne by the parties to the consortium arrangement;

(g) the quality assurance and standards;

(h) terms of engagement: and

(i) any other relevant contract condition related to the consortium as agreed by the parties.

(2) The consortium buying agreement entered into under section 50 of the Act shall—

(a) be in writing and signed by each respective accounting officer of procuring entities involved in the consortium;

(b) be deemed as a special purpose vehicle to be registered with the Authority and the procuring entities forming a consortium shall identify a lead partner;

(c) ensure availability of funds prior to initiation of procurement;

(d) be for a specific procurement and shall lapse at the end of subject procurement;

(e) be managed by the procurement professionals;

(f) undertake procurement in accordance with provisions of the Act and these Regulations.

38. Registration of procuring or asset disposal agents

(1) The Authority shall register and license procuring or asset disposal agents appointed under section 51 of the Act upon payment of registration fee of fifty thousand shillings.

(2) The fee paid under paragraph (1), shall be payable only once at the time of initial registration.

(3) A procuring entity shall—

(a) meet the cost of the services offered by the procuring agent;

(b) prepare the terms of reference for the assignment;

(c) be responsible for the actions and performance of the agent; and

(d) only use a registered and licenced procuring agent through a competitive process.

(4) Where the procuring agent is engaged by a procuring entity the accounting officer shall approve the contract award.

(5) The license issued under this regulation shall be renewed annually at a nominal fee of five thousand shillings.

(6) Where the registered procuring agent is a partnership, proprietorship or company it shall employ or have a procurement professional.

(7) A procuring entity shall not contract out both the procurement functions and its contract management functions to the same procuring agent.

(8) None of the functions of the accounting officer shall be contracted out to a procuring agent.

39. Transfer of procuring responsibility to another public entity

(1) The Authority may transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in accordance with section 52(1) of the Act—

(a) where the Authority is of the view that the procuring entity lacks the capacity to comply with the Act, these Regulations or the directions issued by the National Treasury or the Authority due to its size or capacity;

(b) where the accounting officer of a procuring entity demonstrates the lack of internal capacity to comply with the Act, these Regulations or the directions issued by the National Treasury or the Authority due its size or capacity and requests the Authority to do so;

(c) where the accounting officer of the procuring entity decides that it would be more economical or efficient to transfer the function and requests the Authority to do so; or

(d) where the procuring entity has established possible collusion, coercion, obstruction, conflict of interest and manipulation over the planned procurement that undermines fair competition and value for money.

(2) The accounting officer or the head of the procuring entity who requests the Authority to transfer its function shall remain accountable for all decisions taken by the procuring entity to which the function is transferred.

(3) Where the procurement and asset disposal responsibility is transferred to another procuring entity under paragraph (1)(b), the accounting officers of the two procuring entities shall agree on—

(a) any function that may be excluded from the transfer arrangement;

(b) the mechanism for implementation of the procurement and asset disposal requirement;

(c) reporting and monitoring procedures and responsibilities;

(d) any limitations or exceptions to the transfer; and

(e) any costs to be paid.

(4) The agreement for transferring the procuring responsibility under paragraph (3) shall be in writing and signed by the accounting officers of the two procuring entities and a copy of the agreement submitted to the Authority.

Part VI – GENERAL PROCUREMENT AND ASSET DISPOSAL PRINCIPLES

40. Procurement planning

(1) A procuring entity shall prepare a procurement plan for each financial year as part of the annual budget preparation process.

(2) Where applicable, multi-year procurement plans may be prepared which shall be integrated into the medium term budgetary expenditure framework.

(3) A head of user department shall submit an annual departmental procurement plan to the accounting officer prior to the commencement of the financial year and shall be implemented in accordance with the timelines set out therein.

(4) The consolidated annual procurement plan shall be prepared by the accounting officer of the procuring entity and approved by the Cabinet Secretary, or county executive committee member of finance or responsible for that entity or, where applicable, by the board of directors or a similar body.

(5) A procuring entity of a county government shall indicate in its procurement plan a minimum twenty percent (20%) budgetary allocation for preferences and reservations for resident tenderers of the county, pursuant to section 33(2)(g) of the Act.

(6) An accounting officer of a procuring entity shall prepare a quarterly report on the implementation of the annual procurement plan and submit it to the Cabinet Secretary or county executive committee member for finance or responsible for the procuring entity or the governing body, as the case may be.

41. Contents of a procurement plan

The annual consolidated procurement plan for each procuring entity shall include—

(a) a detailed breakdown of the goods, works, or services required;

(b) a schedule of the planned delivery, implementation or completion dates for all goods, works, or services required;

(c) an indication and justification whether it shall be procured within a single-year period or under a multi-year arrangement;

(d) an indication of which items may be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-user items;

(e) an indication of which items shall be packaged into lots;

(f) an estimate of the value of each package of goods, works or services required and an indication of the budget available and sources of funding;

(g) an indication of the appropriate procurement method for each procurement requirement;

(h) where transfer of responsibilities is justified, the optimal period for such transfer taking into account seasonal price variations, warehousing and distribution capacity, and product shelf life; and

(i) the estimated cost for procurement of items which shall include insurance, clearing and forwarding, demurrage charges, warehousing, advertisement and all other incidental costs where applicable.

42. Annual Procurement Plan format

Pursuant to section 53(2) of the Act, the annual procurement plan shall be done in accordance with the format specified in the Third Schedule.

43. Procurement pricing and requirement not to split contracts

(1) A procuring entity shall not split or structure its contracts for the purpose of avoiding the use of a procurement procedure as provided for under section 54(1) of the Act except where unbundling of categories is allowed under preference and reservation schemes in the Act and regulation 154.

(2) In discharging its mandate under section 54(3) of the Act, the Authority shall determine standard goods, works and services with known market prices and prepare a quarterly market price index as a reference guide.

(3) The National Treasury may support the Authority execute its function in developing the market price index, obtaining value for money for procuring entities and obtaining synergy.

(4) In making a procurement decision in relation to the market price index in paragraph (2), the procuring entities shall take into consideration the following—

(a) their own market survey prices or results;

(b) insurance and demurrages;

(c) prevailing inflation rate; and

(d) regional price differential.

44. List of registered suppliers

(1) The suppliers register shall be updated at least every six months as a requirement under section 57(2) of the Act and in accordance with section 71 of the Act.

(2) When updating the list, a procuring entity shall notify the new vendors of their admission into the list.

(3) A procuring entity shall evaluate the list after every two years leading to a fresh registration of suppliers.

45. Tender security

(1) Where an accounting officer of a procuring entity requires a tender security under section 61(1) of the Act, that tender security shall be in the form of—

(a) cash;

(b) a bank guarantee;

(c) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or

(d) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.

(2) A candidate or tenderer shall not issue a tender security to guarantee itself.

46. Tender Securing Declaration Form

The Tender Securing Declaration Form for procurement reserved for small and micro-enterprises or enterprises owned by women, youth, persons with disabilities and other disadvantaged groups participating in procurement proceedings in accordance with section 61(5) of the Act shall be in the format provided in the Fourth Schedule.

47. Self-declaration form

A declaration that a person submitting a tender, proposal or quotation is not debarred or shall not engage in any corrupt or fraudulent practice as required under section 62 of the Act shall be in the forms specified in the Fifth Schedule of these Regulations.

48. Termination or cancellation of procurement and asset disposal proceedings

(1) Prior to the cancellation or termination of a procurement and asset disposal proceedings under section 63 of the Act, an accounting officer may take into account the recommendations of the head of procurement function.

(2) The report required under section 63(2) and (3) of the Act shall be made in accordance with the guidelines issued by the Authority.

49. Forms of communications, electronic procurement and asset disposal

(1) The National Treasury when designing and managing an efficient procurement management system as envisaged under section 7(2)(c) and in accordance with section 64(2) of the Act, shall ensure that the system is interfaced with the State Portal in respect of—

(a) procurement planning;

(b) registration of suppliers;

(c) publication of notices;

(d) submission and opening of tenders;

(e) tender evaluation;

(f) requesting for information on tender or disposal process;

(g) dissemination of laws, regulations, directives and circulars;

(h) digital signatures;

(i) publication of tender awards;

(j) notification and acceptance of tender awards;

(k) administrative review of tender disputes;

(l) publication of contract awards;

(m) requisition;

(n) invoicing;

(o) generation of orders;

(p) termination or cancellation of procurement proceedings; and

(q) any other as may be specified by the Cabinet Secretary.

(2) The conduct of e-procurement procedures for the supply of goods, works and services shall be carried out by a procuring entity using an e-procurement system which is integrated to the State Portal.

(3) The e-procurement system referred to in paragraph (2) shall—

(a) allow electronic exchange of documents between a procuring entity and suppliers; and

(b) allow the management of the qualification process, the updating of supplier lists and the evaluation of suppliers.

50. Annual procurement plan, preparation and publication

(1) Where a procuring entity intends to use an e-procurement system, that procuring entity shall prepare its annual procurement plan through the system and upload it in the State Portal.

(2) Subject to paragraph (1), a procuring entity shall configure the approval process for annual procurement plans into the e-procurement system to allow for the preparing and publishing of departments or consolidated procurement plans.

51. E-tender clarifications

The e-procurement system referred to in Regulations 50 and 52 shall be interactive and have the capability to enable bidders participating in a procurement proceeding to request or seek information or clarification.

52. Requisition

Where the e-procurement system is in place, procuring entities shall requisition all the procurement and asset disposal requirements through the approved system in regulation 49 through the procurement function.

53. Tenderer registration

Tenderers, suppliers and consultants may register as a single entity, joint venture or association with sub-contractors or sub-consultants in compliance with the Act through an application form provided by the system for registration.

54. Procuring entity registration

The National Treasury shall ensure that all procuring entities are registered into the e-procurement system and that they have their respective facilities to carry out different activities of initiating the procurement process, annual procurement plan preparation, procurement document preparation, evaluation, professional opinion, contract award, contract management, internal procurement process, workflow management, tracking payments, deliverables and other processes through the available features and modules of the e-procurement system.

55. Submission of e-tenders

(1) The candidates who are desirous of participating in e-procurement shall submit their bids in the standard formats issued by the Authority.

(2) The tenderers shall upload copies of all the relevant certificates and documents on the e-procurement system in support of their bids.

(3) The tenderers shall sign all statements, documents and certificates uploaded to take responsibility for their correctness and authenticity.

(4) Tenderers shall be allowed to submit modifications to bids or proposals or withdraw previously submitted bids or proposals electronically up to, but not after, the bid submission deadline.

(5) Receipt of modification or notice of withdrawal including the date and time shall be acknowledged electronically.

(6) A bid or proposal submitted online shall be scanned for malware by the system administrator before being uploaded and accepted into the online bid box.

(7) Where a scan causes a bid to be rejected, the tenderers shall be notified immediately.

(8) A procuring entity shall accept only those bids in electronic format received within the tender submission deadline.

(9) Receipt of electronic submissions, including the date and time, shall be acknowledged electronically.

(10) Proof of tender security as required by the procuring entity, where applicable, shall be scanned and uploaded along with the bid, and the original physical copy shall be submitted to the procuring entity so as to reach before the date of closing of the bids.

(11) Failure to submit the original physical copy of a tender security before the closing of the bid shall lead to the disqualification of the bid.

(12) A procuring entity shall not charge any fee for tender documents obtained electronically by candidates.

(13) In order to submit the bids electronically, candidates shall be required to secure a digital signature certificate from a certifying agency licensed by the Communications Authority of Kenya.

(14) The bids or proposals submitted online shall be signed electronically with a digital signature to establish the identity of the bidder submitting the bid or proposal online.

56. Inquiries relating to tender document

(1) Where a candidate or tenderer makes an inquiry relating to the amended tender documents under section 75(2) of the Act, the procuring entity shall promptly respond in writing in both manual and through electronic mail where possible, and such correspondence shall be sent through the official communication address of the procuring entity.

(2) Where the response under paragraph (1) affects the requirements of the tender, the response shall be copied to all candidates and shall include a description of the inquiry but without identifying the source.

(3) A procuring entity shall not be bound to respond to inquiries received after the deadline for submitting inquiries stipulated in the tender document.

57. Opening of e-tenders

(1) Where submission of tenders are done online, such submissions shall be received into an electronic tender box and maintained to high standards of security and the e-tender box shall remain closed until the time of tender opening.

(2) The electronic tender box referred to under paragraph (1) shall have three passwords that are simultaneously time-activated and each password shall be issued to different officers who are members of the tender opening committee.

(3) Without limiting the generality of the foregoing, the tenderer submitting a bid or proposal may encrypt their bid as long as their respective passwords are availed at the tender opening.

(4) A tenderer who submits an encrypted tender and fails to provide their respective password or other means of access to the document at the tender opening shall be deemed not to have submitted their bid.

(5) A record of the bid opening shall be kept in print copy and signed by the tender opening committee appointed in accordance with section 78(1) of the Act.

(6) A procuring entity shall ensure that the date and time of an automated closure of an electronic bid deadline is indicated in the invitation notice or tender document in accordance with the local time zones.

(7) All tenders shall be opened in the presence of all invited bidders who choose to attend and sign a record of attendance.

(8) Despite paragraph (7), a procuring entity may allow for online viewing of tender opening proceedings by tenderers.

(9) All e-tenders shall be readable through open standard interfaces and formats as specified in the tender documents.

(10) Information read at the bid opening shall include where applicable and practicable, the name of the tenderer, the absolute and final price, offered discount, tender security and any other pertinent information that may be deemed necessary.

(11) The procuring entity shall on request provide a copy of the tender opening register to a tenderer.

(12) Bids or proposals in electronic format shall be protected against access by unauthorized persons until the publication of the contract award.

(13) A procuring entity shall open bids or proposals in electronic format.

(14) A procuring entity shall ensure that financial proposals in electronic format shall only be accessed and opened after the technical evaluation of the proposals where so required in the e-tender documents.

(15) Until the price bids are opened, the bid-offers shall be kept confidential.

(16) Financial bids for unsuccessful bidders at the technical stage shall not be opened.

58. Access to e-procurement system

(1) An accounting officer of a procuring entity shall, upon appointment of any *ad hoc* evaluation committee, register its members and give them access to the e-procurement system.

(2) An evaluation committee shall access the system only in specified and restricted time for specific procurement defined by a procuring entity for submitting the evaluation results and reports.

(3) The tender evaluation committee shall evaluate the tenders using the evaluation criteria contained in the e-tender document.

(4) The clarifications, particulars, if any, required from the tenderers to assist in evaluation pursuant to section 81 of the Act, shall be obtained electronically.

(5) The tender evaluation report shall be submitted and accessed electronically by the head of the procurement function for professional opinion.

(6) A procuring entity shall use pre-approved automated evaluation process so long as the evaluation aligns with the criteria established in the bidding documents is consistent with the principles of economy, effectiveness, efficiency, equal opportunity, and transparency.

59. Digital signature

(1) A digital signature certificate required by a procuring entity shall be obtained from a certifying agency licensed by the Communications Authority of Kenya for accounting officer, head of procurement function, tender opening and evaluation committee, as the case may be.

(2) When an officer with a digital signature ceases to work for the procuring entity, the digital signature shall be surrendered to the issuing authority immediately.

(3) A bid for a particular tender can be submitted during the online bid submission stage only using the digital certificate that is used to encrypt the data.

(4) In the event of a loss of the digital signature certificate by an officer of a procuring entity, for any reason whatsoever including a misplacement, hardware or software malfunctions, operating

systems problems and malware, the officer shall immediately report such loss to the accounting officer and the certifying agency simultaneously.

60. Publication of e-tender and contract awards

All contract awards shall be reported by the procuring entity through the e-procurement system to the Authority and the Authority shall upload the information in the State portal accordingly.

61. E-notification and acceptance of e-tender awards

(1) A procuring entity shall notify all bidders participating in the e-tendering process of the outcome of the award electronically and simultaneously.

(2) The system approved in section 64 of the Act shall be interactive and have the capability to enable bidders participating in a procurement procedure to be notified and accept tender awards electronically.

(3) The accounting officer or head of the procurement function shall, in accordance with section 87 of the Act, sign and send a notification to—

(a) the successful tenderer that their bid was successful; and

(b) to unsuccessful tenderers that their bids were unsuccessful, giving reasons thereof.

62. E- administrative review of tender disputes

(1) The e-procurement system shall recognize the management of administrative review of all tendering disputes lodged before the Review Board and suspend all affected procurement proceedings until the request for review is heard and determined.

(2) Candidates and tenderers shall lodge appeals and receive responses electronically.

63. Award of e-tender

After the award of the contract, the contract agreement shall be prepared and entered into in accordance with Part XI of the Act.

64. E-invoicing and e-documentation

The system envisaged in section 64 of the Act shall—

(a) be interactive and have the capability to generate purchase orders and receive invoices from suppliers; and

(b) have a secure document management system.

65. Confidentiality declaration form

The confidentiality declaration form to be signed by an employee, agent or member of a board, commission or committee of a procuring entity during or after the procurement proceedings under section 67 of the Act shall be in the form provided for under the Sixth Schedule.

66. Procurement records form

(1) The records for procurement submitted as a summary of the proceedings of opening of tenders, evaluation and comparison of tenders, proposals or quotations including evaluation criteria envisaged in section 68 of the Act, shall be in the form specified in the Seventh Schedule.

(2) In addition to procurement records specified in section 68(2) of the Act, the following documents shall form part of the procurement records—

(a) where the procurement or the disposal requirement involves feasibility studies and surveys directly carried out or accepted by a procuring entity in order to prepare the tender document, the reports and other documents resulting from these studies and surveys;

(b) all receipts for the sale of tender document, request for clarifications and any responses issued by a procuring entity; and

(c) records of any negotiations including appointments, terms of negotiations and duly signed negotiation report.

67. Dissemination of laws, regulations, directives and circulars

The Authority shall disseminate and ensure accessibility of all public procurement and asset disposal laws, directive, manuals, guidelines, circulars, market price indices, standard tender and asset disposal documents, public procurement and asset disposal formats in the State portal envisaged under section 9(1)(k) of the Act.

Part VII – BASIC PROCUREMENT RULES

68. Standard tender documents and formats

(1) Standard tender documents envisaged under sections 9(1)(f) and 70(1) of the Act, shall be developed by the Authority for use by all procuring entities as set out in the Eighth Schedule.

(2) The Authority shall issue and publicize the format of procurement documents to be used and issue standard forms by which a procuring entity shall carry out specific procurement procedures.

(3) The documents used by a procuring entity shall be clear and bear references to the procurement requirement, provision for dates and signatures of authorizing officers.

(4) Pursuant to section 70(4) of the Act, the accounting officer of a procuring entity shall prepare the tender document clearly indicating the technical and financial evaluation criteria to be applied which shall be quantifiable, measurable and objective in line with the provisions of section 80(3) of the Act in consultation with the user department and other relevant departments.

(5) The Authority may, from time to time, issue circulars and guidelines only on the content of procurement and disposal documentation.

(6) A procuring entity may, under section 70(5) of the Act, charge a fee not exceeding one thousand shillings for hard copies of a tender document or as may be set by the Cabinet Secretary from time to time.

(7) In determining the fee payable under paragraph (6) above, a procuring entity shall only have regard to the costs related to printing, copying, and distributing.

(8) A procuring entity shall not charge a fee under paragraph (6) above, where the tender document is —

(a) obtained electronically;

(b) an invitation for expression of interest;

(c) a registration of suppliers; or

(d) a pre-qualification document.

(9) Where a procuring entity charges a fee for a tender document, the procuring entity shall permit potential tenderers to inspect the document, prior to paying the fee for the document.

69. Registration of suppliers

(1) A procuring entity may generate a list of suppliers under section 71 of the Act by way of invitation of registration of suppliers.

(2) The registration of suppliers by a procuring entity shall be in accordance with regulation 44.

(3) Where a procuring entity conducts a registration procedure pursuant to the Act, it shall publish an invitation to candidates to submit applications to be registered.

(4) The invitation referred to in paragraph (1), shall include—

(a) the name, address and contact details of the procuring entity;

(b) instructions on obtaining the registration documents; and

(c) instructions on location and deadline for submission of applications for registration.

(5) For greater certainty, the notice for registration of suppliers shall not apply to the youth, women and persons with disabilities registered by the National Treasury.

70. Registration procedure

(1) A procuring entity shall promptly issue registration documents to all candidates who request them and shall maintain a record of all candidates to whom documents are issued.

(2) The registration document shall contain all information necessary for the potential candidates to prepare and submit applications to be registered.

(3) Without prejudice to the generality of paragraph (2) above, such information shall include—

(a) the name, address and contact details of the procuring entity;

(b) instructions on the preparation of applications to register, including any standard forms to be submitted and the documentary evidence and information required from candidates;

(c) instructions on the sealing, labeling and submission of applications to register, including the location and deadline for submission; and

(d) statement of the key requirements, information and criteria for registration.

(4) The procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be registered.

(5) The procuring entity shall promptly respond to all requests for any clarification relating to the registration document where such requests are received before the deadline for submission.

(6) The procuring entity shall, in writing, record the results of its evaluation of applications for registration using the evaluation criteria stipulated in the registration documents.

71. Initiation of procurement

(1) Pursuant to section 73 of the Act, the head of the user department shall initiate the procurement process through a requisition as per the approved procurement plan.

(2) The user department shall submit the requisition under paragraph (1) to the head of the procurement function for processing which shall be accompanied by the following, as applicable—

(a) feasibility studies or surveys and reports;

(b) specifications, bills of quantities, technical drawings, or terms of reference;

(c) environmental and social impact assessment reports;

(d) reasonable expected date of delivery; and

(e) any other necessary information pertaining to the procurement.

(3) When estimating the value of the goods, works or services, the accounting officer shall ensure that the estimate is realistic and based on up-to-date information on economic and market conditions.

72. Invitation to tender

The tender advertisement invitation under section 74 of the Act shall indicate the mode of submission of tenders by specifying whether the submission shall be done electronically or manually.

73. Opening of tenders

(1) Despite the provisions of section 78 (6)(b) of the Act, the total price of the tender—

(a) may not be read out where a tender consists of numerous items that are quoted for separately; or

(b) shall not be read out where a tender is preceded by a technical evaluation and such tender is not technically responsive.

(2) For avoidance of doubt, the total price shall take into account any discount referred to in section 78(6)(b) of the Act.

74. Preliminary evaluation of open tender

(1) Pursuant to section 80 of the Act and upon opening of tenders, the evaluation committee shall first conduct a preliminary evaluation to determine whether—

(a) a tenderer complies with all the eligibility requirements provided for under section 55 of the Act;

(b) the tender has been submitted in the required format and serialized in accordance with section 74(1)(i) of the Act;

(c) any tender security submitted is in the required form, amount and validity period, where applicable;

(d) the tender has been duly signed by the person lawfully authorised to do so through the power of attorney;

(e) the required number of copies of the tender have been submitted;

(f) the tender is valid for the period required;

(g) any required samples have been submitted; and

(h) all required documents and information have been submitted.

(2) Subject to section 79(2)(b) of the Act, any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive.

75. Non-responsiveness to tender

(1) A procuring entity shall reject all tenders, which are not in conformity to the requirements of section 79 of the Act and regulation 74 of these Regulations.

(2) The classification of a deviation from the requirements as minor under section 79(2)(a) of the Act shall be applied uniformly and consistently to all tenders received by a procuring entity.

76. Technical evaluation

(1) Upon completion of the preliminary evaluation under regulation 74, the evaluation committee shall conduct a technical evaluation by comparing each tender to the technical requirements of the goods, works or services in the tender document.

(2) The evaluation committee shall reject tenders which do not satisfy the technical requirements under paragraph (1).

77. Financial evaluation

(1) Upon completion of the technical evaluation under regulation 76 of these Regulations, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.

(2) The evaluated price for each bid shall be determined by—

(a) taking the bid price in the tender form;

(b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2)(a) of the Act;

(c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date;

(d) applying any margin of preference indicated in the tender document.

(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with the provisions of section 86 of the Act.

78. Evaluation report and professional opinion

(1) An evaluation report prepared under section 80(4) of the Act shall include—

(a) a summary of all the tenders received from the head of the procurement function;

(b) the results of the preliminary evaluation;

(c) the results of the technical evaluation;

(d) reasons why any tenders were rejected;

(e) details of any minor deviations accepted under section 79(2)(a) of the Act and the way in which such deviations were quantified and taken into account in the evaluation and comparison of the tenders;

(f) the evaluated price of each tender showing the price and any conversion to a common currency, if any;

(g) the ranking of the tenders each according to its total evaluated price;

(h) a recommendation to award the contract to the successful tenderer in accordance with section 86 of the Act; and

(i) any dissenting opinion and the reasons thereof and such other recommendation as may be deemed necessary by the evaluation committee.

(2) The evaluation report under paragraph (1), shall be reviewed by the head of the procurement function and forwarded to the accounting officer together with the professional opinion referred to in section 84 of the Act within a day upon receipt of the evaluation report.

(3) The head of the procurement function may seek for clarification from the evaluation committee before making a professional opinion.

(4) The professional opinion referred to under paragraph (3) shall be in the format set out in the Ninth Schedule of these Regulations and shall include the following information—

(a) a review of the procurement or asset disposal proceedings;

(b) adherence to evaluation criteria stipulated in the bid documents;

(c) legality of tender award recommendations;

(d) whether the recommended price for standard goods, services and works are within the indicative market prices;

(e) availability of funds; and

(f) a recommendation for change of scope, where the bid document had provided for change of scope, if the successful bid is above the budget available of the procuring entity, taking into account the effect of the scope of change to the entire evaluation of the tender.

(5) Where the accounting officer has approved the recommendation of the head of procurement function under paragraph (4)(f), the head of procurement function shall—

(a) inform the user department for concurrence;

(b) refer the matter back to the evaluation committee for review and recommendation to the accounting officer;

(c) inform the successful bidder for concurrence; and

(d) make appropriate recommendation to the accounting officer, taking into account the views of the user department, the evaluation committee and the successful bidder.

79. Approval of the accounting officer

(1) Upon receipt of the evaluation report and professional opinion, the accounting officer shall take into account the contents of the professional opinion and shall within a day, in writing—

(a) approve award to the successful tenderer;

(b) seek clarification from the head of the procurement function or the evaluation committee prior to approving or rejecting the award; or

(c) reject the recommendations.

(2) Where the accounting officer rejects the recommendations under paragraph (1)(c), the accounting officer shall give reasons and provide further directions to the head of the procurement function, in writing.

(3) Pursuant to section 68(2)(g) of the Act, any further directions, approval or rejection by the accounting officer shall form part of the procurement records.

80. Post-qualification

(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with sections 55 and 86 of the Act.

(2) If the bidder determined under paragraph (1) is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer—

(a) who submitted the next responsive bid for goods, works or services as recommended by the evaluation committee; or

(b) who emerges as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.

81. Professional fees

(1) The professional fees and rates chargeable under section 80(2) of the Act shall be guided by the rates approved by the respective professional bodies.

(2) For non-regulated professional services, the fee shall be based on time, scope and quality of services to be rendered.

82. Notification of intention to enter into a contract

(1) The notification to the unsuccessful bidder under section 87(3) of the Act, shall be in writing and shall be made at the same time the successful bidder is notified.

(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.

(3) The notification in this regulation shall include the name of the successful bidder, the tender price and the reason why the bid was successful in accordance with section 86(1) of the Act.

83. International tendering and competition

Where the provisions of section 89(c) of the Act apply with respect to foreign tenders, the minimum period of time between the advertisement and deadline for submission of international tenders shall be seven days.

Part VIII – CLASSIFIED PROCUREMENT METHODS AND PROCEDURES

84. Classified procurement methods and procedures

(1) Where an accounting officer of a procuring entity is dealing with classified items under section 90(2) and (5) of the Act, that accounting officer shall submit a list of the classified items to the Cabinet Secretary by the 30th July of each financial year which shall include—

(a) the justification for use of classified procurement and asset disposal for each category;

(b) the description and quantity of each item required;

(c) the estimated cost of each item;

(d) the budgetary provision; and

(e) the proposed procurement and asset disposal methods for each item and the justification for use of the method.

(2) The format of the list referred to in paragraph (1) shall be in the form prescribed under the Tenth Schedule of these Regulations.

(3) The list submitted under paragraph (1) shall be accompanied by a report detailing the selection criteria for suppliers.

(4) National security organs and other procuring entities that deal with the procurement of classified items shall agree with the Cabinet Secretary on the category of classified items and the method of procurement or disposal to be applied by that procuring entity.

(5) Pursuant to section 90(6) of the Act, the Cabinet Secretary shall submit the classified list of each national security organ and other procuring entities that deal with the procurement of classified items to the Cabinet for approval every financial year.

(6) Any national security organ or procuring entity that deals with classified items which fails to submit its list shall be deemed to be conducting all its procurements and disposal on the basis of open list and shall be subject to the procurement and disposal procedures under the Act and these Regulations.

(7) An accounting officer of a national security organ or procuring entity that deals with classified items shall appoint special committee to handle the procurement and disposal of its classified items.

(8) In establishing the special committee in paragraph (7), the accounting officer shall submit the names of the nominated members of the special committee to the respective Cabinet Secretary, county executive committee member or governing body of that procuring entity for approval.

(9) The head of the procurement function shall be the secretary to the special committee.

(10) The special committee shall be responsible for—

(a) developing the specifications of classified items;

(b) coordinating the process of sourcing and identification of suppliers;

(c) establishing and updating a list of registered and prequalified suppliers for the supply of classified items;

(d) conducting market surveys of the classified items to be procured;

(e) conducting the evaluation, inspection, acceptance and negotiations;

(f) managing and implementing all contracts of a classified nature;

(g) preparing reports and recommendations for the procurement and disposal activities; and

(h) maintaining and archiving all records and relevant documentation.

(11) The accounting officer of the national security organ or procuring entity that deals with classified items shall submit quarterly reports on the procurement and disposal activities of that procuring entity to the Cabinet Secretary and the Authority.

(12) Where a procurement or disposal need arises which was not included in the approved list, the accounting officer of the national security organ or procuring entity that deals with classified items shall submit a supplementary classified list to the Cabinet Secretary.

(13) All classified procurements shall be monitored by the Authority in accordance with section 9(1)(d) of the Act.

(14) In monitoring the classified procurement information pursuant to paragraph (13), the Director-General shall liaise with the Cabinet Secretary to access the list of the classified procurement.

Part IX – METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES

A. Open Tender

85. Threshold for advertising of open tender

(1) The threshold for national advertising envisaged under section 96(2) and (5) of the Act shall be as specified in the matrix in the Second Schedule to these Regulations.

(2) Without limiting the generality of section 96(3)(a) of the Act in respect of tender advertisement, a procuring entity shall advertise tenders in the State portal.

(3) The procedure for open tender method shall be in accordance with sections 96, 97 and 98 of the Act.

86. Time for preparation of open tenders

The minimum time for preparation of tenders for purposes of section 97(1) of the Act shall be a period of seven days for national and county specific tenders.

B. Two Stage Tendering

87. Two stage tendering

Two stage tendering shall be done in accordance with section 99 of the Act and the minimum time for preparation of tenders shall be a period of seven days at every stage of tendering.

C. Design Competition

88. Design competition

(1) Pursuant to section 101(3) of the Act, the following shall be the procedure for the design competition process—

(a) preparation of tender documents;

(b) appointment of independent assessors in accordance with section 101(4) of the Act;

(c) issuance of the notice of invitation to participate in the design competition;

(d) submission of design proposals by the tenderers;

(e) opening of bids;

(f) appointment of an *ad hoc* evaluation committee in accordance with section 101(4) of the Act;

(g) evaluation of the design proposals in accordance with the criteria set out in the bid documents;

(h) submission of design competition report to the head of procurement function for review;

(i) preparation of a professional opinion by the head of the procurement function who shall submit it to the accounting officer for approval;

(j) notification of results to all bidders and declaration of the best three design schemes; and

(k) payment of honorarium as provided in the bid document inviting the design competition.

(2) For greater certainty, the provisions of section 101(7) of the Act, shall only apply to the best three assessed design schemes envisaged under section 101(5) of the Act.

D. Restricted Tendering

89. Restricted tendering

(1) An accounting officer may use restricted tendering, only if any of the conditions set out in section 102(1) of the Act are satisfied.

(2) A procuring entity that conducts procurement using the restricted tendering method shall be subject to the procurement thresholds set out in the Second Schedule to these Regulations.

(3) Unless otherwise provided in this regulation, the procedure for open tendering set out in the Act and these Regulations shall apply *mutatis mutandis* to restricted tendering.

(4) A procuring entity shall, for the purpose of identifying pre-qualified contractors pursuant to section 102(1)(a) of the Act, use the pre-qualification procedures set out in sections 93, 94 and 95 of the Act.

(5) Where restricted tendering is used pursuant to section 102(1)(b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list maintained as provided under sections 57 and 71 of the Act or otherwise as permitted under section 56 of the Act.

(6) Where restricted tendering is used pursuant to section 102(1)(c) of the Act, the procuring entity shall invite tenders from all the known suppliers of the goods, works or services.

(7) The minimum time for preparation of tenders for the purposes of section 102 of the Act shall be a period of seven days.

(8) For greater certainty of section 102(1)(d) of the Act, any procurement under section 102(1)(c) of the Act, the procuring entity shall place an advertisement on its website or on state portal regarding their intention to procure through restricted tender for at least three days before inviting tenders and where any bidder outside the known suppliers emerge, he or she shall be invited to bid.

E. Direct Procurement

90. Direct procurement

(1) In addition to direct procurement requirements set out under section 103 of the Act, the following shall apply—

(a) a procuring entity shall conduct procurement using the direct procurement method subject to threshold matrix set out in the Second Schedule;

(b) where an accounting officer uses direct procurement, the procuring entity shall record the reasons upon which it makes a determination that the relevant condition set out in section 103 of the Act has been satisfied;

(c) an accounting officer shall, within fourteen days after the notification of the award of the contract, report any direct procurement of a value exceeding five hundred thousand shillings to the Authority in a format provided by the Authority;

(d) an accounting officer shall not enter into a contract under section 104 of the Act unless it is satisfied that the offer—

(i) meets the requirements of the procuring entity as specified under paragraph (1)(b) above; and

(ii) is at the prevailing real market price;

(e) a procuring entity shall negotiate with a person for the supply of the goods, works or services being procured in accordance with the provisions of the Act and these Regulations; and

(f) a procuring entity shall not use direct procurement in a discriminatory manner.

(2) Any direct procurement bid shall be evaluated in accordance with the provisions of the Act and these Regulations.

(3) The negotiations shall be conducted by the *ad hoc* evaluation committee appointed in accordance with section 104 (b) of the Act.

(4) The *ad hoc* evaluation committee responsible for negotiation under paragraph (3) may negotiate on terms that include—

(a) price;

(b) terms of contract;

(c) terms of delivery;

(d) scope of work or service.

(5) On completion of negotiations, the committee under paragraph (3) shall prepare a report and submit it to the head of procurement function for professional opinion and for onward submission to the accounting officer for approval and award of the contract.

(6) Any direct procurement shall require the prior approval of the accounting officer in writing except under urgent need where approval shall be granted in line with section 69(3) of the Act.

(7) For greater certainty, the fourteen days window period between the notification of award and signing of the contract provided for under section 135(3) of the Act shall not apply for direct procurement method.

(8) The resulting contract shall be in writing and signed by both parties as provided for under section 104(d) of the Act.

F. Request for Quotations

91. Request for quotations

(1) A procuring entity that procures using the request for quotations method pursuant to section 105 of the Act, shall be subject to the procurement threshold in the Second Schedule.

(2) The accounting officer or such other person delegated in writing by that accounting officer shall, and for the purposes of the procurement process, appoint—

(a) an *ad hoc* opening committee in accordance with section 78 of the Act; and

(b) the *ad hoc* evaluation committee in accordance with section 46 of the Act and regulation 39 of these Regulations.

(3) The *ad hoc* evaluation committee shall carry out the evaluation in accordance with the Act and these Regulations.

(4) Before any decision to award a procurement under a request for quotation, the head of procurement function shall by way of professional opinion make a recommendation based on a market survey.

(5) An accounting officer shall ensure a fair and equitable rotation amongst the persons on the list under sections 57, 71 and 106 of the Act and these Regulations.

(6) For the purpose of implementing section 157 (5) and (10) of the Act, on preferences and reservations under women, youth and persons living with disability, a procuring entity shall maximize the use of the request for quotations as applicable.

G. Low Value Procurement

92. Low value procurement method

A procuring entity may use low value procurement method under section 107(b) of the Act, where—

(a) the estimated cost of the goods, works or services being procured per item per financial year is as per the threshold matrix in the Second Schedule;

(b) no benefit would accrue to a procuring entity in terms of time or cost implications if a procuring entity uses requests for quotations or any other procurement method;

(c) the procedure is not being used for the purpose of avoiding competition; or

(d) the procedure has been recommended by the head of procurement function after conducting a market survey and approved by the accounting officer or such person delegated in writing by the accounting officer.

93. Procedure for low value procurement

(1) Where the accounting officer finds it necessary to use low value procurement method, that accounting officer may only delegate that function to the head of procurement function to procure the goods, works or services from a reputable outlet or provider through direct shopping or using credit cards or direct funds transfer to that outlet.

(2) Any procurement under paragraph (1) shall be supported by the original Kenya Revenue Authority Electronic Tax Receipt (KRA ETR Receipt) duly signed by the person undertaking the low value procurement of goods, works or services.

(3) The goods procured shall be taken on charge by the officer responsible for the stores after the user department has confirmed the quantity and quality of the goods, works or services, before they are issued to the respective user department.

H. Force Account

94. Force account

(1) A procuring entity may use the force account method of procurement where conditions under section 109(2) and (3) of the Act are satisfied.

(2) Pursuant to section 109(3) of the Act, the limit for force account shall be set out under Second Schedule of the threshold matrix.

95. Procedure for use of force account under section 109(2)(a) of the Act

Where a procuring entity uses force account under section 109(2)(a) of the Act, the procedure shall be as follows—

(a) a procuring entity shall identify and include the activity in the annual procurement plan;

(b) an accounting officer shall approve the procedure for use of force account based on the report which shall include an assessment and availability of a state officer's or public officer's capacity including public assets, equipment and labour;

(c) preparation of relevant bills of quantities, cost estimates and technical drawings, where applicable;

(d) the procurement of the materials or services to be used as inputs under force account method shall be in accordance with the provisions of the Act and these Regulations;

(e) a procuring entity shall satisfy itself that it is uneconomical to outsource the goods or works or services; and

(f) a procuring entity shall establish that the cost of the items to be procured are at prevailing indicative market prices obtained through a market survey.

96. Procedure for use of force account under section 109(2)(b) of the Act

Where a procuring entity uses force account under section 109(2)(b) of the Act, that procuring entity shall —

(a) first establish that the work or service is urgent and may be carried out without any interruptions on ongoing operations using available state or public officers skills, equipment, materials and labour;

(b) seek approval from the accounting officer;

(c) ensure that the approval sought under paragraph (b) is supported by a report which shall include an assessment and availability of a state's or public officer's capacity including public assets, equipment and labour;

(d) prepare relevant bills of quantities, cost estimates and technical drawings, where applicable; and

(e) ensure that the procurement of the materials or services to be used as inputs is in accordance with the provisions of the Act and these Regulations.

97. Procedure for use of force account under section 109(2)(c) of the Act

(1) Where a procuring entity uses force account under section 109(2)(c) of the Act, that procuring entity shall—

(a) seek approval from the accounting officer;

(b) ensure that the approval sought under paragraph (a) is supported by a report which shall include an assessment and availability of a state's or public officer's capacity including public assets, equipment and labour;

(c) prepare relevant bills of quantities, cost estimates and technical drawings, where applicable; and

(d) ensure that the procurement of the materials or services to be used as inputs is in accordance with the provisions of the Act and these Regulations.

(2) A procuring entity may use force account to complete the works where the contractors either abandoned or delayed completion of works or services and the cost of retendering is uneconomical.

(3) Where force account is used, pursuant to section 109(2)(c), a procuring entity shall terminate the existing contract in accordance with section 153 of the Act.

98. Procedure for use of force account for user department

(1) Despite the provisions under Regulations 95, 96 and 97, the general procedure for application of force account shall be as follows—

(a) the user department shall prepare a detailed proposal on the following—

(i) scope of works or services;

(ii) status of the project;

(iii) justification for use of force account method;

(iv) list of materials and bills of quantities to be procured;

(v) available state or public officers capacity and competencies to undertake the assignment; and

(vi) cost analysis of fees or rates using approved government rates;

(b) the proposal shall be submitted to the head of procurement function for review and recommendation to accounting officer for approval;

(c) upon approval, the user department and procurement function shall commence implementation in accordance with the Act.

(2) The head of user department shall be accounting officer's representative in the project.

I. Electronic Reverse Auction

99. Electronic reverse auction

(1) A procuring entity may request for approval from the Authority to use the electronic reverse auction system in accordance with the provisions of section 110 of the Act.

(2) The electronic reverse auction method shall apply to goods, works and services which have standard and comprehensive specifications.

(3) Pursuant to section 112(b) and (c) of the Act, the procuring entity shall ensure that the reverse auction bidding is completed within a period of five hours.

(4) The automatically generated report shall be submitted to the head of the procurement function for a professional opinion and for onward submission to the accounting officer who shall notify the successful bidder, in writing, that his or her bid has been accepted in accordance with section 87 of the Act.

(5) In the event that the successful bidder under section 113 of the Act declines the offer, the next lowest bidder shall be offered the bid subject to the reserve price.

J. Competitive Negotiations

100. Procedure for competitive negotiations

(1) In using competitive negotiations as provided for under section 131 of the Act and in applying the procedure set out in section 132 of the Act, an accounting officer of a procuring entity shall appoint an *ad hoc* evaluation committee pursuant to section to 46(4) of the Act to negotiate with the bidder on the recommendation of the head of the procurement function.

(2) Tenders shall be evaluated by the evaluation committee constituted in the initial phase of the proceedings.

(3) The accounting officer of a procuring entity shall request the identified vendors to revise their bids by submitting the best and final offer within a period not exceeding seven days.

(4) The revised prices shall not compromise the quality or specifications of the original tender.

(5) The members of the evaluation committee conducting the negotiation under paragraph (1) shall prepare a report of the negotiation and submit it to the head of procurement function for professional opinion and onward submission to the accounting officer for approval.

(6) The report prepared under paragraph (5) shall form part of the procurement records.

(7) A procuring entity shall, prior to applying the procedure referred to in this regulation, invite the concerned suppliers to submit their bids for competitive negotiations.

K. Framework Agreement Method

101. Conditions for use of framework agreement method

(1) A procuring entity may enter into a framework agreement through open tender in accordance with section 114 for the supply of goods, works or services where—

(a) the quantities and delivery schedules are not definable or determinable at the beginning; and

(b) the need for the subject procurement is expected to arise on a repeated basis over a definite period of time.

(2) A procuring entity shall not use a framework agreement in such a way as to prevent, restrict or distort competition.

(3) A procuring entity shall not award a contract under the framework agreement where there is evidence demonstrating that—

(a) the prices of goods, works or services are above the indicative market prices; or

(b) material corporate governance issues have been detected.

(4) A procuring entity shall not procure using a framework agreement of another procuring entity except for those concluded under institutional frameworks prescribed in the Act and these Regulations.

102. Procedure for framework Agreement

(1) Subject to section 114 of the Act, a procuring entity may enter into a framework agreement through open tender using an invitation to tender which shall specify—

(a) that the procuring entity intends to establish a framework agreement;

(b) the number of suppliers or contractors which shall not be less than seven alternative vendors;

(c) the duration of the framework agreement which shall not exceed three years;

(d) the evaluation criteria;

(e) an estimate of the total volume or scope of work or quantity of purchases expected to be made for the duration of the framework agreement, as appropriate; and

(f) any other information as may be deemed relevant.

(2) Where applicable, a procuring entity shall specify in the tender document the relative weighting that it gives to each of the criteria.

(3) The weighting referred to in paragraph (2) may be expressed by providing a range within an appropriate maximum spread.

(4) An *ad hoc* evaluation committee shall be appointed by the accounting officer in accordance with section 46 of the Act.

(5) The bids submitted shall be evaluated in accordance with the provisions of the Act and these Regulations.

(6) The evaluation committee shall apply the evaluation criteria set out in the bid documents when evaluating the bids and the evaluation report shall be submitted to the head of the procurement function.

(7) The head of the procurement function shall prepare a professional opinion and submit it to the accounting officer for consideration prior to the approval and award of the framework agreement.

(8) An accounting officer shall award a contract under the framework agreement in accordance with section 86 of the Act.

103. Contracts under the framework agreement

(1) Parties to a framework agreement entered into under regulation 102 shall not make substantial amendments to the terms specified in that framework agreement when entering into a contract under it.

(2) An accounting officer may award a contract under a framework agreement either through—

(a) call-off orders where the price has been determined in the contract by applying the terms specified without reopening competition; or

(b) inviting mini-competition amongst the suppliers under the framework agreement.

(3) For the purposes of paragraph (2)(a) an accounting officer may from time to time, make a call-off order for goods, works or services based on the procuring entity's needs.

(4) Where an accounting officer awards a contract under framework agreement through the provisions of paragraph (2)(b), the following procedures shall be followed—

(a) for each contract to be awarded, the procuring entity shall invite in writing the suppliers or contractors that have entered into the framework agreement to participate in the mini-competition;

(b) the procuring entity shall give a minimum of three days for bidders to submit their financial bids;

(c) suppliers or contractors shall submit their financial bids in writing;

(d) the procuring entity shall keep the content of the financial bids confidential until the deadline for receiving tenders has expired;

(e) the procuring entity shall award the contract to the tenderer that has submitted the lowest evaluated price on the basis of the award criteria set out in the framework agreement.

104. Threshold for framework agreements

The thresholds for framework agreements shall be as specified in the Second Schedule to these Regulations.

105. Indexing prices

For goods or services whose prices are volatile, framework agreements may include an indexing mechanism to adjust prices based on prevailing Central Bank's monthly rate of inflation or the consumer price index of the Kenya National Bureau of Statistics.

106. Procedure for ordering

(1) A procuring entity is not required to advertise or invite quotations from persons not shortlisted under the framework agreement where a framework agreement has been entered into by the procuring entity.

(2) Individual orders shall include all the details required to establish the full cost or price for the delivery of goods, works or services.

(3) Call-off orders shall be within the specific requirements issued within the period of performance in a format provided by the Authority.

(4) Orders may be placed by using electronic means or as specified in the framework agreement.

(5) A procuring entity shall ensure the price or quantities for all the orders does not exceed any ceiling amount stated in the contract.

(6) Orders placed on the basis of a contract under the framework agreements shall contain the following information—

(a) date of order;

(b) agreement number and order number;

(c) for goods and services, contract item number and description, quantity, and unit price;

(d) delivery or performance schedule;

(e) place of delivery or performance (including the details of the consignee, where applicable);

(f) any packaging, packing, and shipping instructions;

(g) method of payment; and

(h) any other information as may be deemed necessary from time to time by the procuring entity.

(7) The requirement of the performance security shall be included in the bid documents and determined by a procuring entity in accordance with value of the orders made.

L. Specifically Permitted Procurement

107. Specially permitted procurement procedure

(1) Pursuant to section 114A(2)(f) of the Act, the National Treasury may permit Specially Permitted Procurement Procedure where such procedure is in the public interest or interest of national security.

(2) Pursuant section 114A(3) of the Act and in applying the Specially Permitted Procurement Procedure referred to under paragraph (1), an accounting officer shall—

(a) approve and issue written justification for use of the procedure upon considering its uniqueness from the other methods of procurement set forth in the Act;

(b) plan the subject procurement and set it forth in its approved annual procurement plan, where applicable;

(c) prepare tender documents for the subject procurement which shall at least include a specifications, conditions of tendering and contracting; and

(d) submit the tender documents and the proposed procedure to the Cabinet Secretary for approval detailing the justification for the use of the method.

(3) The National Treasury shall maintain a register of all Specially Permitted Procedures allowed and notify the Authority for monitoring purposes.

M. Community participation

108. Community participation method

(1) Pursuant to section 92(m) of the Act, a procuring entity may involve a beneficiary community to participate in the delivery of services if it is established that it shall contribute to—

(a) the economy;

(b) value for money;

(c) project sustainability; and

(d) socio-economic objectives such as creation of employment.

(2) Community participation method may involve two approaches, namely—

(a) direct community participation; or

(b) organized community participation through the appointment of community based service providers.

109. Conditions for use of community participation method

Where a procuring entity intends to use community participation as a method of procurement that procuring entity shall ensure—

(a) the project is aligned to the procuring entity's mandate and strategic plan;

(b) the project has positive socio-economic outcomes with the community as its main beneficiary;

(c) the project requires community involvement in part or in whole for its success and its continued implementation;

(d) the project is included in the annual procurement plan for that procuring entity;

(e) the project proposal prepared is in line with its strategic plan and which shall include—

(i) setting out the key result areas and the specific roles of the target community; and

(ii) the objectives, estimated budget and the target community beneficiaries.

110. Procedure for use of community participation method

(1) Where the procuring entity uses community participation procurement method for delivery of services that procuring entity shall—

(a) organise a meeting of the beneficiary community, whereby—

(i) the community shall he informed of the activity, the scope of their participation and the benefit to the community in return;

(ii) through its representatives, the procuring entity shall explain to the community the document containing obligations of both sides, the appropriate payment, the period after which participants shall be paid, payment modalities and any other details related to goods, works or non-consultancy services execution; and

(iii) the procuring entity shall establish a list of community members committed to participate in the procurement proceedings and those members shall affix their signatures or fingerprints as evidence for their commitment;

(b) require the community to elect or nominate their representative in all communication and transaction processes and that procuring entity shall identify a contact person and where there is a change to the representatives each party shall communicate the change to the other;

(c) avail technical equipment needed for the execution and shall inform the community of any equipment they shall bring for the execution of the community project, where applicable;

(d) use its public officers or hire a consultant to technically assist the community for the supervision of works execution, if needed;

(e) with the help of supervisors, assist every participant to sign on daily basis in the register or on a card prepared for that purpose, as appropriate;

(f) before execution of the community project, require every participant to provide his or her full identification, and if necessary, her or his bank account where the payment may be deposited;

(g) where a procuring entity is unable to organize the community participation, delegate to another public entity capable of managing that activity; and

(h) ensure that a project management committee composed of at least five volunteer members is elected or nominated by the beneficiary community who shall—

(i) participate in the preparation, management and implementation of the project;

(ii) monitor the implementation of the project; and

(iii) report to the accounting officer of the procuring entity.

(2) For the purposes of paragraph (1), the accounting officer shall ensure that a person is appointed as project supervisor, who may be the head of the user department, or a consultant where a procuring entity does not have the internal capacity to supervise the project.

(3) For the avoidance of doubt, Regulations 109 and 110 shall apply for both approaches of community participation method referred to under regulation 108.

111. Direct community participation

(1) Where a procuring entity intends to use direct community participation approach that procuring entity shall transfer the project funds in tranches to the community project management and implementation committee.

(2) The community project management and implementation committee under paragraph (1) shall—

(a) procure goods, works or non-consultancy services at the prevailing market prices; and

(b) negotiate for goods, works or non-consultancy services to get value for money.

(3) In addition, the community project management and implementation committee under paragraph (1) may also procure goods, works or non-consultancy services through a competitive process within market prices.

(4) A procuring entity shall be represented in the community project management and implementation committee by the head of the user department or his or her representative appointed in writing, who shall also be the secretary of the committee.

(5) The project funds transferred under paragraph (1) shall be transferred to a bank account opened in the name of the community project and which shall be operated by the following three signatories, with the secretary being a mandatory signatory—

(a) chairperson;

(b) treasurer; and

(c) secretary, who shall be the representative of the accounting officer.

(6) The community project management and implementation committee shall prepare monthly reports during project implementation and a final report after the completion of the project to the procuring entity.

112. Community based service provider

(1) Where a procuring entity intends to use the services of a community based service providers the accounting officer shall ensure that Regulations 108 and 110 have been complied with before any award of the tender.

(2) The head of the procurement function shall prepare a request for quotation or proposal or tender to source and identify the service provider competitively.

(3) A notice shall be posted on the procuring entity's website in at least two conspicuous public places and on the notice board of the procuring entity within the community project implementation area.

(4) The notice referred to in paragraph (3) shall include—

(a) a brief description of goods, works or non-consultancy services;

(b) the technical specifications;

(c) scope of work;

(d) deadline for submission of bids;

(e) the terms and conditions of the contract; and

(f) any other necessary information.

(5) A procuring entity may use a predetermined rates approach in which the community service providers shall ballot for the goods, works or non-consultancy services to determine the successful bidder where the goods, works or non-consultancy services are not of a complex or specialised nature.

(6) A community based service provider under paragraph (1) shall be—

(a) registered in Kenya;

(b) have an office or members who are residents within the community where the community project is being implemented;

(c) have a bank account opened in their name; and

(d) have a physical address.

(7) The community based service provider shall prepare a monthly report during project implementation and a final report after the completion of the project to the procuring entity.

(8) For purposes of this regulation "a community based service provider" shall be composed of organized community members intending to act as a service provider or contractor for a project or its components which includes community service organizations, community based organizations or registered organized community groups.

Part X – PROCUREMENT OF CONSULTANCY SERVICES

113. Request for proposals

A procuring entity that conducts procurement using the request for proposal pursuant to section 116 of the Act shall be subject to the procurement thresholds set out in the Second Schedule.

114. Expression of interest

(1) The notice inviting expression of interest prepared by a procuring entity pursuant to section 119 of the Act shall give a minimum period of seven days for tenderers to submit their expressions of interest.

(2) In addition to the requirements provided for under section 119 (4) of the Act, a county government and its entities shall advertise expression of interest for county-specific procurements on its notice boards located in conspicuous public areas.

115. Opening of expression of interest.

The opening of expression of interest shall be carried out in accordance with section 78 of the Act and Regulations 25 and 73.

116. Submission of technical and financial proposals

The instructions for the submission of technical and financial proposals envisaged under section 123(2)(c) of the Act shall be as specified in the request for proposal document.

117. Regulated professional services

(1) Pursuant to section 121(2) of the Act, the professional fees and rates chargeable shall be guided by the rates approved by the respective professional bodies, where applicable.

(2) The quoted fees or charges under this regulation shall be guided by the provisions of section 124(7)(d) of the Act.

(3) A procuring entity shall provide a basis or an estimate to facilitate a bidder to comply with the provisions of this regulation.

118. Evaluation of proposals

(1) For the purposes of section 126(2) of the Act, the criteria for evaluation of tenders shall be as set out in section 80(3) of the Act.

(2) Despite the provisions of section 126(3) of the Act, an accounting officer of a procuring entity may reduce the evaluation period after taking into account the following circumstances—

(a) where the scope of the assignment is not complex;

(b) where the assignment can be done by individual consultants;

(c) where the budget is fixed;

(d) where the selection is done through single sourcing.

(3) Where the conditions under paragraph (2) apply, the evaluation period may not be more than fourteen days.

119. Time for preparation of request proposal

Pursuant to sections 125 and 97 of the Act, the time for preparation of proposal shall be a minimum period of seven days.

120. Opening of technical proposals

(1) Pursuant to section 120 of the Act, technical proposals shall be opened first before the opening of financial proposals where the tender document requires submission of separate technical and financial bids.

(2) For purposes of section 78(6)(b) of the Act, no announcement for the prices shall be required at the opening of technical proposal where the tender document requires submission of separate technical and financial bids.

121. Terms of reference

For purposes of section 117(b) of the Act, the terms of reference prepared by a 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 and deliverables expected from the person to be awarded the tender;

(d) the qualifications necessary for a person to be awarded the tender;

(e) duration of the assignment; and

(f) any other relevant information as may be required in the tender document.

122. Procedure for quality and cost based selection method

(1) Pursuant to section 124(2) and (4) of the Act, the Quality and Cost Based Selection (QCBS) method shall be conducted as follows—

(a) both the quality and the cost of bids shall be taken into account in a process under which technical bids are evaluated without accessing the financial bids; and

(b) the relative weight to be given to the quality and cost components of the evaluation shall depend on the nature of the assignment and shall be stated in the request for proposals.

(2) A bid submitted under the Quality and Cost Based Selection (QCBS) method shall be submitted under the two envelopes submission method and evaluated to determine the—

(a) quality, with regard to a technical bid, in accordance with—

(i) an evaluation against set criteria on a merit point system to determine the total technical score for the technical bid received; and

(ii) the total scores determined compared to the minimum technical score;

(b) only bids which have attained the minimum technical score shall proceed to the opening of the financial bid which shall be conducted as follows —

(i) the bidders who shall have attained the minimum technical score shall be invited to attend the opening of the financial bids;

(ii) during the opening of the financial bids, the procuring entity shall read out the technical score to all bidders who attained the minimum technical scores;

(iii) an evaluation shall be done against a set criteria on a merit point system to determine the total financial score for the financial bid; and

(iv) the total scores determined compared to the minimum financial score;

(c) total weighted cost score, with regard to a financial bid, where the bidder attained the minimum technical score; and

(d) bidder obtaining the highest combined score based on the formula provided in the request for proposal document, shall be recommended for the award of contract.

(3) Pursuant to section 124(4) of the Act, the evaluation criteria provided in the request for proposal tender document shall take into account the following, among others—

(a) specific experience;

(b) methodology proposed including key deliverables;

(c) key personnel;

(d) transfer of knowledge; and

(e) participation of nationals.

123. Procedure for Quality Based Selection (QBS) evaluation method

(1) Pursuant to section 124(7) of the Act, a Quality Based Selection (QBS) method shall be conducted as follows—

(a) a technical evaluation shall be conducted against the set criteria on a merit point system to determine the best technical bid without accessing the financial bids;

(b) the quality of a bid shall be the primary factor to be considered; and

(c) the bid with the highest technical score shall take priority in the first instance.

(2) The procedure for the Quality Based Selection (QBS) method of a technical bid shall be conducted in three stages.

(3) The preliminary examination shall be done following the opening of a technical bid to determine whether a bidder has qualified on the basis of having passed or failed the selection for the bid and the responsiveness of bids to the terms of the bidding document.

(4) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.

(5) The technical evaluation criteria shall be used to—

(a) evaluate each technical bid against the technical evaluation criteria; and

(b) the same method of technical evaluation as that utilized for the Quality and Cost Based Selection (QCBS) method under regulation 122.

(6) The evaluation committee shall prepare a technical evaluation report of the technical bids received which shall—

(a) substantiate the results of the evaluation;

(b) describe the relative strengths and weaknesses of the bids; and

(c) indicate which bid is recommended to proceed to the financial evaluation.

(7) A financial evaluation shall be conducted of the bidder—

(a) who submitted the best evaluated technical bid being invited to submit a financial bid where only technical bids were submitted; or

(b) of the financial bid of the bidder who submitted the best evaluated technical bid where both technical and financial bids were submitted under the dual envelope method.

(8) The financial bid shall be negotiated by the procuring entity in accordance with the provisions of these Regulations.

(9) In this regulation "Quality Based Selection" means an evaluation method that uses quality as the primary factor in a process under which technical bids are evaluated without accessing the financial bids and a financial evaluation is undertaken only for the best technical bid.

124. Procedure for evaluation of fixed budget selection

(1) Where a procuring entity uses the fixed budget selection evaluation method in the request for proposals pursuant to section 124(9) of the Act—

(a) the procuring entity shall indicate its available budget in the tender document, and evaluation shall be considered as follows—

(i) a bidder shall be required to provide, within the stated budget, the best possible technical and financial bids, in separate envelopes; and

(ii) the bidder with the evaluated technical bid of the highest quality, which is within the stated budget, shall be recommended for the award of the contract.

(b) the schedule of requirements or the terms of reference prepared by the procuring entity shall contain all the necessary detail to portray the sufficiency of the budget for the performance, by a bidder, of the expected tasks as shall be contained in the contract;

(2) The procedure for the fixed budget selection evaluation method of a technical and financial bid shall be conducted in three stages.

(3) Following the opening of a technical bid, a preliminary examination shall be conducted to determine—

(a) whether a bidder has qualified on the basis of having passed or failed the selection for the bid; and

(b) the responsiveness of bids to the terms of the bidding document.

(4) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be rejected.

(5) A technical evaluation of a bid shall be conducted—

(a) to evaluate each technical bid against the technical evaluation criteria; and

(b) following the same method of evaluation as that utilized for the Quality and Cost Based Selection method.

(6) An evaluation committee shall prepare a technical evaluation report of the technical bids received which shall—

(a) substantiate the results of the evaluation;

(b) describe the relative strengths and weaknesses of the bids; and

(c) indicate which bid is recommended to proceed to the financial evaluation.

(7) The evaluation committee shall prepare a technical evaluation report prior to the commencement of a financial evaluation.

(8) Bidders that have qualified on the technical criteria shall be notified of the date and time set for the opening of the financial bids and financial bids shall be opened publicly and at the public opening there shall be publicly read out the—

(a) name of the bidder;

(b) technical score; and

(c) bid price.

(9) A financial evaluation shall be conducted and any bid that exceeds the budget shall be rejected.

(10) Subject to any negotiations that may need to be held, the bidder who has submitted the highest ranked technical proposal, of bids submitted within the budget, shall be recommended for the award of contract.

(11) Negotiations shall be carried out in accordance with the provisions of these Regulations.

(12) The evaluation committee shall prepare an evaluation report for submission to the accounting officer through the head of procurement: function and shall be accompanied by the professional opinion.

125. Procedure for evaluation of least cost selection

(1) A procuring entity may, in accordance with section 124(8) of the Act, use a least cost selection method to identify the lowest priced bid which meets all the commercial and technical requirements.

(2) The least cost selection method shall require the use of separate sealed envelopes for submission of technical and financial bids.

(3) The procedure for the least cost selection method evaluation of a technical bid shall be conducted in three stages.

(4) A preliminary examination shall be conducted to determine—

(a) whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and

(b) the responsiveness of bids to the terms of the bidding document.

(5) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be rejected.

(6) A technical evaluation of a bid shall be conducted—

(a) to evaluate each technical bid against the technical evaluation criteria; and

(b) following the same method of evaluation as that utilized for the Quality and Cost Based Selection.

(7) A bidder who does not secure the minimum qualifying score shall be rejected.

(8) The evaluation committee shall prepare a technical evaluation report prior to the financial evaluation.

(9) Bidders who have secured the minimum qualifying mark shall be notified of the date and time set for the opening of the financial bids.

(10) The opening date of the financial bids shall be as specified in the request for proposal documents.

(11) Financial bids shall be opened publicly, and at the public opening, there shall be publicly read out the—

(a) name of the bidder;

(b) technical score; and

(c) bid price.

(12) A financial evaluation shall be conducted by reviewing the conversion of bids to a single currency as stated in the invitation to bid.

(13) For the purposes of evaluation, cost shall include local taxes, and other reimbursable expenses such as travel, translation, printing of the report or secretarial expenses, where applicable.

(14) Subject to any negotiations that may need to be held, the bidder who has submitted the lowest financial bid and meets minimum technical score shall be recommended for the award of contract.

(15) Negotiations shall be carried out in accordance with the provisions of these Regulations.

(16) The evaluation committee shall prepare an evaluation report for submission to the accounting officer through the head of procurement function and shall be accompanied by the professional opinion.

126. Procedure for consultants qualification selection method

(1) Pursuant to section 124(6)(c) of the Act, Consultants' Qualification Selection (CQS) method shall be used for small assignments of which the need for preparing and evaluating competitive bids is not justified.

(2) The procuring entity, for the purpose of soliciting bidders under the qualification selection method, shall—

(a) follow a two stage process;

(b) prepare the terms of reference;

(c) request bidders to supply expressions of interest and information concerning their experience and competence relevant to the assignment; and

(d) establish a short-list.

(3) The procedure to be followed for the qualification selection evaluation method shall be conducted in two stages.

(4) The procuring entity shall—

(a) evaluate the expressions of interest together and with any supporting information; and

(b) select a bidder with the most appropriate qualifications and references, to whom the contract is to be awarded.

(5) The evaluation committee shall—

(a) prepare a technical evaluation report of the expressions of interest received; and

(b) submit the technical evaluation report to the accounting officer for his or her approval through the head of the procurement function, which shall be accompanied by the professional opinion.

(6) The procuring entity shall not proceed to Stage Two of the evaluation procedure before obtaining the approval of the accounting officer.

(7) The procuring entity shall request the successful bidder to negotiate the terms of the contract for the provision of the services.

(8) Negotiations shall be carried out in accordance with the provisions of these Regulations.

127. Conditions for use of individual consultant selection

Pursuant to section 124(6)(d) of the Act, individual consultant selection method may be used for an assignment for which—

(a) a team of experts is not required;

(b) no additional outside professional support is required;

(c) the experience and qualifications of the individual are the predominant considerations; or

(d) coordination, administration or collective responsibility between individuals is required.

128. Procedure for individual consultant selection

(1) The individual consultant may be procured using any one of the following approaches—

(a) open advertisement by request for expression of interest; or

(b) request for applications from the list of registered consultants in the relevant category within ceilings specified in the Second Schedule of the threshold matrix.

(2) A procuring entity shall—

(a) prepare terms of reference setting out the objectives, scope of work, level of effort, evaluation criteria, scoring points and minimum technical score required to pass; and

(b) estimate the cost of the consultancy based on the terms of reference and market rates.

(3) Where open advertisement under paragraph (1)(a) applies, individual consultants shall be required to submit their applications with curriculum vitae, and other relevant testimonials, including professional and academic certificates.

(4) Where a register of consultants under paragraph (1)(b) is used, an invitation shall be issued to at least five consultants.

(5) All submitted applications shall be opened in the presence of applicants or their representatives who choose to attend.

(6) The evaluation committee shall use the specified evaluation criteria in the bid document or invitation notice and terms of reference to evaluate and score each of the applications and rank each application according to technical scores.

(7) The consultants that fail to attain the minimum technical score or have conflict of interest regarding the subject consultancy and other related assignments shall be disqualified from further consideration.

(8) The evaluation committee shall prepare an evaluation report and submit it to the head of procurement for the professional opinion before submission to the accounting officer.

(9) The first ranked individual consultant with the highest technical score shall be recommended for award of contract.

(10) The head of procurement function shall prepare a draft contract setting out the proposed fees, terms and conditions of contract using the standard template issued by the Authority.

(11) After approval of the recommendation for award by the accounting officer, the first ranked individual consultant shall be invited to negotiate the fees, reimbursable expenses and contract terms with the evaluation committee and where negotiation fail, the second ranked individual shall be invited to negotiate the contract.

(12) The negotiations shall be carried out in accordance with regulation 130 of these Regulations.

(13) A procuring entity shall issue the successful consultant with the notification of award and at the same time notify the unsuccessful applicant of their results.

(14) A procuring entity may enter into contract with the successful consultant after fourteen days from notification of award.

129. Single source selection method.

(1) In using the Single Source Selection (SSS) method, a procuring entity shall first prepare the justification for use of the method in the context of—

(a) ensuring economy and efficiency;

(b) natural continuation of previous assignments where continuity of technical services is required;

(c) cases of urgency;

(d) clear advantage over competition;

(e) qualification, experience and exceptional worth of the consultant.

(2) The decision to use the single source selection method shall be approved in writing by the accounting officer on recommendation by the head of the user department and the head of the procurement function and submit to the Authority for approval.

(3) A procuring entity shall prepare terms of reference in accordance with section 117(b) of the Act and regulation 121 of these Regulations.

(4) A procuring entity shall place an advertisement of the intention to single source in its website and invite anyone who wishes to bid within a minimum period of three (3) days.

(5) The terms of reference prepared under paragraph (3) of this regulation shall be incorporated in standard document for request for proposal document and issued to the selected consultant with a request to submit a technical and financial proposal to the procuring entity.

(6) A procuring entity, upon receipt of the technical and financial proposals, shall evaluate the proposals and submit recommendations for award to the accounting officer through the head of procurement function.

(7) The head of procurement function shall submit the evaluation report to the accounting officer together with the professional opinion in accordance with regulation 79 of these Regulations for award.

(8) Upon approval by the accounting officer, the head of procurement function shall notify the consultant of the award.

130. Negotiations with successful tenderers

(1) The accounting officer may negotiate with successful tenderers in accordance with section 128(1) of the Act.

(2) A procuring entity shall not enter into any negotiations pursuant to section 128 of the Act, until —

(a) the accounting officer has approved the successful proposal in line with section 127 of the Act; and

(b) the accounting officer has notified the successful and unsuccessful bidders pursuant to section 126(4) of the Act and regulation 82 of these Regulations.

(2) For greater certainty, where negotiations are to be conducted the notification to the successful bidder shall specify that entering into a contract shall be subject to the successful negotiations.

(3) Where the evaluation committee conducts negotiations on behalf of the accounting officer, the evaluation committee shall prepare a report of the negotiations and submit it to the head of procurement function for onward submission to the accounting officer.

(4) The negotiation report under paragraph (3) shall be accompanied by a professional opinion of the head of the procurement function to the accounting officer for decision making and approval.

(5) The report and the professional opinion prepared under paragraphs (3) and (4) shall form part of the records of the procurement proceedings.

Part XI – PROCUREMENT CONTRACTS

131. Publication of procurement contracts

(1) An accounting officer of a procuring entity shall, in accordance with section 138 of the Act—

(a) publish and publicize all procurement contracts at its notice boards and websites within fourteen days after signing the contract; and

(b) report all signed contracts to the Authority within fourteen days after the end of every month in the format provided by the Authority.

(2) Pursuant to section 138(4) of the Act, the Authority shall issue a reporting format for contract awards requiring accounting officers to submit information that is not limited to the following—

(a) name of contractor or supplier;

(b) subject of procurement;

(c) date of commencement or signing;

(d) date of contract expiry or completion; and

(e) contract price.

132. Amendments or variations to contracts

(1) Contract variations or amendments envisaged under section 139(1)(b) of the Act for goods, works and services may either emanate from procuring entity on its own volition or from the contractor because of circumstances that were not foreseen during project design.

(2) Any variation request shall be reviewed by—

(a) the contract implementation team as set out under section 151 of the Act for complex and specialized contracts; or

(b) an evaluation committee envisaged under section 139(2) of the Act for other contracts,

before they are submitted through the head of a procurement function to accounting officer for approval.

(3) The extension of contract period under section 139(2)(a) of the Act where delivery is delayed shall not have a financial implication.

(4) Any additional funding required shall be secured and committed prior to a variation of contract under section 139(1)(a) of the Act.

(5) For the purposes of section 139 of the Act and this regulation—

(a) "**contract amendment**" means a change to the terms and conditions of an awarded contract; and

(b) "**contract variation**" means a change to the price, completion date or statement of requirements of a contract to facilitate adaptations to anticipated events or changes in requirements.

133. Interest on overdue amounts and liquidated damages

(1) Pursuant to section 140(d) of the Act, any ascertained liquidated damages shall be deducted from—

(a) the amount of approved invoices due for payment; or

(b) the performance security.

(2) Damages may emanate from delayed completion of activities or poorly executed activities or both.

(3) If the liquidated damages exceed the value of the performance security, the contract shall automatically be cancelled and the contractor shall be held responsible.

134. Framework contracting

(1) Pursuant to section 141 of the Act, an accounting officer of a procuring entity may—

(a) use open tendering method to develop a list of contractors or suppliers for an award of indefinite delivery framework contracts or multiple awards of indefinite quantity framework contracts for procurement;

(b) enter into a framework contract for a duration not exceeding three years, subject to the satisfactory performance of the supplier or contractor;

(c) enter into a framework contract with an unlimited number of suppliers or contractors; and

(d) ensure that the price of goods, works or services to be procured is established in the framework contract.

(2) For the purpose of efficiency of the procurement process and reduction of procurement transaction costs, an accounting officer may enter into a framework contract where it is determined that—

(a) the need for the subject matter of procurement is expected to arise on a repeated basis during a given period of time;

(b) by virtue of the nature of the subject matter of procurement, the need for it may arise on an urgent basis during the period of the framework contract; or

(c) other grounds and circumstances have arisen which justify recourse to a framework contracting arrangement.

(3) The head of the procurement function shall prepare and submit to the accounting officer with a copy to the internal auditor quarterly reports detailing an analysis of items procured through framework contracts and these reports shall include an analysis of pattern of usage, procurement costs in relation to the prevailing market rates and any recommendations.

(4) The conditions and procedure for framework agreements provided in Regulations 102 to 106 of these Regulations shall apply *mutatis mutandis* to framework contracts.

(5) The National Treasury shall, pursuant to section 7(2)(1) of the Act, issue guidelines with respect to arrangements relating to framework contracts and framework agreements.

135. Performance security

(1) For the purposes of section 142(3) of the Act, the threshold for providing performance security for goods, works and non-consultancy services shall be for contracts above five million shillings.

(2) A performance security shall not be required where a professional indemnity cover is provided by the consultant.

(3) Where performance security for goods, works and non-consultancy services for women, youth and persons with disabilities and other disadvantaged groups is required, the performance security shall not exceed one per cent of the contract sum.

(4) The head of procurement function shall be the custodian of the tender security, performance security, and professional indemnity certificate and shall monitor its application.

(5) A security for advanced payment shall be under the custody of the head of the accounting unit of a procuring entity with a copy retained by the head of the procurement function.

136. Advance payment and letters of credit

(1) Pursuant to section 147(2) of the Act, the amount of advance payment allowed shall be specified in the bid document.

(2) Where an advance payment has been done pursuant to section 146 and 147 of the Act, the head of procurement function shall ensure that—

(a) the bank guarantee has been authenticated by the issuing bank in writing to the accounting officer;

(b) the bank guarantee shall be on demand;

(c) the bank guarantee shall not be allowed to lapse unless the contractor has done a commensurate work or has supplied goods of equivalent value to the guarantee; and

(d) any payments made to the contractor shall be done in a manner to reduce the advance payment progressively.

(3) Where the advance payment has not been fully paid and the contract is terminated or frustrated, the outstanding advance payment shall be paid by the contractor.

(4) The contractor shall confirm in writing that the advance payment shall only be used for purposes of the contract.

(5) Where it has been confirmed by a procuring entity that the advance payment has been used contrary to paragraph (4), the advance payment shall be recovered from the bank guarantee.

(6) A procuring entity may apply for and open a letter of credit in international transactions.

137. Complex and specialized contracts

In managing complex and specialized procurement contracts under section 151 of the Act—

(a) the accounting officer of a procuring entity shall have in place a contract implementation team in order to ensure the right quality and quantity of goods, works and services are procured;

(b) the contract shall have a commencement date;

(c) contract implementation shall be as per the project implementation plan agreed upon by the contractor and the procuring entity;

(d) the plan referred to under paragraph (c) shall include—

(i) the list of activities planned to be carried out;

(ii) the deadline for each activity;

(iii) monthly cash planning forecast; and

(iv) any other information as required by a procuring entity;

(e) the requirements of the contract shall be closely monitored to ensure that there are no deviations or risks and those identified dealt with in time.

138. Contract review reports

(1) In performance of its functions under section 151(2) of the Act, the contract implementation team shall have a contract management plan that shall provide for review meetings.

(2) Review meetings referred to in paragraph (1) shall be held periodically as deemed necessary for the purpose of contract performance review, charting the way forward and preparing status reports.

(3) The contract review shall consider the following—

(a) the timeliness of contract performance;

(b) cost and quality performance;

(c) risk analysis;

(d) operational effectiveness;

(e) appropriateness of the procedure of delivery; and

(f) any other relevant information.

(4) For purposes of paragraph (3)(c), a risk register shall be maintained to monitor all identified contract risks.

(5) The common contract risks to be monitored shall include—

(a) incomplete or incorrect specifications;

(b) poor communication;

(c) supplier lacking sufficient resources;

(d) production problems;

(e) quality problems including technology;

(f) shipment details;

(g) underestimation of costs by supplier;

(h) inflation trends; and

(i) unexpected events.

(6) Any risks identified shall be isolated and addressed within a reasonable time.

(7) After every review meeting, a status report shall be prepared to be shared by the parties and shall include—

(a) executive summary;

(b) report on performance of activities and budget; and

(c) any other issues relevant to the contract such as environmental and general observation including the performance rating.

(8) The contract manager shall report to the accounting officer the outcome of such a contract review meeting.

139. Payments to a contractor

(1) A contractor shall satisfactorily perform its contractual obligations prior to any payment by a procuring entity.

(2) A procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations.

(3) Payments shall only be made after an invoice or fee note is accurately raised and submitted in accordance with the provisions of the contract.

(4) Unless the contract provides otherwise, a procuring entity shall pay interest on the overdue amounts.

(5) The interest to be paid under paragraph (4), shall be in accordance with the prevailing commercial bank rates.

(6) A procuring entity shall plan its procurement and cash or fund flows to ensure that contractors are paid promptly as per the terms of contract.

(7) On receipt of an invoice or a fee note, a procuring entity shall make payment on first come first paid basis.

140. Contract monitoring

(1) The head of procurement function shall prepare a monthly progress report of all procurement contracts and submit the same to the accounting officer in accordance with section 152 of the Act.

(2) The report referred to in paragraph (1) shall include—

(a) contract description;

(b) contract number;

(c) value of contract;

(d) commencement date;

(e) current status;

(f) the amount of money paid; and

(g) the expected completion date.

141. Contract termination

(1) A contract terminated pursuant to section 153 of the Act shall specify the grounds and the procedure for termination.

(2) An accounting officer of a procuring entity may approve the termination of a contract upon request by the head of procurement function.

(3) The request for approval shall clearly state the reasons for termination, the contractual grounds for termination and the cost of terminating the contract.

(4) An accounting officer of a procuring entity shall be required to terminate a contract within a reasonable time when it becomes apparent that a contract is frustrated based on the evidence from the contract implementation team pursuant to section 151(2)(a) and (g) of the Act.

(5) A procuring entity shall seek legal advice or clearance from the Attorney-General or such person designated in writing by the Attorney-General before terminating a contract under the Act or these Regulations.

(6) All terminated contracts shall be reported to the Authority on a quarterly basis.

142. Handover and acceptance of goods, works or services

(1) In managing the handover and acceptance of goods or services under section 151(2)(f) of the Act, the procuring entity may provide in the contract—

(a) for partial provisional acceptance by taking possession and utilizing part of the goods, works and services accepted;

(b) that the contractor be responsible for the repairs resulting from defects of poor workmanship and make the corrections pointed out in the partial provisional acceptance report; or

(c) for provisional acceptance where the entire subject matter of procurement is dealt with in the same manner and have the same consequences as the partial provisional acceptance in paragraph (a).

(2) The final acceptance of all goods, works or services shall take place—

(a) within the period or last period of guarantee for the provisional acceptance if there has been partial acceptances; or

(b) within sixty (60) days before the end of the last period of guarantee on which all defects, poor workmanship and any other snags pointed out in the minute of acceptance are corrected.

Part XII – PREFERENCES AND RESERVATIONS IN PROCUREMENT

143. Requirement for preference and reservations in procurement

Pursuant to Article 227(2) of the Constitution and sections 155 and 157 of the Act, candidates shall participate in the procurement proceedings without discrimination except where participation is limited in accordance with the Constitution, the Act and these Regulations.

144. Transfer of skills and technology

(1) An accounting officer shall, and in accordance with section 155(5)(b) of the Act, ensure that a procuring entity's tender documents contain a mandatory requirement as preliminary evaluation criteria specifying that the successful bidder shall—

(a) transfer technology, skills and knowledge through training, mentoring and participation of Kenyan citizens; and

(b) reserve at least seventy-five percent (75%) employment opportunities for Kenyan citizens for works, consultancy services and non-consultancy services, of which not less than twenty percent (20%) shall be reserved for Kenyan professionals at management level.

(2) In complying with the requirements of paragraph (1), an accounting officer shall ensure that the procuring entity's tender document contains a mandatory requirement specifying that all tenderers include in their tenders a local content plan for the transfer of technology.

(3) The local content plan referred to under paragraph (1) shall include—

(a) positions reserved for employment of local citizens;

(b) capacity building and competence development programme for local citizens;

(c) timeframes within which to provide employment opportunities;

(d) demonstrable efforts for accelerated capacity building of Kenyan citizens;

(e) succession planning and management;

(f) a plan demonstrating linkages with local industries which ensures at least forty percent (40%) inputs are sourced from locally manufactured articles, materials and supplies partially mined or produced in Kenya, or where applicable have been assembled in Kenya.

(4) In circumstances where international tendering and competition does not meet the requirement of paragraph (1), an accounting officer shall cause a report to be prepared detailing evidence of the inability to meet this provision and measures to be undertaken to ensure compliance with this regulation, and submit the report to the National Treasury to grant a waiver of the requirement.

145. Eligibility criteria

(1) A person shall be qualified to benefit from preference and reservation scheme, if that person meets the requirements of section 55 of the Act.

(2) A person shall not be qualified to benefit from a preference and reservation scheme—

(a) as a contracting firm, unless that person is qualified as a local contractor or a citizen contractor; or

(b) as a micro enterprise or an enterprise owned by a disadvantaged group, unless that person is registered by the National Treasury as such upon application.

(3) All small, micro and medium enterprise groups or disadvantaged groups that have been registered by the National Treasury shall automatically be included in the list of registered suppliers of a procuring entity upon submission of the National Treasury Registration Certificate.

146. Registration of enterprises and groups

(1) A small, micro and medium enterprise or a disadvantaged group wishing to participate in public procurement shall apply for registration with the National Treasury in the Form set out in the Eleventh Schedule to these Regulations.

(2) All lists of registered enterprises from the national and county levels shall be submitted to the Authority for consolidation, publication and updating in the State Portal.

147. Qualifications of contractors

(1) A firm shall be qualified as—

(a) a local contractor if it is registered in Kenya and has above fifty-one percent (51%) Kenyan shareholding; or

(b) a citizen contractor if wholly owned and controlled by persons who are Kenyan citizens.

(2) A citizen contractor registered outside Kenya shall only be eligible to benefit from the preferences and reservations scheme when bidding in international tendering and competition.

148. Application by foreign contractors

(1) A foreign contractor may benefit from a preference and reservation scheme where it enters into a joint venture or subcontracting arrangements, as evidenced by written agreement, with a firm that is registered in Kenya and where Kenyan citizens have majority shares.

(2) Where a citizen contractor has entered into contractual arrangements with a foreign contractor in accordance with paragraph (1), a ten percent (10%) margin of preference in the evaluated price of the tender shall be applied.

(3) A citizen contractor referred to in paragraph (2) of this regulation shall demonstrate technical capability and competence to perform.

149. Reservation of budget

An accounting officer of a procuring entity shall, when processing procurement under section 157(5) of the Act, allocate at least thirty percent (30%) of its annual procurement budget for the purposes of procuring goods, works and services from enterprises owned by youth, women and persons with disability.

150. Prompt payment for performed contracts

(1) Subject to the availability of funds and after proper certification of the goods, services or works have been done, a procuring entity shall make prompt payments for all performed contracts including enterprises owned by youth, women or persons with disabilities and shall make payment within sixty days from the date of receipt of the invoice.

(2) Where delay of payments for goods, works and services performed are likely to happen, a procuring entity may facilitate invoice discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises stated in paragraph (1).

(3) For the purpose of implementing the provisions of paragraph (1), a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices and contract awards.

(4) A procuring entity shall submit a quarterly payment performance statistics to the National Treasury and the Authority demonstrating compliance with the obligation to pay invoices within sixty days for publication.

151. Regions where exclusive preference shall apply

(1) For purposes of sections 157(4)(d) of the Act, counties, sub-counties and constituencies shall be regions where exclusive preference and reservations schemes shall apply.

(2) The regions referred to under paragraph (1) shall be applicable where citizen contractors are based and operate.

(3) Citizen contractors who are based and operate in the regions specified in paragraph (1), shall be given exclusive preference when participating in procurements using funds from the county government or any devolved Fund except where it is established that local capacity is not available.

152. National reservations

(1) For purposes of section 157(1) and (4) of the Act, a procuring entity shall grant exclusive preference to citizen contractors offering goods, services and works that are assembled, manufactured, mined, extracted or grown in Kenya, including—

(a) motor vehicles, motorcycles, bicycles, plant and equipment which are assembled in Kenya;

(b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather agro-processing, sanitary products, and any other goods made in Kenya;

(c) goods manufactured, mined, extracted or grown in Kenya; or

(d) hospitality, air travel and security services.

(2) Pursuant to section 155(5)(a) of the Act, an accounting officer of a procuring entity may prepare and cause a report to the National Treasury detailing evidence of inability to procure manufactured articles, materials or supplies wholly mined or produced in Kenya.

153. Single preference to tenderers

Subject to section 156 of the Act, a candidate shall be entitled to one preference and reservation scheme at a time in a procurement proceeding.

154. Unbundling of procurements

(1) Despite the provisions of section 54(1) of the Act, a procuring entity may for the purpose of ensuring maximum participation of citizen contractors, disadvantaged groups, small, micro and medium enterprises in public procurement, unbundle a category of goods, works and services in practicable quantities.

(2) For greater certainty, a procuring entity in unbundling procurements in paragraph (1) may lot goods, works or services in quantities that are affordable to specific target groups participating in public procurement proceedings.

155. No requirement for tender security

(1) No tender security shall be required from small, micro and medium enterprises or enterprises owned by disadvantaged groups participating in reserved procurement proceedings.

(2) Despite paragraph (1), target groups shall be required to complete and sign the Tender Securing Declaration Form set out in Fourth Schedule to these Regulations.

(3) Any bidder from the target group who fails to adhere to the terms of the Tender Securing Declaration Form shall be liable for debarment pursuant to section 41 of the Act.

156. Preference and reservations term limit

An enterprise registered by the National Treasury as a target group benefitting from the preference and reservation scheme shall be entitled to such benefits for a period of two years, which may be renewed biennially for up to a maximum period of ten years.

157. Open tender advertisement

An advertisement relating to an open tender under a preference and reservations scheme shall state that such tender is open to small and micro enterprises and to disadvantaged groups registered with the National Treasury or regions, as appropriate.

158. Procurement to be competitive

Procurement of goods, works and services under these Regulations shall be competitive in accordance with the provisions of section 157(3)(b) of the Act.

159. Framework contracts and framework agreements with target groups

A procuring entity shall make use of existing framework contracts or framework agreements with disadvantaged groups, small, micro and medium enterprises to provide an efficient, cost effective and flexible means to procure goods, works and services that are required repeatedly or continuously over a set period of time.

160. Monitoring and evaluation

(1) The application of the preference and reservation scheme by procuring entities shall be monitored by the Authority and the National Treasury pursuant to sections 9(1)(e) and 157(17)(d) of the Act respectively.

(2) Any report prepared pursuant to section 157 (17)(d) of the Act by the National Treasury on the implementation of the preference and reservation scheme shall be shared with the Authority.

161. Formats for preparation of reports

(1) The Authority shall provide formats for preparation of reports envisaged under sections 157(12) and 158(3) of the Act.

(2) The report prepared under paragraph (1) shall be submitted to the Authority by the accounting officer within fourteen days after the end of the reporting period with a copy submitted to the National Treasury.

162. Guidelines on the reporting requirements

The Authority shall issue guidelines on the reporting requirements relating to contractors' workload and performance pursuant to section 157(7) of the Act.

163. Threshold for exclusive preference

For the purpose of section 157(8)(a)(ii) and (iii) of the Act, the threshold which exclusive preference shall be given to citizen contractors shall be—

(a) one billion shillings for procurements in respect of works, construction materials and other materials which are made in Kenya; and

(b) five hundred million shillings for procurements in respect of goods and services.

164. Margin of preference for international tendering and competition

For purposes of section 157(8) (b) of the Act, the margin of preference for international tendering and competition pursuant to section 89 of the Act shall be—

(a) twenty percent (20%) margin of preference of the evaluated price of the tender given to candidates offering goods manufactured, mined, extracted, grown, assembled or semi-processed in Kenya and the percentage of shareholding of Kenyan citizens is more than fifty percent (50%);

(b) fifteen percent (15%) margin of preference of the evaluated price of the tender given to candidates offering goods manufactured, mined, extracted, grown, assembled or semi-processed in Kenya;

(c) ten percent (10%) margin of preference of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is more than fifty percent (50%);

(d) eight percent (8%) margin of preference of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is less than fifty percent (50%) but above twenty percent (20%); and

(e) six percent (6%) margin of preference of the evaluated price of the tender, where percentage of shareholding of Kenyan citizens is above five percent (5%) and less than twenty percent (20%).

165. Sourcing of supplies from citizen contractors by international tenderers

For greater certainty, supplies under section 157 (9) of the Act shall include goods, works, non-consulting and consulting services.

Part XIII – INVENTORY CONTROL, ASSET AND STORES MANAGEMENT AND DISTRIBUTION

166. Receipt and recording of goods, stores and works

(1) An accounting officer of a procuring entity shall only receive works, goods or services pursuant to section 159 of the Act based on a purchase order, service order or signed contract and ensure that annual consolidated inventory of assets is maintained in the format specified in the Twelfth Schedule.

(2) An accounting officer of a procuring entity shall ensure that stores are inspected, received and a report prepared on item suitability and conformity to specifications as provided under sections 48 and 150 of the Act.

(3) When managing the inventory, stores and assets in accordance with section 162 of the Act, the accounting officer shall ensure that the stores received under paragraph (2) are taken on charge.

(4) For effective, economic, efficient, and transparent use of government inventory, stores and assets at all levels, an accounting officer of a procuring entity shall take full responsibility of the management or control of inventory and assets and shall ensure that—

(a) preventive measures are put in place to eliminate theft, security and safety threats, losses, wastage and misuse;

(b) the movement and condition of assets can be tracked;

(c) stock levels are at optimum and economical level; and

(d) systems, processes and procedures both in electronic and manual form are in place.

(5) An accounting officer shall ensure officers deployed in the stores are provided with appropriate protective gear.

167. Guidelines and the role of an accounting officer in asset management

(1) The National Treasury shall develop guidelines on asset management in accordance with section 7(2)(k) of the Act.

(2) The guidelines shall include the date of acquisition, value and life-cycle of assets and any other information deemed necessary.

(3) In managing assets and inventory under this regulation, an accounting officer of a procuring entity shall—

(a) ensure that funds are not tied up in inventory, stores and assets by procuring excessive items beyond the procuring entity's consumption capacity to avoid storage costs;

(b) be responsible for custody, care, control and use of government inventories under him or her;

(c) ensure that there is adequate, safe and secure storage space and facilities commensurate with the needs of a procuring entity;

(d) be responsible for the management of inventory, stores and assets in compliance with the guidelines issued by the Authority and the National Treasury;

(e) in the event of any loss of stores, conduct an investigation to establish the cause of the losses and take appropriate action in line with the prevailing Government Regulations and any written law.

(4) An accounting officer of a procuring entity may introduce and maintain an information communication technology inventory management system, which shall comply with requirements of the Act and these Regulations.

168. Objectives of inventory control assets and stores management and distribution

An accounting officer of a procuring entity shall ensure proper management and distribution of inventory, stores and assets by ensuring that—

(a) they are received and taken on charge;

(b) they are consumed in the course of public business and a record of the same is maintained;

(c) any inventory, stores and assets worn out in the course of public business are removed from the stores records through a disposal process;

(d) items lost, stolen, destroyed, damaged or rendered unserviceable other than by fair, wear and tear have been removed from the stores record through a loss adjustment report.

169. Transfer of inventory, stores and management systems

(1) When assets or liabilities of a procuring entity are transferred to another government entity or other institution by operation of law or reorganization of government functions, an accounting officer for the transferring procuring entity shall be required to—

(a) identify an inventory list of such assets and liabilities; and

(b) provide the accounting officer for the receiving procuring entity or other institution with the necessary records.

(2) Both the accounting officer of transferring procuring entity and a receiving procuring entity or public entity shall sign the inventory when the transfer takes place.

(3) An accounting officer of the transferring procuring entity shall maintain a record under paragraph (1) and file a copy of the signed inventory with the National Treasury and the respective county treasury within fourteen days of the transfer.

170. Inventory for assets and liabilities

(1) An accounting officer of a procuring entity shall be responsible for maintaining a register of assets under his or her control or possession.

(2) A register of land and buildings shall record each parcel of land and each building and—

(a) the terms on which it is held;

(b) reference to the conveyance;

(c) address;

(d) area;

(e) dates of acquisition;

(f) disposal or major change in use;

(g) any capital expenditure;

(h) freehold or lease hold terms;

(i) maintenance contracts; and

(j) other pertinent management details.

(3) All movable and non-movable assets including furniture and equipment issued for government quarters or office, large tools for government works, plant, equipment, vehicles or launches (large motor boats) shall be recorded in a register.

(4) All acquisitions or assignment of immovable property shall be notified to the National Treasury and all county treasuries respectively.

(5) All acquisitions or assignment of building or public land with or without buildings shall be notified to the National Treasury or relevant county treasury, as appropriate.

(6) The National Treasury and a county treasury shall maintain a consolidated asset register of all moveable and immovable inventory and assets within their jurisdictions, as appropriate.

(7) The lifespan of assets under this regulation shall be in accordance with the policy set out by the Cabinet Secretary under section 162(5) of the Act.

171. Responsibilities of head of procurement function

(1) The head of the procurement function of a procuring entity shall—

(a) ensure that a qualified officer in supply chain management is designated to be in charge of stores;

(b) ensure that all stores purchased are received and taken on charge, and shall arrange for occasional visits of inspection to the stores, at least twice in each calendar year, by himself or herself or by a representative in order to ensure that storekeepers carry out their duties as provided by the Act;

(c) ensure that stores are not allowed to suffer deterioration from any preventable cause;

(d) conduct quarterly and annual stock taking pursuant to section 162(2) of the Act;

(e) certify the invoices and payment vouchers to suppliers;

(f) verify that the available stock levels warrant initiating a procurement process;

(g) ensure that all stores requisitions and issues are approved by the head of the procurement function pursuant to section 162(4) of the Act;

(h) ensure that adequate safety and fire-fighting appliances as approved by the relevant authorities are installed in the store premises, are maintained in good working order and are readily available for emergencies; and

(i) ensure that security personnel and staff are trained in the use of the safety and fire-fighting appliances in paragraph (h).

(2) Without prejudice to the responsibilities of the procurement function listed in paragraph (1), an accounting officer of a procuring entity shall ensure full compliance with the relevant occupational health and safety laws.

172. Responsibilities of officer in charge of stores

The officer in charge of stores of a procuring entity shall—

(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-rooms regularly and report to the head of the procurement function in case of any loss, leakage, damage or deterioration;

(c) report half-yearly in writing to the head of the procurement function of any obsolete or unserviceable stores;

(d) examine frequently the locks of doors and fastenings of windows and ensure that the store-rooms do not remain unattended when open for any purpose and shall be solely responsible for the keys of all store-rooms and buildings and shall not delegate the duty of locking up the rooms to any unauthorized person;

(e) ensure the stocks are properly stored, frequently examined and adequately protected and in particular, clothing and other stores subjected to deterioration by dampness or insects are frequently examined and not be placed on the floor and fluids contained in tins or drums, whenever possible, are stored off the ground to enable leakage to be readily detected;

(f) apply good storage and preservation practices for all store items;

(g) ensure damaged and expired stores for condemnation are kept separately from undamaged and unexpired stores;

(h) ensure all stores of a highly inflammable or explosive nature are kept in a separate store-room;

(i) ensure issues are made on first in first out basis;

(j) ensure that stores are not allowed to expire through a lapse of the shelf life;

(k) ensure bin cards are properly kept for each item of stores and placed on or near the respective item;

(l) ensure notices prohibiting smoking are prominently exhibited within the store premises;

(m) ensure access to the stores is restricted; and

(n) be responsible for the safe custody of all empty cases, drums, tins and packing materials that may be of any value and quantity records in respect of such items are kept.

173. Procurement and maintenance of motor vehicles, plant, equipment and related spare parts

(1) The Cabinet Secretary or County Executive Committee Member responsible for matters relating to transport and mechanical engineering at the national and county government level, as the case may be, shall prepare a detailed schedule of requirements and specifications of motor vehicles, plant and equipment for use by procuring entities when initiating the procurement with a copy to the Authority for publication.

(2) Motor vehicles, plant, equipment and related spare parts to be procured shall be new and meet the minimum standards set by the relevant agency responsible for quality control and standardization.

(3) All motor vehicles, plant, equipment and related spare parts shall be procured competitively from manufacturers, authorized local or international dealers or reputable local suppliers or dealers in accordance with the Act and these Regulations.

174. Procedure for maintenance of motor vehicles, plant and equipment

(1) A procuring entity shall utilize its own workshop or garage to repair and maintain motor vehicles, plant or equipment.

(2) Where the procuring entity lacks the capacity to carry out the repairs or maintenance, an accounting officer shall competitively procure such services from a pre-qualified list of service providers licensed to undertake such services in accordance with the Act, these Regulations and any other relevant laws.

(3) The officer in charge of matters relating to transport in the procuring entity shall prepare a record of maintenance, repairs and replacement in respect of each motor vehicle, plant and equipment which shall be submitted to the accounting officer in a format to be provided by the Authority.

(4) The record referred to in paragraph (3) shall form part of the procurement records.

175. Maintenance of ICT equipment and related accessories

(1) The Cabinet Secretary or County Executive Committee Member responsible for matters relating to information and communication technology at the national and county government level, as the case may be, shall prepare a detailed schedule of requirements and specifications of Information Communication Technology (ICT) equipment and related accessories for use by procuring entities prior to initiating the procurement with a copy to the Authority for publication.

(2) The information communication technology equipment and related accessories referred to in paragraph (1) shall be environmentally-friendly and the cost of servicing, maintenance and disposal of each of the item shall be specified.

(3) Subject to the provisions of the Act and these Regulations, information communication technology equipment and related accessories, which shall be procured competitively from suppliers and dealers, shall be new and shall meet the standard specifications referred to in paragraph (1) of this regulation.

Part XIV – DISPOSAL OF ASSETS

176. Annual assets disposal plan

(1) An accounting officer of a procuring entity shall ensure that an annual assets disposal plan is prepared of items declared as unserviceable, surplus or obsolete, obsolescence stores, asset or equipment as set out under section 53(4) of the Act.

(2) Pursuant to section 53(4) of the Act, the disposal plan in paragraph (1) shall be done in accordance with the format specified in the Thirteenth Schedule.

(3) An annual disposal plan format referred to in this regulation shall include the following—

(a) item description for boarding;

(b) quantity;

(c) unit of issue;

(d) date of purchase;

(e) purchase price;

(f) estimated current value;

(g) justification for disposal;

(h) lifespan of item for boarding;

(i) reference number to the assets register or records of the stores;

(j) envisaged disposal method;

(k) time schedule;

(l) an indication whether the disposal is to be managed by the procuring entity or any special agency or hired expert; and

(m) the cost of managing the disposal process.

(4) The disposal plan shall be flexible to accommodate emerging issues in the disposal process.

177. Establishment of disposal committee

(1) An accounting officer shall, in accordance with section 163 (1) of the Act, establish a disposal committee comprising of—

(a) a chairperson, who shall be a head of department;

(b) the head of finance function;

(c) at least three heads of user departments, of whom one shall be the head of the user department disposing off the stores or equipment;

(d) the head of the procurement function as secretary or his or her designate.

(2) Where necessary, the disposal committee may co-opt a relevant technical expert in the process of carrying out its functions.

178. Quorum for disposal committee

The quorum for the disposal committee shall be three members including the chairperson.

179. Functions of a disposal committee

Pursuant to section 163(2) of the Act, the disposal committee shall perform the following functions—

(a) conduct board of a survey of items for disposal;

(b) verify the condition and the location of the items identified for disposal;

(c) determine the current market value of the items for disposal;

(d) set up a reserve price based on paragraph (c), where technical advice is not required;

(e) verify the justification and procedure for disposal;

(f) seek technical expertise where necessary to ascertain the value and the condition of the items; and

(g) prepare a disposal report and submit it to the accounting officer, with specific recommendations on the items to be disposed or those not to be disposed and the reasons thereof.

180. Procedure for disposal

(1) An accounting officer shall be primarily responsible for ensuring that the procuring entity fulfills its asset disposal obligations.

(2) The user department of a procuring entity shall be responsible for identification of items due for disposal and capture them in the annual departmental disposal plan.

(3) The head of a user department shall submit the disposal plan prepared under paragraph (2) to the head of the procurement function thirty days after the close of the financial year for consolidation.

(4) The consolidated annual disposal plan under paragraph (3) shall be submitted through the accounting officer to the Cabinet Secretary for the state department or county executive committee member for the procuring entity, as the case may be, for approval.

(5) The consolidated annual disposal plan under paragraph (3) for state corporations under the national government or county corporations under the county government shall be submitted to the accounting officer of that entity.

(6) Once the consolidated disposal plan has been approved under paragraphs (4) or (5), the head of the procurement function shall process the disposal through the disposal committee of the procuring entity.

(7) The disposal committee shall consider the proposed items and recommend the reserve price where technical advice is not required and recommend the appropriate disposal method to the accounting officer.

(8) An accounting officer of a procuring entity shall consider and take into account the recommendations of the disposal committee and approve or reject it within fourteen days after receiving the recommendation of the disposal committee.

(9) If the accounting officer approves the recommendations of the disposal committee, the head of procurement function shall initiate the disposal process.

(10) If an accounting officer rejects the recommendations of the disposal committee, he or she shall return the report to the disposal committee with his or her recommendations for further consideration.

(11) For the disposal of a building or land, a procuring entity shall obtain the approval of the National Treasury or the respective county treasury.

(12) An accounting officer of a procuring entity that has disposed of a building or land shall submit a disposal report to the National Treasury or to the respective county treasury.

(13) An accounting officer of a procuring entity shall prepare a quarterly report on the implementation of the annual asset disposal plan and submit it to the Cabinet Secretary or County Executive Committee Member, responsible for the procuring entity or the governing body, as the case may be.

181. Methods of disposal

(1) A procuring entity shall ensure that the disposal method is approved by the accounting officer.

(2) Despite the provisions of section 165(1) of the Act, an accounting officer of a procuring entity may use additional methods of disposal as may be gazetted by the Cabinet Secretary from time to time.

182. Transfer to another public entity

(1) An accounting officer may, on the recommendation of the disposal committee, transfer assets, equipment or stores to another public entity with or without financial adjustments.

(2) The recommendation of the disposal committee shall include a justification for the transfer of assets, equipment or stores to another procuring entity.

(3) The transferred documents shall be endorsed by the accounting officers of both the transferring procuring entity and receiving procuring entity.

(4) An accounting officer of a procuring entity may as a result of a request from the receiving procuring entity or a proposal by the procuring entity on its own volition, transfer assets, stores and equipment based on the recommendation of the disposal committee.

(5) An accounting officer of a procuring entity that is receiving the items may pay an agreed amount of money to the transferring procuring entity or may receive the items free of charge.

(6) Both procuring entities shall maintain records of the items transferred.

183. Sale by public tender

(1) An accounting officer of a procuring entity may dispose of items that have become unserviceable, obsolete, or surplus by public tender.

(2) Sale by public tender shall be conducted in accordance with the rules and procedures of open tender envisaged under sections 74 to 87 of the Act.

(3) Where an accounting officer has advertised for disposal through an open tender method and has not attracted successful bidders, that accounting officer shall dispose off the items within six months through a public auction.

184. Disposal documents and proceedings

(1) A procuring entity shall use standard asset disposal documents and formats issued by the Authority in accordance with section 70(1) of the Act.

(2) An accounting officer of a procuring entity shall ensure the disposal document prepared contains sufficient information to allow fair competition among those who may wish to submit tenders.

(3) In all asset disposal proceedings, a procuring entity—

(a) shall allow a potential bidder to inspect the disposal document prior to obtaining the document;

(b) may charge a fee for obtaining the disposal document not exceeding one thousand shillings or as may be directed by the Cabinet Secretary from time to time;

(c) shall not charge a fee where disposal document is obtained electronically;

(d) may require bid deposits as specified in the bid document paid by the bidder which shall be deemed as a bid security.

(4) For successful bidders, the deposit shall form part of sale price and those who decline the award shall forfeit deposit paid.

(5) For unsuccessful bidders, the deposit shall be refunded in line with the provisions of the bid document.

(6) The value of any required bid deposit shall be expressed as a fixed amount and not as a percentage.

(7) The disposal document referred to under this regulation shall set out the following—

(a) a statement of any key technical requirements;

(b) qualification requirements and evaluation criteria;

(c) assets or equipment with implication on public health and safety, and environmental protection;

(d) application of a margin of preference and reservations;

(e) instructions on obtaining the disposal bidding document, including any price payable and the language of the document;

(f) instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value;

(g) instructions on the location; and

(h) deadline for submission of bids.

185. Tender notice for public tenders

(1) A public tender notice shall be advertised in accordance with section 96 of the Act.

(2) For international public tenders, the notice shall be published in a media of wide international circulation or on widely read internet sites, in the English language.

(3) Where a procuring entity establishes that it is necessary to ensure wider competition, that procurement entity may further send the notice directly to potential bidders.

(4) A procuring entity shall keep record of any bidders to whom the notice is sent directly, which shall form part of the disposal record.

186. Site visit for the public

A procuring entity shall organize a site visit to enable bidders to gain access to the unserviceable stores or surplus or obsolete assets or equipment to make their own assessment of the items.

187. Sale by public auction

(1) An accounting officer of a procuring entity shall ensure the procurement of services of a registered auctioneer through a competitive process in accordance with Part X of the Act.

(2) For greater certainty, only registered auctioneers having valid licenses shall conduct public auctions.

188. Inviting bids under the public auction sale method

(1) A procuring entity shall invite bids through the publication of an announcement of auction sale in accordance with regulation 187.

(2) A procuring entity shall publish an announcement of auction sale, inviting all potential bidders to participate in the sale.

(3) An auction notice shall include the following—

(a) the name, address and contact details of a procuring entity;

(b) the nature of the disposal requirement, including the description and quantity of stores, assets and equipment;

(c) the location and timetable for disposing of the stores, assets and equipment;

(d) a statement of any key eligibility requirements to participate in 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;

(e) instructions on the location and time of the auction; and

(f) name and address of the auctioneer contracted.

189. Eligibility criteria for the public auction sale method

(1) Bidders participating in the public auction shall be required to produce evidence of having paid the required deposit.

(2) Disposal of items with potential environmental, health and safety or security concerns shall be in accordance with the applicable Acts of Parliament.

190. Notice period for the public auction sale method

(1) The notice period for sale by public auction method shall be a minimum of fourteen days.

(2) In determining the appropriate notice period for each requirement, a procuring entity shall take into account, in addition to the minimum bidding period—

(a) the time required for all potential bidders to access the stores, assets and equipment; and

(b) any restrictions relating to the time the stores, assets and equipment may be inspected by the potential bidders.

191. Public auction notices, sale, administration and awards

(1) A public auction shall be conducted by a registered and licensed auctioneer appointed in accordance with regulation 187.

(2) Bidders who provided auction deposits shall be given auction bidding numbers which they shall be stating when announcing their bids.

(3) A public auction shall be conducted professionally with all the participating bidders being given fair chances to bid up to the time the highest bidder is determined.

(4) The participating bidders shall obtain copies of the public auction list.

(5) The deposit shall be placed for each item or lot of the auction.

(6) The auction deposit shall not exceed ten per cent of the total cost of the estimated value of the auction item or lot.

(7) The auctioneer shall have staff who shall keep the record of the winning bidders and shall register the second highest bidder per item or lot.

(8) A procuring entity shall also have its own staff who shall also keep the same record of the winning bidders and shall register the second highest bidder per item or lot.

(9) At the end of the public auction the two lists of winners shall be tallied and signed by the representatives of the auctioneer and the procuring entity.

192. Payment for and collection of Items

(1) The successful bidders in the public auction shall be given a period of at least fourteen days from the date of the public auction to pay for the items and take possession of them and remove them from the procuring entity's premises.

(2) Where the successful bidder fails to meet the requirements in paragraph (1), the bidder shall forfeit the bid deposit and the items may be offered to the second highest bidder.

193. Use of waste disposal management

(1) An accounting officer of a procuring entity shall comply with the procedure under regulation 194 on public notice, while using waste disposal management method.

(2) The documents, procedures and approvals required for waste disposal management shall be obtained from the relevant public agencies allowing a procuring entity to dispose those items that are harmful and unfriendly to the environment.

194. Assessment of waste disposal management

(1) The user department of a procuring entity shall conduct an assessment to determine if a procuring entity is capable of disposing off the stores, assets or equipment itself or if it should seek the assistance of competent agencies.

(2) Subject to the approval of the Authority, an accounting officer of a procuring entity may transfer an asset disposal proceeding to another procuring entity with necessary competence and capacity to carry out the disposal process on its behalf where—

(a) it demonstrates lack of internal capacity; and

(b) there exists another public entity with that capacity.

(3) Where an accounting officer has transferred the disposal proceedings under paragraph (2), the other procuring entity shall provide evidence that the disposal was done in accordance with the relevant laws and provisions of the Act.

(4) Where an accounting officer has transferred the disposal responsibility to another accounting officer, the two accounting officers shall sign an agreement spelling out each entity's responsibilities.

195. Justification for waste disposal management

The disposal committee shall give justification and recommendations to dispose off the stores, assets or equipment or the use of the waste disposal management method to the accounting officer of a procuring entity.

196. Destruction certificate

Upon execution of waste disposal management, an accounting officer shall obtain a certificate duly signed and issued by the disposing public entity or disposal agent.

197. Use of trade in method of disposal

(1) An accounting officer of a procuring entity may use trade-in as a method of disposal of unserviceable, obsolete or obsolescence or surplus stores, assets and equipment.

(2) Prior to initiating trade-in disposal procedure, the accounting officer of a procuring entity shall ensure compliance with the Act and these Regulations.

198. Justification for the trade-in method

(1) The user department shall justify the use of the trade-in disposal procedure and submit its recommendations to the accounting officer for approval through the head of procurement function.

(2) Any justification for the use of trade-in method applied by a procuring entity shall arise from a combination of the need to procure and the need to dispose the stores, assets and equipment.

(3) The disposal of stores, assets and equipment shall be a means of a procuring entity of obtaining discount as part of a disposal requirement.

(4) A cost benefit analysis shall be used to demonstrate the transfer advantage compared to other methods of disposal.

(5) A disposal requirement executed using the trade-in method shall be linked directly to a procurement requirement as reflected in the procurement plan of a procuring entity.

199. Procedure for trade-in method

(1) A procuring entity may use any appropriate procurement method under Part IX of the Act when undertaking disposal through trade in method.

(2) A trade-in may be initiated and negotiated with a selected bidder of a procurement requirement through a direct procurement subject to justification and approval by an accounting officer.

(3) Where direct procurement is used by a procuring entity, the value of the item to be traded-in shall be negotiated by the parties.

(4) A procuring entity may also open a trade-in procedure to all bidders participating in the procurement in which case the bidders shall quote the value of the items to be traded-in.

(5) Upon receipt of bids, a disposal committee shall conduct an assessment on the cost and benefits of the trade in method to establish the following—

(a) costs of trade-in if different from procurement requirement transaction costs;

(b) transaction costs without trade-in, such as sales or destruction;

(c) comparison of the estimated sale value of the stores, assets or equipment with the estimated discount as part of the procurement requirement; or

(d) any other considerations that may inform the decision of the disposal committee to ensure value for money.

200. Evaluation report and recommendations

(1) The disposal committee shall prepare an evaluation report for submission to the accounting officer through the head of the procurement function.

(2) The evaluation report shall include—

(a) a summary of the cost benefit analysis;

(b) the results of the evaluation;

(c) a recommendation on the trade-in or other disposal method to be used;

(d) the current condition of the asset;

(e) reserve price to be applied as part of the procurement process; and

(f) any other relevant information.

201. Reserve price

(1) The disposal committee of a procuring entity shall establish a reserve price in the case of trade-in below which the stores, assets or equipment may not be disposed of.

(2) The reserve price shall be disclosed to the bidders.

(3) A procuring entity may negotiate with the selected bidder of the procurement proceedings where the reserve price is not accepted.

(4) The negotiations under paragraph (3), shall not affect the reserve price.

(5) Where the negotiations do not result in an agreement, a procuring entity shall cancel all disposal proceedings, subject to approval by the accounting officer.

(6) The disposal committee conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the disposal and shall obtain the other party's written agreement that the minutes are a true and accurate record of the negotiations held.

202. Disposal to employees

(1) Despite the provisions of section 166(1) of the Act, a procuring entity may dispose off unserviceable, obsolete stores, assets and equipment to an employee of a procuring entity, or a member of a board or committee of a public entity where—

(a) the time and cost required to dispose to any other person is disproportionate to the value of the unserviceable, obsolete, obsolescence stores and equipment to be disposed;

(b) the employee is in possession of the stores item or equipment to be disposed and may be given the first priority to purchase the same;

(c) assets, stores and equipment are to be disposed of by taking into consideration the net book value or minimum acceptable price set by the technical expert under section 164(3) of the Act, where applicable, at the time of disposal based on government policy.

(2) The disposal committee of a procuring entity shall set the reserve price for each item to be disposed under these Regulations based on criteria under paragraph (1)(c).

(3) For greater certainty, employees of a public entity are allowed to participate in disposal processes through public tender and auction provided the employee is not directly involved in the disposal proceeding.

(4) Every disposal made by a procuring entity under paragraph (1), shall be reported by an accounting officer of a procuring entity to the Authority within thirty days of the disposal.

Part XV – ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS

203. Request for a review

(1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations.

(2) The request referred to in paragraph (1) shall—

(a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;

(b) be accompanied by such statements as the applicant considers necessary in support of its request;

(c) be made within fourteen days of —

(i) the occurrence of the breach complained of, where the request is made before the making of an award;

(ii) the notification under section 87 of the Act; or

(iii) the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder.

(d) be accompanied by the fees set out in the Fifteenth Schedule of these Regulations, which shall not be refundable.

(3) Every request for review shall be filed with the Review Board Secretary upon payment of the requisite fees and refundable deposits.

(4) The Review Board Secretary shall acknowledge by stamping and signing the request filed for review immediately.

204. Deposits

(1) Pursuant to section 167(2) of the Act, the filing of a request for review shall be accompanied by a refundable deposit valued at fifteen percent (15%) of the applicant's tender sum which shall be paid into a deposit account.

(2) Despite paragraph (1), where the tender sum is not determinable at the time of filing of the request for review the amount of deposit shall be two hundred thousand shillings.

(3) Where it is established that the applicant has provided false information on his or her tender sum, the request for review shall be dismissed and the deposit forfeited.

(4) The deposit submitted shall be refunded to the applicant, within twenty one days, upon receipt of the signed judgement or withdrawal of the application and original receipt from applicant and shall not accrue any interest.

205. Notification of the review and suspension of procurement proceedings

(1) The Secretary shall, immediately after the filing of the request under regulation 203, serve a notice thereof to the accounting officer of a procuring entity in accordance with section 168 of the Act.

(2) The notification of the filing of the request for review and suspension of procurement proceedings shall be communicated, in writing, by the Review Board Secretary.

(3) Upon being served with a notice of a request for review, the accounting officer of a procuring entity shall within five days or such lesser period as may be stated by the Secretary in a particular case, submit to the Secretary a written memorandum of response to the request for review together with such documents as may be specified.

(4) An accounting officer of a procuring entity who fails to submit the document within the stipulated period under paragraph (3), commits an offence and shall be liable to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both.

(5) The Review Board Secretary shall immediately notify all other parties to the review upon receipt of such documents from a procuring entity under paragraph (3).

206. Notice of Hearing

(1) The Review Board Secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.

(2) The notice referred to in paragraph (1) shall be in the format set out in the Sixteenth Schedule of these Regulations.

207. Hearing panels, quorum, and proceedings

(1) The Review Board secretary, in consultation with the chairperson of the Review Board, may constitute a panel of at least three members to hear and determine a request for review and the Review Board chairperson shall chair the panel.

(2) In the absence of the chairperson, each panel shall elect its own chairperson for the purpose of that meeting.

(3) The quorum of a Review Board panel established under paragraph (1), shall be chairperson and at least two other members.

(4) Decisions of a Review Board panel shall be taken by simple majority but in the case of a tie, the proposal supported by the chairperson shall prevail.

208. Representation by person of own choice

Any party to a request for review filed under regulation 203 shall, at the hearing thereof, be entitled to be represented by an advocate or a representative of his choice.

209. Preliminary objections

(1) A party notified under regulation 206 may file a preliminary objection to the hearing of the request for review to the Secretary of the Review Board within three days from the date of notification.

(2) A preliminary objection filed under paragraph (1) shall set out the grounds upon which it is based on and shall be served to the applicant at least one day before the hearing.

(3) The applicant may file a reply to the preliminary objection before the time of the hearing of the request.

(4) The Review Board may hear the preliminary objection either separately or as part of the substantive request for review and give a separate or one decision.

(5) The fees chargeable for filing a preliminary objection shall be as set out in the Fifteenth Schedule of these Regulations.

210. Hearing notice

(1) The Review Board Secretary shall, at least three days before the date set for the hearing, invite the members of the Review Board panel to attend the hearing.

(2) The invitation under paragraph (1), shall set out the time, date, and place where the hearing shall take place.

211. Business hours

The business of the Review Board shall be transacted between 8.00 a.m. and 5.00 p.m. on normal working days unless as otherwise agreed to by the Review Board Secretary in consultation with the chairperson.

212. Disclosure of interest

(1) Where any member of the Review Board has a direct or indirect interest in any matter before the Review Board, he or she shall declare his or her interest in the matter and shall not participate in the hearing or decision-making process of the Review Board in relation to that particular matter.

(2) Such a disclosure shall be recorded in a conflict of interest disclosure register.

213. Attendance at the hearing

Where on the day set for the hearing of a request for review for which due notification has been given—

(a) an applicant appears and a procuring entity fails to appear, the hearing of the request for review shall proceed in the absence of the procuring entity unless the Review Board deems it fit to adjourn the hearing;

(b) a procuring entity appears and the applicant does not appear, the request for review shall be dismissed unless the Review Board deems it fit to adjourn the hearing;

(c) where both parties fail to appear, the request for review shall be dismissed unless the Board deems it fit to adjourn the hearing.

214. Procedure at the hearing

At the hearing of the request for review, unless decided otherwise by the Review Board, the applicant shall be given the first opportunity to present the case in support of the request for review and the procuring entity shall be given an opportunity to reply thereto.

215. Consolidation of requests

Where two or more requests for review are instituted arising from the same tender or procurement proceeding, the Review Board may consolidate the requests and hear them as if they were one request for review.

216. Withdrawal of the requests

(1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Review Board Secretary signed by the applicant.

(2) The withdrawal under paragraph (1) shall be based on consent signed between parties concerned and registered with the Review Board.

(3) Upon such a withdrawal notice under paragraph (1) being received by the Review Board Secretary, the request for review shall be deemed to have been withdrawn.

(4) When a request for review is withdrawn, the Review Board Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.

217. Experts

The Review Board may engage an expert to assist it in any proceedings in which it feels it lacks the necessary expertise, but the opinion of the expert shall not be binding on the Review Board.

218. Rules of evidence

The Review Board shall not be bound to observe the rules of evidence in the hearing of a request for review under these Regulations.

219. Proof of documents

An order of the Review Board certified by both the chairperson and the secretary to be a true copy thereof shall in any legal proceedings be *prima facie* evidence of the issuance of that order.

220. Communication to the Review Board

All communications to the Review Board relating to matters pending before the Review Board shall be through the Review Board Secretary.

221. Powers of the Review Board

Pursuant to section 173(d) of the Act, the determination of costs between parties to the review shall be determined by the Review Board.

222. Security fee

The filing of the judicial review application under section 175(2) of the Act shall be accompanied by a refundable security fee valued at 3% of applicant's tender sum subject to a maximum ten million shillings in a mode of payment determined by the High Court.

Part XVI – OFFENCES, SANCTIONS AND REVOCATION

223. Prohibitions and sanctions

(1) Subject to the provisions of section 176 of the Act, a public officer of a procuring entity shall not—

(a) fail to maintain procurement, inventory and asset disposal records as provided under section 68 of the Act and these Regulations;

(b) vary or amend a procurement or asset disposal contract contrary to section 139 of the Act;

(c) procure goods, works, or services at unreasonably inflated prices beyond the indicative market survey;

(d) breach the rules on specific procurement requirements or skewed or tailored technical specifications as provided under section 60 of the Act;

(e) fail to safeguard and manage inventory, stores and assets of a procuring entity as provided under section 162 of the Act; or

(f) inappropriately dispose of public assets without adhering to Part XIV of the Act.

(2) A person who contravenes any provisions under paragraph (1) or the code of ethics prepared by the Authority under section 181 of the Act commits an offence and shall be liable upon conviction—

(a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both; or

(b) if the person is a body corporate, to a fine not exceeding ten million shillings.

(3) Where a person is convicted for any offence under the Act and these Regulations, the assets or resources lost may be recovered.

(4) Where a public officer or a state officer unreasonably fails to comply with specified timelines or fails to implement preference and reservation schemes or any other administrative obligation under these Regulations, that person may be subjected to disciplinary measures in accordance with the Act, these Regulations or prevailing service Regulations.

224. Revocation of L.N No. 174 of 2006

The Public Procurement and Disposal Regulations, 2006 are hereby revoked.

FIRST SCHEDULE

[Reg 22(3).]

FORM FOR FILING A REQUEST FOR DEBARMENT

FORM DC1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

APPLICATION NO ..... OF ..... 20 .....

1 To _____(Director General PPRA)_____

2 Person recommended for debarment _____(Name and full address)_____

3 Reason for debarment including references to sections of the Act or Regulations that have been breached _____(State reason)_____

4 Particulars of

the case _____(Particulars of the procurement and dates attach evidence)_____

Reporting Procuring Entity or a person requesting debarment _____(Full address)_____

Signed (Applicant)

Name of signatory _____

Designation _____

Dated on day of / 20

FOR OFFICIAL USE ONLY

Lodged with the Director General Public Procurement Regulatory Authority on day of 20

Signed/Stamped Receipt

Director General

SECOND SCHEDULE

[Regs. 26, 27, 28(1), 35(1)(c), 85(1), 89(2), 90(1)(a), 91(1), 92(a), 94(2), 104, 113 and 128(1(b).]

THRESHOLD MATRIX

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods services or works 150/151 where applicable
International Open tender (s 89 of the Act)	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
National Open tender (s 96 of the Act)	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Restricted tender under sec 102(1)(a) of the Act	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods services or works 150/151 where applicable
Restricted tender under sec 102(1)(b) of the Act	The Maximum level of expenditure shall be KES 30 000 000 above this threshold use open tender	The Maximum level of expenditure shall be KES 30 000 000 above this threshold use open tender	The Maximum level of expenditure shall be KES 20 000 000 above this threshold use open tender	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
	No minimum	No minimum	No minimum				
Restricted tender under 102(1)(c) of the Act	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Request for proposals (s 116 of the Act)	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods services or works 150/151 where applicable
Direct Procurement under s 103(2) and (3) of the Act	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Request for quotations(s 105 of the Act)	Maximum level of expenditure under this method is KES 3 000 000 per request for quotation	Maximum level of expenditure under this method is KES 5 000 000 per request for quotation	Maximum level of expenditure under this method is KES 3 000 000 per request for quotation	Head of the User Department in consultation with accounting officer	Accounting Officer or delegated person in writing by the Accounting officer	Accounting Officer or delegated person in writing by the Accounting officer	Accounting officer or his or her appointee in writing

Request for quotations(s 105 of the Act)	Maximum level of expenditure under this method is KES 3 000 000 per request for quotation	Maximum level of expenditure under this method is KES 5 000 000 per request for quotation	Maximum level of expenditure under this method is KES 3 000 000 per request for quotation	Head of the User Department in consultation with accounting officer	Accounting Officer or delegated person in writing by the Accounting officer	Accounting Officer or delegated person in writing by the Accounting officer	Accounting officer or his or her appointee in writing
Low value procurement(s 107 of the Act)	Maximum level of expenditure under this method is KES 50 000 per item per financial year	Maximum level of expenditure under this method is KES 100 000 per item per financial year	Maximum level of expenditure under this method is KES 50 000 per item per financial year	Head of the User Department in consultation with accounting officer	A person delegated in writing by the Accounting officer	A person delegated in writing by the Accounting officer	Accounting officer or his or her appointee in writing
	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method				
Competitive negotiation (s 131 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods services or works 150/151 where applicable
Electronic reverse auction (s 110 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

Force account (s 109 of the Act)	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Two stage tendering (s 99 of the Act)	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	No minimum Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods services or works 150/151 where applicable
Design competitio (s 100 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Framework agreement (s 114 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing
Community Participation	No Minimum Maximum Kshs 10 000 000 00	No Minimum Maximum Kshs 30 000 000 00	No Minimum Maximum Kshs 5 000 000 00	Head of user Department in consultation with accounting officer	Accounting Officer	Accounting Officer	Accounting officer or his or her appointee in writing

THIRD SCHEDULE

[Reg 42.]

ANNUAL PROCUREMENT PLAN

Ministry/Parastatal.....

Procuring Entity's Name.....

Project Name (if applicable).....

Financial Year.....

N	Item d ript	U	Q y	Pro rem M th d	S rc f F d	E im ted C t K h 000	T m Proce	I te/ Ad rtl T d	Bid p i g	B d l i	T d w d	N f ti f Aw rd	C tract S g i g	T l im t co tra t ig t re	D te f mpl f co tra t
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1							Pl ed D y								
							l D y								
							V an								
2							Pl ed D y								
							tu l D y								
							Varian								
3															
4															
	T t l														

Prepared by Head of the Procurement Function Sign Date

Countersigned by Accounting Officer Sign Date

Approved by Cabinet Secretary / CECM / Board / Council Sign Date

Guidance Notes on Preparing the Procurement Plan as per Column

1. Represents a number at the PE's discretion.
2. Description of the goods being procured. This should be comprehensive but not go to the level of specifications.
3. Unit of purchase or issue.
4. Quantity should be expressed in universally acceptable terms, for instance, number (No.), kilograms (Kg), tonnes, etc.
5. Procurement method — the methods are limited to only open tender, direct, restricted, request for quotation, low value, community participation, design competition, electronic reverse auction, force account, competitive negotiations and request for proposals.
6. Source of funds — could either be from the Government of Kenya or a donor.
7. Estimated cost — represents the total cost at which the goods are estimated to be procured. The cost should be established through market surveys.
8. Time process — represents the planned dates for execution of the various activities, planned days those activities are expected to take and actual dates taken in each specified activity. The variance should be filled after the activities are concluded (variance = planned days — actual days).
9. Invite/advertise tender — this is the date when tenders are advertised in the newspapers or when bidders are invited to collect tender documents under the restricted procurement method.

10. Tender opening — this is the date when tender documents are opened.
11. Tender evaluation — is the process used to identify the most preferred bidder technically and financially. This process should not take more than 30 calendar days.
12. Accounting officer approval to award — this is the date that the accounting officer awards the subject procurement.
13. Notification of award — this is the date that notification of award letter is sent to the preferred bidder.
14. Signing of contract — this is the date on which the contract is signed between the PE and the supplier/ contractor.
15. Total time to contract signature — this is the number of days taken between issuance on notification of award and signing of the contract.
16. Time for completion of contract — this is the time in days to be taken before the contract is completed.
17. Status.

FOURTH SCHEDULE

[Regs. 46 and 155(2).]

TENDER-SECURING DECLARATION FORM

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date: [insert date (as day, month and year) of Tender Submission]

Tender No.: [insert number of tendering process]

To: [insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
    (a) our receipt of a copy of your notification of the name of the successful Tenderer; or
    (b) thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

Capacity / title (director or partner or sole proprietor, etc.) .....

Name: .....

Duly authorized to sign the bid for and on behalf of: [insert complete name of Tenderer]

Dated on ..... day of ....., ... [Insert date of signing]

Seal or stamp

FIFTH SCHEDULE

SELF DECLARATION FORMS

[Reg. 47.]

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015

I, ..., of Post Office Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ..... (insert name of the Company) who is a Bidder in respect of Tender No. ..... for .....(insert tender title/description) for .....(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

....

(Title) (Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION FORMS

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ...of P. O. Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of .....

..... (insert name of the Company) who is a Bidder in respect of Tender No. ..... for .....(insert tender title/description) for .....(insert name of the Procuring entity) and duly authorized and competent to make this statement.

any member of the Board, Management, Staff and/or employees and/or agents of ……..(insert name of the Procuring entity) which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ……..(name of the procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

…… …… ……

(Title) (Signature) (Date)

Bidder's Official Stamp

SIXTH SCHEDULE

CONFIDENTIALITY DECLARATION FORM

[Reg. 65.]

I, ……. an *employee/agent/member of a board/member of a commission/member of a committee* of ……. *[name of the procuring entity]* ……. hereby declare that I shall not disclose any information that comes into my possession during or after any procurement proceedings of ……. *[name of the procuring entity]*……. relating to—

(1) any procurement whose disclosure would impede law enforcement or whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;

(2) any procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;

(3) information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or

(4) the contents of tenders, proposals or quotations.

I understand that the disclosure of such information to any unauthorised person(s) or in circumstances not permitted under the Public Procurement and Asset Disposal Act, 2015 is an offence.

I confirm that the declarations I have made above are correct to the best of my knowledge.

Name: ……

Signature: ……

Date: ……

SEVENTH SCHEDULE

[Reg. 66(1).]

SUMMARY OF PROCUREMENT PROCEEDINGS

Procuring Entity: .....

Financial Year:.....

Tender/Quotation No.....

Description of the tender .....

Requisition No. .....

Procurement method .....

	Procurement Stage	Indicators			Information on Indicators (fill as appropriate)
1.	Invitation and Tender opening	Tender Invitation/advertisement date			
		Tender closing/opening date			
		Number of bidding document issued			
		Number of bids received			
		Names of tender opening committee members			
		Number of bidders present			
2.	Tender evaluation	Evaluation committee	Names of the tender evaluation committee members		
			Specify consultants/ external experts involved in evaluation if any	Name	
				Profession	
				Organization	
		Number of bids evaluated			
		An extract of the evaluation criteria*			
		Number of bids passed preliminary evaluation stage			
		Number of bids passed technical evaluation			

		stage	
		Name of the recommended/successful bidder and the price	
		Date evaluation was concluded	
		Date evaluation report was forwarded/submitted to the head of procurement function	
3.	Procurement professional opinion	Date the professional opinion was issued	
4.	Tender Award	Date of approval / rejection of the award	
5.	Notification of award	Date the notification to award a tender was sent out	
6.	Contract execution	Date the contract was signed	

Prepared by: Head of Procurement Function: Sign ..... Date .....

*where the evaluation criteria are detailed an extract may be annexed to the summary

EIGHTH SCHEDULE

[Reg. 68(1).]

STANDARD TENDER DOCUMENTS AND FORMS

The standard tender documents include the following:

1. Standard tender document for procurement of works (buildings and associated civil engineering works)
2. Standard tender document for procurement of works (roads, water bridges, etc)
3. Standard tender document for procurement of works (electrical and mechanical)
4. Standard tender document for procurement of small works
5. Standard tender document for procurement of goods
6. Standard tender document request for proposals (selection of consulting firms)
7. Standard tender document for procurement of non-consultancy services
8. Standard tender documents for request for proposals (selection of individual consultants)
9. Standard tender document for framework agreements
10. Standard tender document for disposal
11. Standard tender document for insurance services
12. Standard tender document for information technology
13. Standard tender document for maintenance services
14. Standard tender document for design and build (turnkey)
15. Standard tender document for supply and Installation
16. Standard tender document for specialized goods and services
17. Standard tender documents for pre-qualification

18. Standard tender documents for management contracts
19. Standard tender documents for performance based contract
20. Standard tender documents for leasing
21. Procurement requisition standard form for legal services
22. Standard tender documents for purchase of immovable assets/ property
23. Request for quotation form
24. Procurement requisition form
25. Local procurement order
26. Order amendment form
27. Tender opening register
28. Register of samples
29. Confidential business questionnaire
30. Board of survey form
31. Disposal certificate
32. Destruction certificate
33. Contract agreement for goods
34. Stores requisition and issue voucher
35. Stores receipt voucher
36. Bin Card, stock verification, issue/receipt
37. Contract agreement for goods (term contracts)
38. Contract agreement for consultancy services
39. Contract agreement for consultancy services (time based)
40. Contract agreement for general services
41. Contract agreement for insurance services
42. Contract agreement for framework agreements and framework contracts

NINTH SCHEDULE

[Reg. 78(4).]

PROFESSIONAL OPINION

PART A – BASIC INFORMATION
1. Name of Procuring Entity: .....
2. Item Description:.....
3. Tender No.: .....
4. Date Tenders Invited:..... .....
5. Date Tenders Opened:.....
6. Members of Tender Opening Committee and Bidders Present (Annex list, if many) .....
7. No. of Tenderers Issued with Tenders Documents (where applicable).....
8. No. of Bids received:.....
9. Method of Procurement Applied/used (specify provision of law):.....
10. Names of Appointed Evaluation Committee Members (specify names, designation, section/org, memo/Letter reference number and date)-annex appointment letter
PART B – LEGAL & PRACTICAL ASPECTS OF THE TENDER
1. A brief background statement of the procurement/asset disposal proceeding from planning to tender evaluation.
2. State whether due diligence was conducted on the successful bidder (if applicable) and give brief statement of the outcome thereof.
3. State whether the awardis appropriate for the method of procurement/asset disposal applied citing specific provision of law and tender document.
4. State whether the recommended price for standard goods, services and works are within the indicative market prices;
5. State how evaluation criteria set forth in tender document was applied and whether or not the Tender Evaluation Committee members adhered to the law in bid evaluation
6. Confirm if adequate funds are set aside (budgeted) for the procurement/asset disposal
PART C – RECOMMENDATION TO ACCOUNTING OFFICER FOR APPROVAL/ REJECTION

1. Give opinion whether procurement law and practice was applied in the proceedingleading to the recommendation of the evaluation committee and whether or not Accounting Officer may consider approval/rejection of the recommendations of the evaluation report.
2. Where the recommended bid price is in excess of available budget state:- (a) where applicable, if change of scope would/would not materially alter the substance of the tender and would be consistent with the provisions of the tender documents; (b) whether there is need to result to use competitive negotiations 3. Any other relevant information.

Name of Procurement Professional	*Designation*	*Signature*	*Date*
.....	.....	.....	.....

TENTH SCHEDULE

[Reg. 84(2).]

LIST OF CLASSIFIED PROCUREMENTS AND DISPOSALS

Name of Procuring Entity.....

S/NO	Item Description	Unit	Quantity	Estimated Cost	Budget Available	Procurement Method	Justification for use of classified procurement method

Name of the Accounting Officer:.....

Sign ..... Date .....

ELEVENTH SCHEDULE

[Reg. 146(1).]

REGISTRATION OF DISADVANTAGED GROUPS

REGISTRATION FORM FOR ENTERPRISES OWNED BY WOMEN, YOUTH AND PERSONS WITH DISABILITY TO SUPPLY GOODS, WORKS AND SERVICES TO PROCURING ENTITIES

ACCESS TO GOVERNMENT PROCUREMENT OPPORTUNITIES (AGPO)

The registration of suppliers is aimed at building a profile for each supplier regarding information on general particulars of the company. You are advised that it is a serious offence to give false information on this form.

PART I - DETAILS OF THE APPLICANT

1. Name of Applicant .....
2. Physical Address .....
3. Postal Address: .....
4. Postal Code:.....
5. E-mail: .....
6. Mobile Phone No.....
7. Are you applying for youth, women or persons with disabilities? .....
8. Contact Person .....
9. Overview of the Enterprise

Type of ownership (please tick one)	[Sole Proprietor] [Partnership] [Limited Company] [Others Specify]
Number of employees	[0-5] [6-25] [26-49] 50-59] [100-250]
Initial Investments (KES)	
Total Annual Sales for the previous year (TurnoverKES)	
Experience in the sector in years	

Type of Ownership Details

Part 9 (a) - Sole Proprietor or name of registered business, where applicable

Name in Full		Age	
Identity/Passport No.			

Part 9 (b) - Partnership Details			
NAME	NATIONALITY	ID/PASSPORT NO.	% SHARES

Part 9 (C) – Registered Company

State the nominal and issued capital of company

Nominal KShs ..... Issued KShs.....

Directors' Details			
Name	Nationality	ID/Passport No.	% Shares

10. Bank Account Name:.....
11. Branch of the Bank:.....
12. Bank Account Number:.....
13. VAT Registration Number:.....
14. IFMIS Number, where applicable:.....
15. Type of business: SECTOR (TICK ONE)

AGRIBUSINESS	TRADE	HOSPITALITY& ENTERTAINMENT
MANUFUCTURING	SERVICES	ICT
CONSTRUCTION	OTHERS	SPECIFY

Title: .....

Signature: ..... Date .....

PART II - LIST OF ATTACHMENTS

The following attachments are essential for appraisal and you are required to ensure that they are all attached, failure to which your application may be rejected:

1. Copy of certificate of incorporation/registration;
2. PIN Certificate;
3. VAT Registration Certificate;
4. Valid Tax Compliance/ Exemption Certificate;
5. Original Bank Statement/Bank reference of not more than three months from date of applying;
6. Copy of certificate of registration with relevant regulatory bodies (for persons with disabilities registration with National Council for Persons with Disability);
7. Business/Company profile;
8. Evidence of having paid the non-refundable fee for the Application Form;
9. Copies of Annual Return Forms, filed by Limited Companies, the Business Names for business names (sole trader and partnerships), and a stamped receipt which bears the Accounts Stamp from the Registrar of Companies/Societies; CR12; Partnership Deed;
10. Certificate of Registration in a target group issued by the National Treasury;
11. National IDs/Passports.

TWELFTH SCHEDULE

[Reg. 166(1).]

INVENTORY OF ASSETS

ANNUAL CONSOLIDATED INVENTORY OF ASSETS

Name of Public Entity

.....

.....

Location of Public Entity

.....

.....

S/No	Department	Asset Description	Location/Site	Quantity/Size	Status

Prepared by: Name:

.....

Designation: .....

Date: .....

Approved by:

Name: .....

Designation: .....

Date: .....

THIRTEENTH SCHEDULE

[Reg. 176(2).]

ANNUAL ASSET DISPOSAL PLAN

Financial Year: .....

Name of the Procuring Entity: .....

No.	Item Description	Qty	Unit of issue	Date of purchase	Purchase Price	Estimated current value	Justification for disposal	Item Life span	Ref. No to the asset register	Disposal Method	Cost of managing disposal	Dates for completing key disposal activities		
												Disposal Initiation		
												Bid Documents Prepared		
												Invitation To Tender/Public Auction		
												Bid Opening/ Registration of Bidders		
												Accounting officer Award/ Fail of Auction Hammer		
												Notification of Award/		
												Contract Signed		
												Disposal Completed		
												Notice to PPRA (If Disposal to Employee)		
1.														
2.														

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

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

FOURTEENTH SCHEDULE

[Reg. 203(1).]

FORM FOR REVIEW

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT (Review Board)

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for .....(Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED .....(Applicant) Dated on.....day of...../...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of ..... 20.....

SIGNED

Board Secretary

FIFTEENTH SCHEDULE

[Regs. 203(2)(d) and 209(5).]

FEES FOR REVIEWS

1. Administrative fee KES 5,000
2. Upon filing a request for review, the fees payable shall be as follows-

Amount of Tender	*Fees*
1. *Tenders of Ascertainable Value*	
(a) Does not exceed KES 2,000,000	10% subject to a minimum of KES 20,000/-
(b) Exceeds KES 2,000,000/- but not over KES 50,000,000/-	The fees for tender sum of KES 2,000,000 plus an additional fee of 0.25% on the amount above KES 2,000,000
(c)Exceeds KES 50,000,000/-	The fees for tender sum of KES. 50,000,000 plus an additional fee of 0.025% on the amount above KES 50,000,000/- subject to a maximum fee of KES 250,000/-
(d)Pre-qualification, EOI and other "	KES 40, 000/-
2. Unquantified Tenders	KES 250,000/-
3. Upon request of an adjournment to a party by the Board.	Maximum amount payable fee shall be KES20, 000/-
4. Filing a preliminary objection	KES 5, 000/-
5. The Secretary may demand additional fee if the fee paid at the time of filing is less than that ascertained to be chargeable.	

SIXTEENTH SCHEDULE

[Reg. 206(2).]

NOTICE

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REQUEST NO ..... OF ..... 20.....

BETWEEN

..... APPLICANT

AND

..... RESPONDENT (Procuring Entity)

TO: 1) ..... (Procuring Entity)

2) ..... (Applicant)

3) ..... (Interested Candidate)

HEARING NOTICE

Whereas ..... the Applicant herein has instituted a complaint against ..... (Procuring Entity) on ..... (Date) particulars of which were set out in a Request For Review served upon you on .....

You are hereby required to appear on the ..... day of ..... 20 ..... at ..... am/pm when the complaint against you will be heard by this Board sitting at .....

If you fail to appear the Applicant may proceed with the complaint and determination by order of the Board may be made in your absence.

Dated on ..... day of ..... 20 .....

Board Secretary