

Kenya Gazette Supplement No. 92

29th December, 2006

Legislative Supplement No. 53)

LEGAL NOTICE No. 174

THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2005

(No. 3 of 2005)

IN EXERCISE of the Powers conferred by Section 140 of the Public Procurement and Disposal Act, 2005, the Minister for Finance makes the following Regulations:-

THE PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS, 2006

ARRANGEMENT OF REGULATIONS

Regulation		Page
PART I – PRELIMINARY		1127
1.	Citation and Commencement	1127
2.	Interpretation	1127
3.	Public Entity	1128
4.	Capacity Building Levy	1128
5.	Membership of the Advisory Board	1128
6.	Threshold Matrix	1128
PART II – INTERNAL ORGANIZATION OF PROCURING ENTITIES		1129
7.	Roles of Accounting Officer	1129
8.	Procurement unit	1129
9.	Responsibilities of User Department.....	1132
10.	Tender Committee	1132
11.	Approvals by Tender Committee	1133
12.	Procedures for Tender Committee Meetings	1134
13.	Procurement Committee	1135
14.	Approval by Procurement Committee	1135
15.	Procedures for Procurement Committee Meetings	1136
16.	Evaluation Committees	1136
17.	Inspection and Acceptance Committee	1138
18.	Transfer of Procurement Authority	1139
19.	Procuring Agents	1139
20.	Procurement Planning	1140
21.	Contents of Procurement Plan	1140
22.	Purchase Requisition and Authorization	1141
PART III – GENERAL PROCUREMENT RULES		1141
23.	Pre-qualification Procedures	1141
24.	Pre-qualification Documents	1141
25.	Approval of Pre-qualified Candidates	1142
26.	Limitation of Contracts with Employees	1142
27.	Procurement Approvals	1142
28.	Preference and Reservations	1143
29.	Tender Documents	1143
30.	Manuals by the Authority	1143
31.	Variations to Contracts	1143
32.	Contract Termination	1144
33.	Format of Procurement Documents	1144

Regulation	Page
34. Additional Procurement Records	1144
PART IV – OPEN TENDERING	
35. Open Tendering	1144
36. Time for International Tendering	1145
37. Threshold for national Advertising	1145
38. Additional Information to be contained in Tender Document	1145
39. Fees for Tender Document	1145
40. Time for Preparing Tenders	1145
41. Tender Security	1145
42. Period of Validity of Tenders	1146
43. Inquires Relating to Tender Documents	1146
44. Form of Tender Box	1146
45. Opening of TENDERS	1147
46. Period for Evaluation of Open Tenders	1147
47. Preliminary Evaluation of Open Tenders	1147
48. Non-responsive Tenders to be Rejected	1147
49. Technical Evaluation	1147
50. Financial Evaluation	1148
51. Evaluation Report	1148
52. Confirmation of Qualification	1149
PART V – ALTERNATIVE PROCUREEMNT PROCEDURES	
53. Use of Restricted Tendering	1149
54. Procedure for Restricted Tendering	1149
55. Request for Proposals	1149
56. Terms of Reference	1149
57. Preliminary Evaluation of Proposals	1150
58. Procedures for Negotiation	1150
59. Request for Quotation	1150
60. Submission of Quotation	1150
61. Opening and Evaluation of Quotation	1151
62. Direct Procurement	1151
63. Low Value Procurement	1151
64. Use of Specially Permitted Procedures	1151
65. Award of Contract	1152
66. Notification of the Award	1152
PART VI – ADMINISTRATIVE REVIEW OF PROCUREMENT PROCEDINGS	
A – COMPOSITION AND MEMBERSHIP OF REVIEW BOARD	
67. Appointment and Tenure of Member	1153
68. Composition and Membership	1153
69. Quorum, Panels and Proceedings	1153
70. Resignation from Office	1154
71. Termination of Appointment	1154
72. Allowances	1154
B – PROCEDURES IN REVIEWS	
73. Mode of Filing Request	1154
74. Notification of Filing Requests	1155
75. Notice of Hearing	1155
76. Representation by Person of Own Choice	1155
77. Preliminary Objection	1155
78. Invitation to the Hearing	1156
79. Disclosure of Interest	1156
80. Attendance at Hearing	1156
81. Procedure at hearing	1156
82. Consolidation of Requests	1156
83. Withdrawal of Requests for Review	1157
84. Hearing of Request	1157
85. Experts	1157
86. Rules of Evidence	1157

Regulation		Page
87.	Proof of Documents	1157
88.	Communication to the Review Board	1157
PART VII – INVESTIGATION, DEBARMENT AND DISPOSAL		1157
89.	Limitation of Investigator’s Powers	1157
90.	Other Grounds for Debarment	1157
91.	Debarment	1157
92.	Disposal Committee	1157
93.	Disposal to Employees	1158
FIRST SCHEDULE – TRHRESHOLD MATRIX		1159
Class A Procuring Entities		1159
Class B Procuring Entities		1163
Class C Procuring Entities		1167
SECOND SCHEDULE – COMPOSITION OF TENDER COMMITTEE		1171
Ministerial Tender Committee or Self Accounting Unit Tender Committee		1171
District Tender Committee		1171
State Corporations Tender Committee		1171
Public Universities Tender Committee		1172
Local Authority Tender Committee		1172
Colleges Tender Committee		1172
Schools Tender Committee		1173
Co-operative Societies Tender Committee		1173
Voluntary Organizations/Institutions Tender Committee		1173
Central Bank of Kenya Tender Committee		1174
Commissions (Permanent) Tender Committee		1174
Semi Autonomous Government Agencies Tender Committee		1174
Hospital Tender Committee		1174
Health Facility Tender Committee		1175
Special Security Tender Committee		1175
Constituencies Development Fund Tender Committee		1175
THIRD SCHEDULE		1177
Standard Tender Documents		1177
FOURTH SCHEDULE		1179
PART I	FORMS OF REVIEWS	1179
FORM RB 1- Request for Review		1179
FORM RB 2- Hearing Notice		1180
PART II	FEEES FOR REVIEWS	1182
Administrative Fee		1182
A – Fee for Tender of Ascertainable Value		1182
B – Fee for Tender of Ascertainable Value		1182

PART I - PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Public Procurement and Disposal Regulations, 2006 and shall come into operation on the 1st January 2007.

Interpretation.

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

“asset” means movable and immovable property, tangible and intangible, including immovable property stores, equipment, shares, intellectual rights vested in the state or proprietary rights;

“procurement cycle” means the cycle that starts with the initiation of the process of an individual procurement requirement and when the goods, works, services have been delivered and accepted;

“procurement plan” means the document prepared annually by each procuring entity, to plan all procurement requirements necessary to perform the activity plan of the procuring entity;

“public-private partnership” means an agreement between a procuring entity and a private party under which -

- (a) the private party undertakes to perform a public function or provide a service on behalf of the procuring entity;
- (b) the private party receives a benefit for performing the function, either by way of-
 - (i) compensation from a public fund;
 - (ii) charges or fees collected by the private party from the users of a service provided to them; or

(iii) a combination of such compensation and such charges or fees;

(c) the private party is generally liable for the risks arising from the performance of the function depending on the terms of the agreement;

“pre-qualification procedure” means the prequalification procedure set out in these Regulations;

“request for review” means a request for administrative review filed with the Review Board under sections 93, 106 or 117 of the Act;

“tenderer” means a person submitting a tender;

“user department” means the department in a procuring entity which initiates procurement proceedings.

Public entity.

3. For the purposes of section 3 of the Act, public entity shall include-

- (a) any body that uses public assets in any form of contractual undertaking including public private partnerships;
- (b) a company owned by a public entity to carry out functions that would have otherwise been performed by the public entity; and
- (c) any body in which the Government has a controlling interest.

Capacity building levy.

4. (1) The capacity building levy payable under section 18 (5) (d) of the Act shall be one and a half percent of the contract price.

(2) The capacity building levy referred to in paragraph (1) shall not apply where the contract is one hundred per cent fully funded by a donor.

(3) Where the contract is partly funded by a donor, the capacity building levy shall be payable in respect of the portion funded by the Government.

Membership of the Advisory Board.

5. (1) For the purposes of section 22(1)(a) of the Act, the Minister shall appoint nine members of the Public Procurement Oversight Advisory Board from persons nominated by-

- (a) the Institute of Certified Public Accountants of Kenya;
- (b) the Institution of Engineers of Kenya;
- (c) the Kenya National Chamber of Commerce and Industry;
- (d) the Kenya Federation of Master Builders;
- (e) the Kenya Institute of Management;
- (f) the Kenya Association of Manufacturers;
- (g) the Law Society of Kenya;
- (h) the Institute of Certified Public Secretaries of Kenya;
- (i) the Marketing Society of Kenya;
- (j) the Architectural Association of Kenya ;
- (k) the Computer Society of Kenya;
- (l) the Institute of Surveyors of Kenya;
- (m) the Federation of Kenya Employers, and
- (n) the Central Organization of Trade Unions.

(2) Each organization referred to in paragraph (1) shall submit to the Minister the curriculum vitae of two members being nominated of whom one shall be a woman.

Threshold
matrix.

6. (1) A procuring entity shall, pursuant to section 26(3) (b) of the Act, undertake procurement in accordance with the threshold matrix set out in the First Schedule to these Regulations.

(2) The approval authorities for all procurement methods shall, for the purposes of section 26(3) (c) of the Act, be as set out in the First Schedule.

(3) The Authority shall, by notice in the Gazette, classify procuring entities either as class A, class B or class C for the purposes of the First Schedule.

PART II – INTERNAL ORGANIZATION OF PROCURING ENTITIES

- Roles of accounting officer.
- 7.** In addition to the responsibilities stipulated under section 27(2) of the Act, the accounting officer shall be responsible for-
- (a) ensuring that the procuring entity establishes a tender committee and a procurement committee in accordance with the Act and these Regulations;
 - (b) ensuring that the procuring entity establishes a procurement unit;
 - (c) signing contracts for the procurement and disposal activities on behalf of the procuring entity for contracts entered into in accordance with the Act and these Regulations;
 - (d) ensuring that the procurement plans are prepared; and
 - (e) ensuring that the procuring entity properly documents procurement proceedings and manages records in accordance with these Regulations.
- Procurement unit.
- 8.** (1) A procuring entity shall establish a procurement unit in accordance with this Regulation.
- (2) The level of qualification and experience required of procurement professionals under section 26(9) of the Act shall be stipulated by the Authority.
- (3) The functions of the procurement unit shall be to-

- (a) maintain and update annually standing lists of registered tenderers required by the procuring entity and liaise with the Authority in respect of the Authority's register of suppliers and procuring agents;
- (b) prepare, publish and distribute procurement and disposal opportunities including invitations to tender, pre-qualification documents and invitations for expressions of interest;
- (c) co-ordinate the receiving and opening of tender documents;
- (d) maintain and safeguard procurement and disposal documents and records in accordance with these Regulations;
- (e) submit shortlists and lists of pre-qualified tenderers to the tender committee or procurement committee for approval;
- (f) issue procurement and disposal documents to candidates in accordance with the Act and these Regulations;
- (g) propose the membership of evaluation committee to the accounting officer for approval;
- (h) co-ordinate the evaluation of tenders, quotations and proposals;
- (i) recommend a negotiating team for appointment by the accounting officer where negotiations are allowed by the Act and these Regulations and participate in such negotiations;
- (j) prepare and publish notices of award and notices of tender acceptance;
- (k) prepare contract documents, in line with the award decision;
- (l) prepare and issue rejection and debriefing letters;
- (m) prepare contract variations and modifications to documents;
- (n) maintain and archive documents and records of the procurement and disposal activities for the required period;
- (o) provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures;
- (p) implement the decisions of the procurement, tender and disposal committees, including co-ordinating all activities of these committees;
- (q) act as a secretariat to the tender, procurement and

- disposal committees;
- (r) liaise with the Authority and other bodies on matters relating to procurement and disposal;
 - (s) prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority;
 - (t) monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;
 - (u) report any significant departures from the terms and conditions of the contract to the head of the procuring entity;
 - (v) recommend the delegation of a procurement or disposal function to another procuring entity by the head of the procuring entity whenever a need arises;
 - (w) prepare consolidated procurement and disposal plans;
 - (x) advise the procuring entity on aggregation of procurement to promote economies of scale;
 - (y) co-ordinate internal monitoring and evaluation of the supply chain function;
 - (z) carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee;
 - (aa) conduct periodic and annual stock taking;
 - (bb) certify the invoices and payment vouchers to suppliers;
 - (cc) approve extension of the tender validity period;
 - (dd) verify that the available stock levels warrant initiating a procurement process;
 - (ee) carry out any other functions or duties as may be provided under the Act or these Regulations and any other functions that might be stipulated by the Authority.

Responsibilities
of user
departments.

9. A user department shall be responsible for–

- (a) initiating procurement and disposal requirements and forwarding them to the procurement unit;
- (b) participating in the evaluation of tenders, proposals

and quotations;

- (c) reporting any departure from the terms and conditions of the contract to the procurement unit;
- (d) forwarding details of any required variations to contracts to the procurement unit for consideration and action;
- (e) maintaining and archiving records of contract management;
- (f) preparing any reports required for submission to the procurement unit, the procurement committee, the tender committee, head of procuring entity or the accounting officer;
- (g) undertaking conformity assessments of supplied goods, works and services with the specifications of the contract documents
- (h) endorsing the issuance of goods, works and services received notes;
- (i) preparing technical specifications and submitting the same to the procurement unit;
- (j) assisting in the preparation of procurement and disposal plans;
- (k) making clarifications on tenders, requests for quotations and any other matter as may be required; and
- (l) carrying out any other functions and duties as may be provided under the Act or these Regulations, or as may be stipulated by the Authority.

Tender
committee.

10. (1) A procuring entity shall establish a tender committee in the manner set out in the Second Schedule.

(2) The functions of the tender committee shall be to-

- (a) review, verify and ascertain that all procurement and disposal has been undertaken in accordance with the Act, these Regulations and the terms set out in the tender documents;
- (b) approve the selection of the successful tender or proposal;

- (c) award procurement contracts in accordance with thresholds prescribed in First Schedule;
- (d) ensure that funds are available for the procurement under consideration;
- (e) ensure that the procuring entity does not pay in excess of prevailing market prices;
- (f) review and approve aggregation of procurements where proposed;
- (g) review and approve the use of lots where packaging into lots has been proposed;
- (h) review the selection of procurement method and where a procurement method, other than open tender, has been proposed, to ensure that the adoption of the other procurement method is in accordance with the Act, these Regulations and any guidelines stipulated by the Authority;
- (i) approve the list of tenderers in cases of restricted tendering pursuant to regulation 54(3);
- (j) approve the list of persons qualified to submit proposals pursuant to section 80 of the Act;
- (k) approve the list of persons to be given requests for quotations pursuant to regulation 59(2);
- (l) approve negotiations under the Act, these Regulations and as may be stipulated by the Authority;
- (m) approve the amendment of contracts previously awarded by the tender committee, in accordance with the Act and these Regulations;
- (n) review the quarterly reports on quotations that have been awarded by the procurement committee.
- (o) undertake any other functions and duties as are provided under the Act, these Regulations or as may be stipulated by the Authority.

Approvals by tender committees.

11. (1) In considering submissions made by the procurement unit or evaluation committees, the tender committee may-

- (a) approve a submission ;or
- (b) reject a submission with reasons; or

approve a submission, subject to minor clarifications by the procurement unit or evaluation committee.

(2) The tender committee shall not-

- (a) modify any submission with respect to the recommendations for a contract award or in any other respect;

- (b) reject any submission without justifiable and objective reasons;
- (c) where the tender committee rejects the recommendation of the evaluation committee, the decision shall be reported to the head of the procuring entity or to the accounting officer

(3) Any submission rejected by the tender committee may be resubmitted and the tender committee shall provide an explanation and a justification for its decision thereof.

Procedure for tender committee meetings.

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

(2) The quorum of the tender committee shall be five members including the chairman.

(3) Decisions of the tender committee shall be by consensus and where there is no consensus, the decision shall be through voting by simple majority and where there is a tie, the chairman shall have a second or casting vote.

(4) Where any member of the tender committee has a direct or indirect interest in any matter, he or she shall declare his or her interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter.

(5) Members of the tender committee may be paid such honoraria as the procuring entity may determine.

(6) The tender committee shall cause to be prepared minutes of all its meetings and such records shall include -

- (a) a register of attendance;
- (b) date of the meeting;
- (c) list of all matters considered;
- (d) the decision made for each matter, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- (e) a note on the basis of any evaluation made;
- (f) any conflicts of interest declared by members;
- (g) any dissenting opinions among tender committee members; and
- (h) such other records as may be necessary.

(7) The tender committee may invite independent advisers or members of the procurement unit to explain submissions or provide technical advice, where required.

(8) To enhance transparency of the procurement process the

procuring entity shall invite in addition to the representative of various departments, at least two observers to attend its meetings in cases where the value of the contract is estimated to be above fifty million shillings.

(9) At least one of the observers

invited under paragraph (8) shall come from a duly recognized private sector organization or discipline relevant to the procurement under consideration.

(10) The failure of an invited observer to attend a meeting shall not nullify the procurement proceedings.

Procurement committee.

13. (1) A procuring entity shall establish a procurement committee.

(2) The procurement committee shall be responsible for procurement below the threshold of the tender committee set out in the First Schedule.

(3) The procurement committee shall be composed of-

- (a) an official delegated by the head of the procuring entity or the accounting officer, who shall serve as the chairman of the committee;
- (b) the finance officer or an officer carrying out related functions;
- (c) three other members appointed by the head of the procuring entity or the accounting officer.

(4) The head of the procurement unit shall appoint an officer to serve as secretary to the procurement committee.

Approvals by procurement committee.

14.(1) In considering submissions made by the procurement unit, the procurement committee may-

- (a) approve a submission ;or
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to minor clarifications by the procurement unit.

(2)The procurement committee shall not-

- (a) modify any submission with respect to the recommendations for contract award or in any other respect;
- (b) reject any submission without justifiable and objective reasons.

(3) Any submission rejected by the procurement committee may be resubmitted and the procurement committee shall provide explanation and justification of its decision thereof.

Procedure for procurement committee meetings.

15. (1) The quorum for a meeting of the procurement committee shall be the chairman and at least two other members.

(2) Where any member is unable to attend a meeting of the

procurement committee, that member shall delegate authority to an appropriate official, who shall attend the meeting in his or her place.

(3) Members of the procurement committee shall ensure that their authority is only delegated to officials with appropriate skills and experience to represent them at a meeting of the procurement committee.

(4) Decisions of the procurement committee shall be by consensus and where there is no consensus, the decision shall be through voting by simple majority and where there is a tie, the chairman shall have a second or casting vote.

(5) Where any member of the procurement committee has a direct or indirect interest in any matter, he or she shall declare his or her interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter.

(6) The procurement committee may invite independent advisers or members of the procurement unit to explain submissions or provide technical advice, where required.

(7) The procurement committee shall cause to be prepared minutes of all its meetings and such records shall include –

- (a) a register of attendance;
- (b) date of the meeting;
- (c) list of all matters considered;
- (d) the decision made for each matter, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subject;
- (e) a note on the basis of any evaluation made;
- (f) any conflicts of interest declared by members;
- (g) any dissenting opinions among procurement committee members; and
- (h) such other records as may be necessary.

Evaluation committees.

16. (1) For each procurement within the threshold of the tender committee, the procuring entity shall establish an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals.

(2) An evaluation committee established under paragraph (1) may comprise-

- (a) a separate financial evaluation committee and a separate

technical evaluation committee; or

(b) a combined financial and technical evaluation committee.

(3) An evaluation committee shall consist of a chairman and at least two other members all appointed by the accounting officer or the head of the procuring entity upon recommendation by the procurement unit.

(4) No person shall be appointed under paragraph (3) if such person is a member of the tender committee of the procuring entity.

(5) A technical evaluation committee established in accordance with paragraph (2)(a) shall be responsible for-

- (a) the technical evaluation of the tenders or proposals received in strict adherence to the compliance and evaluation criteria set out in the tender documents;
- (b) performing the evaluation with all due diligence and within a period of thirty days after the opening of the tenders.

(6) Each member of the technical 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.

(7) A financial evaluation committee established in accordance with paragraph (2) shall be responsible for-

- (a) the financial evaluation of the tenders or proposals received in strict adherence to the compliance and evaluation criteria set out in the tender documents or request for proposals;
- (b) performing the evaluation with all due diligence and within a period of five days from the time of completion of the technical evaluation.

(8) Under no circumstances may any member of an evaluation committee enter into direct communication with any of the tenderers participating in a tender or proposal that such evaluation committee is considering.

(9) An evaluation committee shall prepare a report on the analysis of the tenders received, and final ratings assigned to each tender and submit the report to the tender committee.

(10) The report prepared under paragraph (9) shall include-

- (a) minutes of the opening of the tenders or proposals;

- (b) the results of the preliminary evaluation, with reasons why any tenders or proposals were rejected;
- (c) the scores awarded by each evaluator for each tender or proposal;
- (d) a summary of the relative strengths and weaknesses of each tender or proposal;
- (e) the total score for each tender or proposal; and
- (f) a recommendation to award the tender to the lowest evaluated tenderer or to the person who submitted the proposal with the highest total score.

Inspection and acceptance committee.

17. (1) A procuring entity shall establish an inspection and acceptance committee.

(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procurement unit.

(3) The inspection and acceptance committee shall immediately after delivery of the goods, works or services-

- (a) inspect and where necessary, test the goods received;
- (b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract;
- (c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

(4) The inspection and acceptance committee shall -

- (a) ensure that the correct quantity of has been received;
- (b) ensure that the goods, works or services meet the technical standards defined in the contract;
- (c) ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) ensure that all required manuals or documentation have been received; and
- (e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

Transfer of procurement authority.

18. (1) Pursuant to the provisions of section 27(6) of the Act, the Authority may transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent-

- (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 Authority, due to its size or capacity;
- (b) where the accounting officer or the head of the procuring entity decides that it would be more economical or efficient to transfer the function and requests the Authority to do so.

(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 disposal function is transferred to another procuring entity under paragraph (1) (b), the accounting officers or the heads 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 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 or the heads of the two procuring entities.

Procuring
agents.

19. (1) A procuring agent shall pay a registration fee of twenty thousand shillings to the Authority.

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

(3) The procuring entity shall-

- (a) meet the cost of the services offered by the procuring agent;
- (b) prepare the terms of reference for the procuring agent assignment in accordance with the provisions of the Act and these Regulations;
- (c) be responsible for the actions and performance of the procuring agent

(4) Where the procuring agent is engaged, a procurement committee or a tender committee shall adjudicate the contract award.

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

(6) None of the functions of the accounting officer, procurement committee or the tender committee shall be contracted out to a procuring agent.

Procurement
planning.

20. (1) A procuring entity shall prepare a procurement plan under section 26(3) (a) of the Act for each financial year as part of the annual budget preparation process.

(2) Annual procurement planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.

(3) Where appropriate, multi-year procurement plans may be prepared and shall be integrated into the medium term budgetary expenditure framework.

(4) A head of department shall submit an annual procurement plan to the accounting officer at least thirty days before the close of each financial year.

(5) The consolidated annual procurement plan shall be prepared by the procurement unit and approved by the head of the procuring entity and where applicable by the board of directors or a similar body.

Contents of
procurement
plan.

21. (1) The annual 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 for whether it shall be procured within a single-year period or under a multi-year arrangement;
- (d) an indication of which items can 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.

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

(3) The Authority shall issue instructions to the procuring entities on the format for preparing procurement plans.

Purchase requisition and authorization.

22. (1) Every procurement requirement shall be initiated using a purchase requisition which shall include all necessary information pertaining to the procurement.

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

(3) The purchase requisition shall be approved by the person specified in the First Schedule, prior to the initiation of procurement proceedings.

(4) Approved procurement requisitions shall be submitted to the procurement unit of the procuring entity to initiate procurement proceedings.

(5) Upon receipt of the approved purchase requisition, the procurement unit shall prepare a procurement plan for each individual procurement requirement, which shall include an estimate of the time required for each stage in the procurement cycle.

PART III-GENERAL PROCUREMENT RULES

Pre-qualification procedures.

23. (1) Where the procuring entity conducts a pre-qualification procedure pursuant to the Act, it shall publish an invitation to candidates to submit applications to be pre-qualified.

(2) The invitation referred to in paragraph (1) shall include-

- (a) the name, address and contact details of the procuring entity;
- (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) statement of the key requirements and criteria to pre-qualify;
- (d) instructions on obtaining the pre-qualification documents, including any price payable and the language of the documents; and
- (e) instructions on the location and deadline for submission of applications to pre-qualify.

Prequalification documents.

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

(2) The pre-qualification document shall contain all the information necessary for the potential candidates to prepare and submit applications to be pre-qualified.

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

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

entity;

- (b) details of the procurement requirements, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from candidates;
- (d) instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and
- (e) information on how applications will be evaluated.

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

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

Approval of pre-qualified candidates.

25. (1) The procuring entity shall, in writing, record the results of its evaluation of applications for pre-qualification using the evaluation criteria in the pre-qualification documents and shall state which candidates were found to be qualified and the reasons why any candidates were not qualified.

(2) The record of results prepared under paragraph (1) shall be submitted to the tender committee for approval.

(3) The procuring entity shall invite tenders from only the persons who have been pre-qualified under this regulation.

Limitations of contracts with employees

26. For the purposes of section 33(2) of the Act, a relative is limited to a spouse or 2 child.

Procurement approvals.

27. (1) Subject to the Act, all approvals relating to any procedures in procurement shall be in writing and properly dated, documented and filed.

(2) No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made.

(3) No procurement approval shall be made by a person exercising delegated authority unless such delegation has been approved by the accounting officer.

(4) A procuring entity shall maintain specimen signatures of all persons authorised to make approvals within the procurement process.

(5) Responsibility for each approval made in the procurement procedure shall rest with both the person who delegates the authority and the person to whom the approval authority is delegated.

Preferences and reservations.

28. (1) For the purposes of section 39(8) of the Act, the threshold below which exclusive preference shall be given to citizens of Kenya, shall be the sum of –

- (a) fifty million shillings for procurements in respect of goods or services;
- (b) two hundred million shillings for procurements in respect of works.

(2) The margin of preference-

- (a) for the purposes of section 39(8) (b) (i) of the Act, shall be fifteen percent of the evaluated price of the tender;
- (b) for the purposes of section 39(8) (b) (ii) of the Act, shall be-
 - (i) six percent of the evaluated price of the tender where the percentage of shareholding of the locals is less than twenty percent; and
 - (ii) eight percent of the evaluated price of the tender where the percentage of shareholding of the locals is less than fifty one percent but above twenty percent

Tender documents.

29. (1) The standard tender documents for purposes of section 29 (4) of the Act shall be as set out in the Third Schedule to these Regulations.

(2) Pursuant to section 9(c) (i) of the Act, the Authority shall avail the standard tender documents to procuring entities.

Manuals by the Authority.

30. Pursuant to section 9(c)(i) of the Act, the Authority may, in consultation with specific procuring entities, develop internal procurement manuals, administrative guidelines and best practices manuals specific to such entities consistent with the Act and these Regulations.

Variations to contracts.

31. For the purposes of section 47(b) of the Act, any variation of a contract shall be effective only if-

- (a) the price variation is based on the prevailing consumer price index obtained from Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;
- (b) the quantity variation for goods and services does not exceed ten percent of the original contract quantity;
- (c) the quantity variation for works does not exceed fifteen per cent of the original contract quantity; and
- (d) the price or quantity variation is to be executed within the period of the contract.

Contract termination.

32. (1) A contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.

(2) The procurement unit shall obtain the approval of the tender committee which authorised the original contract, prior to terminating the contract and the request for approval shall clearly state-

- (a) the reasons for termination;
- (b) the contractual grounds for termination; and
- (c) the cost of terminating the contract.

Format of procurement documents.

33. (1) The Authority shall issue guidelines on the format of procurement documents to be adopted for approvals and the documentation of the procurement procedure.

(2) The Authority may issue standard forms by which a procuring entity shall carry out specific procurement procedures.

(3) The documents shall be clear and bear references to the procurement requirement, dates and signatures of authorizing officers.

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

Additional procurement records.

34. (1) For the purposes of section 45(2) (h) of the Act, the following documents shall be treated as part of the procurement records-

- (a) where the procurement or the disposal requirement involves feasibility studies and surveys directly carried out or accepted by the procuring entity in order to prepare the tender documents, the reports and other documents resulting from these studies and surveys;
- (b) all receipts for the sale of tender documents, request for clarifications and clarifications issued by the procuring entity;
- (c) records of any negotiations;
- (d) end of activity report as may be stipulated by the Authority.

(2) The Authority may issue guidelines relating to the use, record management, filing and storage of procurement documentation.

(3) A procuring entity shall maintain an individual file for each procurement requirement containing all information documents and communications relating to that procurement proceeding and such file shall be marked with the relevant procurement reference number.

PART IV –OPEN TENDERING

Open tendering.

35. A procuring entity that conducts procurement using the open tender method shall be subject to the procurement thresholds set out in the First Schedule.

Time for international tendering.

36. For the purposes of section 71(c) of the Act, the minimum period of time between advertisement and deadline for submission of international tenders shall be thirty days.

Threshold for national advertising.	<p>37. For the purposes of section 54(2) of the Act, the threshold for national advertising shall be as set out in the First Schedule.</p>
Additional information to be contained in tender documents.	<p>38. For the purposes of section 52 (3) (k), the tender documents shall contain-</p> <ul style="list-style-type: none"> (a) a statement whether tenders which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in an alternative manner, may be permitted and the manner in which such tenders shall be evaluated; (b) instructions on the sealing, labeling and submission of tenders, including the location and deadline for submission of tenders and procedures for the withdrawal, modification or replacement of tenders; (c) any applicable preference programs and the margin of preference and the manner in which such preference will be applied in the evaluation; (d) the procedures and criteria to be used in cases where a procuring entity decides to invite tenders in two separate phases for the purposes of carrying out the respective technical and financial evaluation of the same tender; (e) the procedure and criteria to be used to evaluate and compare the tenders as set out in regulations 46 to 52.
Fee for tender documents.	<p>39. (1) Pursuant to section of A procuring entity may, pursuant to section 56 (2) of the Act, charge a fee not exceeding five thousand shillings for copies of tender or pre-qualification documents.</p> <p>(2) In arriving at the fee payable under paragraph (1), a procuring entity shall only have regard to the costs related to printing, copying, and distribution or of converting the documents into electronic form.</p> <p>(3) Where the tender documents are obtained electronically, the fee payable under paragraph (2) shall be paid at the time of submission of the tender.</p> <p>(4) Where tender documents are sold, the procuring entity may allow potential tenderers to inspect the documents, prior to purchasing the document.</p>
Time for preparing tenders.	<p>40. The minimum time for the preparation of tenders for the purposes of section 55 (1) of the Act shall be a period of twenty one days.</p>
Tender security.	<p>41. (1) The amount of any tender security under section 57 (2) of the Act shall be expressed either as a fixed amount or as a percentage of the estimated value of the contract and shall not in either case exceed two percent of the estimated value of the contract.</p> <p>(2) In determining the amount of tender security under paragraph (1), a procuring entity shall take into account-</p> <ul style="list-style-type: none"> (a) the cost to tenderers of obtaining a tender security;

- (b) the estimated value of the contract; and
- (c) the risk of tenderers failing to fulfill the conditions of their tenders.

(3) The tender security to be provided under section 57 of the Act shall be in any of the following forms only-

- (a) cash;
- (b) a bank guarantee;
- (c) such insurance company guarantee as may be approved by the Authority;
- (d) a letter of credit.

(4) No tender security shall be accepted under the Act unless such security is valid for a period of at least thirty days after the expiry of the tender validity period.

(5) The procuring entity shall, where it extends the tender validity period, request the tenderers' to extend the period of validity of their tender securities.

(6) A procuring entity may, where it deems necessary, verify the authenticity of any tender security.

Period of validity of tenders.

42. (1) The period of validity of a tender shall be stated in calendar days from the date of opening of the tender.

(2) For purposes of this regulation, a calendar day includes any day of the week including Saturday, Sunday and a public holiday.

Inquiries relating to tender documents.

43. (1) Where a tenderer makes an inquiry relating to the tender documents under section 53(2) of the Act, the procuring entity shall promptly reply in writing.

(2) The reply under paragraph (1) shall be copied to all tenderers and shall include a description of the inquiry but without identifying the source.

(3) The procuring entity shall not be bound to reply to inquiries received after the deadline for submitting inquiries stipulated in the tender documents.

Form of tender box.

44. A procuring entity shall, for purposes of section 58(4) of the Act, ensure that-

- (a) a tender box has two locks;
- (b) the keys for each lock are kept by a different officer; and
- (c) the tender box remains locked until the time for tender opening.

Opening of tenders.

45. (1) Pursuant to section 60 (5) (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;

(b) shall not be read out where a tender is preceded by a technical evaluation and such tender has not met the technical evaluation criteria.

(2) Where a tenderer fails a technical evaluation under paragraph (1) (b) a procuring entity shall return the financial proposal unopened.

(3) A tender opening committee shall, where applicable, record in the tender opening minutes whether any sample has been submitted in respect of any tender.

Period for evaluation of tenders.

46. A procuring entity shall, for purposes of section 66 (6) of the Act, evaluate the tenders within a period of thirty days after the opening of the tender.

Preliminary evaluation of open tenders.

47. (1) Upon opening of the tenders under section 60 of the Act, the evaluation committee shall first conduct a preliminary evaluation to determine whether-

- (a) the tender has been submitted in the required format;
- (b) any tender security submitted is in the required form, amount and validity period;
- (c) the tender has been signed by the person lawfully authorised to do so;
- (d) the required number of copies of the tender have been submitted;
- (e) the tender is valid for the period required;
- (f) all required documents and information have been submitted; and
- (g) any required samples have been submitted.

(2) The evaluation committee shall reject tenders, which do not satisfy the requirements set out in paragraph (1).

Non-responsive tenders to be rejected.

48. (1) A procuring entity shall reject all tenders, which are not responsive in accordance with section 64 of the Act.

(2) the classification of a deviation from the requirements as minor under section 64(2) (a) of the Act shall be applied uniformly and consistently to all the tenders received by the procuring entity.

Technical evaluation.

49. (1) Upon completion of the preliminary evaluation under Regulation 47, the evaluation committee shall conduct a technical evaluation by comparing each tender to the technical requirements of the description of 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).

Financial
valuation.

50. (1) Upon completion of the technical evaluation under Regulation 49, 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, as read out at the bid opening;
 - (b) taking into account any corrections made by a procuring entity relating to arithmetic errors in a tender;
 - (c) taking into account any minor deviation from the requirements accepted by a procuring entity under section 64(2) (a) of the Act;
 - (e) where applicable, converting all tenders to the same currency, using a uniform exchange rate prevailing at the date indicated in the tender documents;
 - (f) applying any discounts offered in the tender;
 - (g) applying any margin of preference indicated in the tender documents

(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be the tender with the lowest evaluated price in accordance with section 66(4) of the Act.

Evaluation
report.

51. (1) An evaluation report prepared under section 66(5) of the Act shall include-

- (a) a summary of all the tenders received and opened;
- (b) the results of the preliminary evaluation under Regulation 47;
- (c) the results of the technical evaluation under Regulation 49;
- (d) reasons why any tenders were rejected;
- (e) details of any minor deviations accepted under section 64 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 any discounts, corrections or adjustments to the tender price and any conversion to a common currency;
- (g) the ranking of the tenders each according to its total evaluated price;
- (h) the results of any confirmation of qualification conducted under Regulation 52; and
- (i) a recommendation to award the contract to the lowest evaluated tender;
- (j) such other recommendation as may be necessary.

(2). The evaluation report prepared under paragraph (1) shall be considered by the tender committee, prior to awarding the contract or taking any other action in relation to the procurement as may be necessary.

Confirmation of qualifications.

52.(1) Where so indicated in the tender documents, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the lowest evaluated responsive tender, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with section 31(1) of the Act.

(2) Where so indicated in the tender documents, if the lowest evaluated tenderer is determined under paragraph (1) not to be qualified in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer who submitted the next lowest evaluated responsive bid.

PART V – ALTERNATIVE PROCUREMENT PROCEDURES

Use of restricted tendering.

53. (1) A procuring entity may use restricted tendering only if the conditions provided in sections 29(3) and 73(2) 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 First Schedule.

Procedure for restricted tendering.

54. (1) Save as is otherwise provided in this Regulation, the procedure for open tendering set out in the Act and these Regulations shall, for the purposes of section 73(1) of the Act, apply *mutatis mutandis* to restricted tendering.

(2) A procuring entity shall, for the purpose of identifying pre-qualified contractors pursuant to section 73(2) (a) of the Act, use the pre-qualification procedures set out in Regulations 23,24 and 25 or otherwise as permitted under section 32 of the Act.

(3) Where restricted tendering is used pursuant to section 73(2) (b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list maintained under Regulation 8 (3) (a).

(4) Where restricted tendering is used pursuant to section 73(2) (c) of the Act, the procuring entity shall invite tenders from all the known suppliers of the goods, works or services.

(5) The minimum time for the preparation of tenders for the purposes of section 73 of the Act shall be a period of fourteen days.

Request for proposals.

55. (1) A procuring entity that conducts procurement using the request for proposals method pursuant to section 76 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) The notice inviting expressions of interest prepared by the procuring entity pursuant to section 78 of the Act shall give a minimum period of fourteen days for tenderers to submit their expressions of interest.

Terms of reference.

56. For the purposes of section 79(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 expected from the person awarded the tender;
- (d) the qualifications necessary for a person to be awarded the tender.

Preliminary evaluation of proposals.

57. The procedure for preliminary evaluation of open tenders set out in Regulation 47 shall apply to evaluation of proposals under section 82 of the Act.

Procedure for negotiation.

58.(1) A procuring entity shall not enter into any negotiations pursuant to section 84 of the Act until the tender committee has approved the successful proposal.

(2) The negotiations shall be conducted by at least two members of staff of the procuring entity appointed by the accounting officer or the head of the procuring entity on the recommendation of the procurement unit.

(3) The members of staff conducting the negotiations under paragraph (2) shall prepare a report of the negotiations and submit it to the tender committee for decision making.

(4) The report prepared under paragraph (3) shall form part of the records of the procurement

Request for quotations.

59. (1) A procuring entity that conducts procurement using the request for quotations method pursuant to section 88 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) For the purpose of determining the persons to be given a request for quotations under section 89 of the Act, a procuring entity shall-

- (a) prepare a list of qualified persons
 - (i) selected from the list maintained under Regulation 8(3)(a) ;
 - (ii) from its own knowledge of the market ;
- (b) submit the list prepared under paragraph (a) to the tender committee for approval; and
- (c) ensure a fair and equal rotation amongst the persons on the list kept under paragraph (a) in respect to giving the requests for quotations.

Submission of quotations.

60. A request for quotations prepared by a procuring entity under section 89(2) (d) of the Act shall set out –

- (a) a requirement that quotations be submitted in sealed envelopes; and
- (b) the mode of delivery of the sealed envelopes to the procuring entity.

Opening and evaluation of quotations.

61. (1) The opening, evaluation and comparison of quotations shall be carried out jointly by the procurement unit and the user department of the procuring entity.

(2) Where the procurement unit is of the view that the successful quotation is higher than the prevailing market price, the procurement unit shall reject the quotations and repeat the process by giving a fresh request for quotations to a set of new persons in the list approved by the tender committee under Regulation 59(2) (b).

(3) Pursuant to section 30 (3) of the Act the procurement unit shall not accept a quotation under section 89(4) of the Act if the quotation is above the prevailing real market price.

Direct procurement.

62. (1) A procuring entity that conducts procurement using the direct procurement method pursuant to section 74 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) Where a procuring entity uses direct procurement, the procuring entity shall record the reasons upon which it makes a determination that the relevant condition set out in section 74 of the Act has been satisfied.

(3) A procuring entity 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.

(4) The procedure for negotiations for proposals set out in Regulation 58 shall apply *mutatis mutandis* to negotiations relating to direct procurement pursuant to section 75(a) of the Act.

(5) A procuring entity shall not enter into a contract under section 75 (c) of the Act unless it is satisfied that the offer-

- (a) meets the requirements of the procuring entity as specified under paragraph (2); and
- (b) is at the prevailing real market price.

Low value procurement.

63.(1) For the purposes of section 90 (2) of the Act, a procuring entity may use a low value procurement procedure only if-

- (a) the estimated cost of the goods, works or services being procured per item is less than or equal to the prescribed maximum value as set out in the First Schedule;
- (b) no benefit would accrue to the procuring entity in terms of time or cost implications if the procuring entity uses requests for quotations or any other procurement method;

- (c) the procedure is not being used for the purpose of avoiding competition;
- (d) the use of the procedure has been recommended by the procurement committee after a market survey

(2) The following procedure shall apply in respect to low value procurement-

- (a) the procurement unit shall procure the goods, works or services from a reputable outlet or provider through direct shopping;
- (b) an original invoice or receipt for the low value procurement of goods, works or services and the price paid shall be obtained and signed by the person undertaking the procurement.

Use of specially permitted procedures.

64. (1) For purposes of section 92 of the Act, the Authority may allow the use of specially permitted procedure-

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

(2) A procuring entity shall-

- (a) first obtain the approval of its tender committee; and
- (b) submit the proposal and all the tender documents to the Authority for approval before proceeding with the procedure.

(3) The Authority shall maintain a register of all specially permitted procedures allowed

(4) the Authority shall issue detailed guidelines for concessioning or public private partnership

Award of contract.

65. All contract award decisions shall be taken by the appropriate award authority, in accordance with the levels of Authority specified in the First Schedule.

Notification of the award.

66. (1) A procuring entity shall, upon rejecting unsuccessful tenders return any tender securities and any unopened financial proposals.

(2) Where so requested by an unsuccessful tenderer, a procuring entity shall, within fourteen days after a request, provide written reasons as to why the tender, proposal or application to be pre-qualified was unsuccessful.

(3) The reasons given under paragraph (2) shall not contain any information on any other tender other than information that is publicly available from tender openings or published notices.

PART VI-ADMINISTRATIVE REVIEW OF PROCUREMENT PROCEEDINGS

A - COMPOSITION AND MEMBERSHIP OF THE REVIEW BOARD

Appointment
and tenure of
members.

67. (1) The members of the Review Board shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years

(2) Subject to paragraph (1), a member shall hold and vacate office in accordance with the member's terms of appointment.

Composition
and
membership.

68. (1) Pursuant to section 25 of the Act, the Review Board shall comprise of-

- (a) six members appointed by the Minister from among persons nominated by;
 - (i) a Kenya Association of Manufacturers;
 - (ii) a Law Society of Kenya;
 - (iii) the Architectural Association of Kenya;
 - (iv) the Institution of Engineers of Kenya;
 - (v) the Institute of Certified Public Accountants of Kenya;
 - (vi) the Kenya Institute of Supplies Management;
 - (vii) the Institute of Certified Public Secretaries of Kenya;
 - (viii) the Chartered Institute of Arbitrators;
 - (ix) the Kenya National Chamber of Commerce and Industry;
 - (x) the Kenya Institute of Management;
 - (xi) the Computer Society of Kenya;
 - (xii) the Pharmaceutical Society of Kenya;
 - (xiii) the Federation of Kenya Employers;
 - (xiv) the Central Organization of Trade Unions
- (b) three other members appointed by the Minister;
- (c) a Chairman appointed by the Minister from among the persons appointed under paragraph (a);

(2) Each organization referred to in sub regulation (1) (a) shall submit to the Minister the curriculum vitae of two members being nominated of whom one shall be a woman.

(3) The Director General shall appoint a Secretary to the Review Board from amongst the staff of the Authority.

Quorum, panels and proceedings.

69. (1) The quorum of the Review Board shall be three members including the Chairman.

(2) The Secretary may in consultation with the Chairman and the Review Board constitute a panel of three members to hear and determine a request for review and each panel shall elect its own chairman.

(3) In the absence of the Chairman, the Review Board may designate one member to act as Chairman for the purpose of that meeting.

(4) Decisions of the Review Board shall be taken by simple majority but in the case of a tie the proposal supported by the Chairman shall prevail.

Resignation from office.

70. The Chairman or any other member of the Review Board may at any time, by notice to the Minister, resign from his office.

Termination of appointment.

71. The Minister may terminate a person's appointment as a member of the Review Board only if the person-

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of an offence under the Penal Code, the Anti Corruption and Economic Crimes Act, 2003, or the Act or these Regulations or an offence involving dishonesty; or
- (d) is absent from three consecutive meetings of the Review Board to which the member has been invited without reasonable excuse.

Allowances.

72. The Authority shall pay the members of the Review Board such allowances as may be determined by the Advisory Board.

B - PROCEDURES IN REVIEWS

Mode of filing requests.

73. (1) A request for review under the Act shall be made in Form RB 1 set out in the Fourth Schedule to these Regulations.

(2) The request referred to in paragraph (1) shall-

- (a) state the reasons for the complaint, including any alleged breach of 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; or
 - (ii) the notification under sections 67 or 83 of Act;

- (d) be submitted in fifteen bound copies and a soft copy, pages of which shall be consecutively numbered;
- (e) be accompanied by the fees set out in Part II of the Fourth Schedule which shall not be refundable.

(3) Every request for review shall be filed with the Secretary of the Review Board upon payment of the requisite fees.

(4) The Secretary shall acknowledge filing of the request for review.

Notification of filing of request.

74. (1) The Secretary shall immediately after the filing of the request under Regulation 73, serve a copy thereof on the procuring entity or Director General as the case may be.

(2) The copy to the procuring entity under paragraph (1) shall also contain a notification of the pending review and the suspension of the procurement proceedings of such procuring entity.

(3) Upon being served with a notification of a request, the procuring entity or the Director General shall within seven 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 reasons for the request together with such documents as the Secretary may specify.

(4) The Secretary shall, within fourteen days of the filing of the request, notify all other parties to the review of the filing and such parties may, at their own expense, obtain copies of the request for review.

Notice of Hearing,

75. (1) The 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 shown in Form RB 2 set out in the Fourth Schedule.

Representation by person of own choice.

76. Any party to a request filed under Regulation 73 shall, at the hearing thereof, be entitled to be represented by an advocate or any other person of his own choice.

Preliminary objection

77. (1) A party notified under Regulation 74 may file a preliminary objection to the hearing of the request for review to the Secretary of the Review Board within five days from the date of notification.

(2) The preliminary objection filed under paragraph (1) shall set out the grounds upon which it is based on and shall be served on 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 shall hear the preliminary objection and make a determination whether to uphold or dismiss the same and shall record the reasons for the determination.

(5) If the Review Board dismisses the preliminary objection, it shall soon thereafter proceed to hear the request for review as scheduled.

(6) The fees chargeable for filing a preliminary objection shall be as set out in the Part II of the Fourth Schedule.

Invitation to the hearing.

78. (1) The Secretary shall, at least three days before the date set for the hearing, invite the members of the Review Board to attend the hearing.

(2) The invitation under paragraph (1) shall set out the time, date, and place where the hearing shall take place.

(3) The business of the Review Board shall be transacted between 8.00 a.m. and 5.00 p.m. on normal working days unless otherwise agreed to by the Secretary.

Disclosure of interest.

79. 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.

Attendance at the hearing.

80. If on the day set for the hearing of a review for which due notification has been given-

- (a) the applicant appears and the 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) the procuring entity appears and the applicant does not appear, the request for review shall be dismissed unless the Board deems it fit to adjourn the hearing;
- (c) if both parties fail to appear, the request for review shall be dismissed unless the Board deems it fit to adjourn the hearing.

Procedure at hearing.

81. 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 and the procuring entity shall be given an opportunity to reply thereto.

Consolidation of requests.

82. Where two or more requests for review are instituted arising from the same tender or procurement procedure the Review Board may consolidate the requests and hear them as if they were one request for review.

Withdrawal of requests for review.

83. (1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Secretary signed by the applicant and upon such notice being received the request for review shall be deemed to have been withdrawn.

(2) When a request for review is withdrawn, the Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.

Hearing of request.	<p>84. (1) Hearing of review proceedings shall be open to all parties to the review.</p> <p>(2) The Review Board may, at the hearing of the request exclude any person from the hearing whom it deems is unruly, interruptive or otherwise conducts himself in an unreasonable manner.</p>
Experts.	<p>85. The Review Board may engage an expert to assist it in proceedings in which it feels it lacks the necessary expertise but the opinion of the expert shall not be binding on the Review Board.</p>
Rules of evidence.	<p>86. The Review Board shall not be bound to observe the rules of evidence in the hearing of a request under these Regulations.</p>
Proof of documents	<p>87. An order of the Review Board certified by both the Chairman and the Secretary to be a true copy thereof shall in any legal proceedings be <i>prima facie</i> evidence of the issuance of that order.</p>
Communication to the Review Board.	<p>88. All communications to the Review Board relating to matters pending before the Review Board shall be through the Secretary.</p>
PART VII - INVESTIGATION, DEBARMENT AND DISPOSAL	
Limitation of investigator's powers.	<p>89. An investigator appointed pursuant to section 102 of the Act shall not, in the course of investigation, advise a procuring entity on any matter relating to a procurement proceeding.</p>
Other grounds for debarment.	<p>90. For the purposes of section 115 (2) of the Act, the Director – General, with the approval of the Advisory Board, may debar a person from participating in procurement proceedings on the ground that that person has breached a code of ethics issued by the Authority pursuant to section 139 of the Act.</p>
Debarment.	<p>91. Where a person is debarred from participating in procurement proceedings under section 115 of the Act, the debarment extends to any firm in which the debarred person has a controlling interest.</p>
Disposal committee.	<p>92. (1) A procuring entity shall, for the purposes of section 128 of the Act, establish a disposal committee comprising of at least five members as follows:-</p> <ul style="list-style-type: none"> (a) the officer in charge of finance; (b) the head of the procurement unit who shall be the Secretary; (c) the head of the accounting department; and (d) two heads of end user departments, of whom one shall be the head of the end-user department disposing of the stores or equipment. <p>(2) The disposal committee shall select a chairperson from amongst its members.</p> <p>(3) The disposal committee shall pursuant to section 128(2) of the Act, first meet within fourteen days of its appointment and subsequently at least once in every quarter.</p>

(4) The accounting officer shall, pursuant to section 129(4) of the Act, give the disposal committee a written notice as to whether he accepts or rejects the recommendations of the disposal committee within fourteen days of receipt of the recommendations.

Disposal to
employees. **93.** (1) A procuring entity may, pursuant to section 131 of the Act, dispose its unserviceable, obsolete or surplus stores and equipment to an employee of the public entity or a member of a board or committee of the public entity where-

- (a) the time and cost required to dispose to any other person would be disproportionate to the value of the unserviceable, obsolete or surplus stores and equipment to be disposed;
- (b) the employee is in possession of the stores or equipment to be disposed and may be given the first priority to purchase the same.

(2) Every disposal made by a procuring entity under paragraph (1) shall be reported by the accounting officer or head of the procuring entity to the Authority within fourteen days of the disposal.

FIRST SCHEDULE**THRESHOLD MATRIX****THRESHOLDS MATRIX FOR CLASS A PROCURING ENTITIES**

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 26(3)(c) 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
International Open tender (s 71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring Entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee
	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity or the Accounting Officer	Inspection and acceptance committee
National Open tender (s 54(2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The head of the procuring entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee

	When using this method the minimum expenditure that requires advertising is Kshs 6,000,000	When using this method the minimum expenditure that requires advertising is Kshs 6,000,000	When using this method the minimum expenditure that requires advertising is Kshs 3,000,000	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity	Inspection and acceptance committee
Restricted tender Under s 73 (2)(a) of the Act	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 20,000,000 below this threshold use open tender	The minimum level of expenditure is Kshs 20,000,000 below this threshold use open tender	The minimum level of expenditure is Kshs 20,000,000 below this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Restricted tender Under s 73 (2)(b) of the Act	The Maximum level of expenditure shall be Kshs 20,000,000 above this threshold use open tender	The Maximum level of expenditure shall be Kshs 20,000,000 above this threshold use open tender	The Maximum level of expenditure shall be Kshs 20,000,000 above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee

THRESHOLDS MATRIX FOR CLASS A PROCURING ENTITIES

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 26(3)(c)			
	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
	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 2,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Restricted tender Under s 73 (2)(c) of the Act	The Maximum level of expenditure shall be Kshs 20,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 20,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 20,000,000. Above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 2,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Request for proposals (s 76(1) of the Act)	This method is not applicable for procurement of goods	This method is not applicable for procurement of works	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Direct Procurement under s 74(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	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee

				Head of the User Department initiates procurement whose expenditure is below Kshs. 500,000	Procurement committee awards for procurement whose expenditure is below Kshs.500,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.500,000	Inspection and acceptance committee
Request for quotations(s 88 of the Act)	Maximum level of expenditure under this method is Kshs 1,000,000	Maximum level of expenditure under this method is Kshs 2,000,000	Maximum level of expenditure under this method is Kshs 1,000,000	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
				Head of the User Department initiates procurement whose expenditure is below Kshs. 500,000	Procurement committee awards for procurement whose expenditure is below Kshs.500,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.500,000	Inspection and acceptance committee
Low value procurement(s 90 of the Act)	Maximum level of expenditure under this method is Kshs 30,000 per procurement per item	Maximum level of expenditure under this method is Kshs 30,000 per procurement per item	Maximum level of expenditure under this method is Kshs 30,000 per procurement per item	Head of the User Department	User	The Head of the Procurement Unit	Stores officer
	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	Head of the User Department	User	The Head of the Procurement Unit	Stores officer

THRESHOLDS MATRIX FOR CLASS B PROCURING ENTITIES

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 26(3)(c)			
	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
International Open tender (s 71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring Entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee
	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity or the Accounting Officer	Inspection and acceptance committee
National Open tender (s 54(2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The head of the procuring entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee
	When using this method the minimum expenditure that requires advertising is Kshs 4,000,000	When using this method the minimum expenditure that requires advertising is Kshs 4,000,000	When using this method the minimum expenditure that requires advertising is Kshs 2,000,000	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity	Inspection and acceptance committee

Restricted tender Under s. 73 (2)(a) the Act	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the procuring entity or the Accounting Officer	Tender Committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs.5,000,000 above this threshold use open tender	The minimum level of expenditure is Kshs.5,000,000 below this threshold use open tender	The minimum level of expenditure is Kshs.5,000,000 below this threshold use open tender	The Head of the procuring entity or the Head of the User Department	Tender Committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Restricted tender under s. 73 (2)(b)	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 1,000,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 2,000,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 1,000,000. Below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Restricted tender Under s. 73 (2)(c) of the Act	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 4,000,000. Above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee

	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 2,000,000 below this threshold use request for quotations	The minimum level of expenditure is Kshs 1,000,000 below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Request for proposals (s 76(1) of the Act)	This method is not applicable for goods	This method is not applicable for works	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
			There is no minimum expenditure for the use of this method	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Request for quotations(s 88 of the Act)	Maximum level of expenditure under this method is Kshs 1,000,000	Maximum level of expenditure under this method is Kshs 2,000,000	Maximum level of expenditure under this method is Kshs 1,000,000	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
				Head of the User Department initiates procurement whose expenditure is below Kshs. 500,000	Procurement committee awards for procurement whose expenditure is below Kshs.500,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.500,000	Inspection and acceptance committee
Direct procurement Under s. 74 (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	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee

				Head of the User Department initiates procurement whose expenditure is below Kshs. 500,000	Procurement committee awards for procurement whose expenditure is below Kshs.500,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.500,000	Inspection and acceptance committee
Low value procurement(s 90 of the Act)	Maximum level of expenditure under this method is Kshs10, 000 per procurement per item	Maximum level of expenditure under this method is Kshs10, 000 per procurement per item	Maximum level of expenditure under this method is Kshs10, 000 per procurement per item	Head of the User Department	User	The Head of the Procurement Unit	Stores officer
	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	Head of the User Department	User	The Head of the Procurement Unit	Stores officer

THRESHOLDS MATRIX FOR CLASS C PROCURING ENTITIES

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 26(3)(c) 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
International Open tender(s 71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring Entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee
	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	There is no minimum level of expenditure under this method	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity or the Accounting Officer	Inspection and acceptance committee
National Open tender (S54 (2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The head of the procuring entity or the Accounting Officer	Tender committee	The Accounting Officer	Inspection and acceptance committee
	When using this method the minimum expenditure that requires advertising is Kshs 3,000,000	When using this method the minimum expenditure that requires advertising is Kshs 3,000,000	When using this method the minimum expenditure that requires advertising is Kshs 1,000,000	The head of the procuring entity or the head of the user department	Tender committee	The Head of the Procuring Entity	Inspection and acceptance committee

Restricted tender Under 73 (2)(a) the Act	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 500,000. Below this threshold request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold request for quotations	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Restricted tender Under 73 (2)(b) of the Act	The Maximum level of expenditure shall be Kshs 3,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 3,000,000. Above this threshold use open tender	The Maximum level of expenditure shall be Kshs 3,000,000. Above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	

THRESHOLDS MATRIX FOR CLASS C PROCURING ENTITIES

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 26(3)(c) 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
Restricted tender Under 73 (2)(c) of the Act	The Maximum level of expenditure shall be Kshs 3,000,000 above this threshold use open tender	The Maximum level of expenditure shall be Kshs 3,000,000 above this threshold use open tender	The Maximum level of expenditure shall be Kshs 1,000,000 above this threshold use open tender	The Head of the Procuring entity or the Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	The minimum level of expenditure is Kshs 500,000. Below this threshold use request for quotations	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
Request for proposals (s. 76(1) of the Act)	This method is not applicable for goods	This method is not applicable for works	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
			There is no minimum expenditure for the use of this method	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee

Request for quotations(s 88 of the Act)	Maximum level of expenditure under this method is Kshs 500,000	Maximum level of expenditure under this method is Kshs 500,000	Maximum level of expenditure under this method is Kshs 500,000	Head of the User Department	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
				Head of the User Department initiates procurement whose expenditure is below Kshs. 100,000	Procurement committee awards for procurement whose expenditure is below Kshs.100,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.100,000	Inspection and acceptance committee
Direct procurement Under 74 (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	The Head of the Procuring entity or the Accounting Officer	Tender committee	The Head of the Procuring entity or the Accounting Officer	Inspection and acceptance committee
				Head of the User Department initiates procurement whose expenditure is below Kshs. 200,000	Procurement committee awards for procurement whose expenditure is below Kshs 200,000	Head of the User Department signs contract for procurement whose expenditure is below Kshs.200,000	Inspection and acceptance committee
Low value procurement(s 90 of the Act)	Maximum level of expenditure under this method is Kshs 5,000 per procurement per item	Maximum level of expenditure under this method is Kshs 5,000 per procurement per item	Maximum level of expenditure under this method is Kshs 5,000 per procurement per item	Head of the User Department	User	The Head of the Procurement Unit	Stores officer
	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	Head of the User Department	User	The Head of the Procurement Unit	Stores officer

SECOND SCHEDULE**COMPOSITION OF TENDER COMMITTEES (s.26 (4))****(1) Ministerial Tender Committee or Self Accounting Unit Tender Committee****Membership Structure:**

Chairman	An officer appointed in writing by the accounting officer
Deputy Chairman	Chief Finance Officer or, if there is no such officer, the Head of the Finance Unit appointed in writing by the accounting officer.
Other members	Five heads of departments appointed in writing by the accounting officer
Secretary	The officer heading the Procurement Unit of the Ministry or the Self Accounting Unit

2. District Tender Committee**Membership Structure:**

Chairman	A head of department appointed in writing by the District Commissioner.
Deputy Chairman	District Development Officer appointed in writing by the District Commissioner
Other members	At least five heads of departments appointed in writing by the District Commissioner from among the following Ministries- <ul style="list-style-type: none"> (a) Agriculture; (b) Health; (c) Environment and Natural Resources; (d) Roads and Public Works; (e) Education. (f) Water and Irrigation and; (g) Livestock and Fisheries Department and; (h) The District Accountant
Secretary	The District Procurement Officer

3. State Corporations Tender Committee**Membership Structure:**

Chairman	A head of department appointed in writing by the Chief Executive Officer.
Deputy Chairman	The head of Finance Department appointed in writing by Chief Executive Officer

Other members	At least five departmental heads including the Company Secretary or officers in equivalent positions appointed in writing by the Chief Executive Officer
Secretary	The officer heading the procurement unit of the corporation

4. Public Universities Tender Committee

Membership Structure

Chairman	A head of department appointed in writing by the Vice Chancellor.
Deputy Chairman	The head of Finance Department appointed in writing by the Vice Chancellor
Other members	The Head of Administration, The Head of Academic Affairs, A Principal of a College appointed by the Vice Chancellor, Three Heads of a Faculty or School appointed in writing by the Vice Chancellor.
Secretary	The officer heading the procurement unit of the University

5. Local Authorities Tender Committee

Membership Structure:

Chairman	For City Councils (Nairobi, Mombasa, Kisumu) – A head of department appointed in writing by the Clerk to the council. For Urban, County and Town Councils – the Clerk
Deputy Chairman	A head of department appointed in writing by the Clerk
Members	The Finance officer/Treasurer Seven heads of departments, appointed by the Clerk of the local authority.
Secretary	The officer heading the procurement unit of the local authority

6. Colleges Tender Committee

Membership Structure:

Chairman	Appointed in writing by the principal.
Deputy Chairman	The officer in charge of finance appointed in writing by the

	Principal.
Other members	At least six heads of departments Matron/Officer in charge of boarding facilities appointed in writing by the Principal.
Secretary	The officer heading the procurement unit of the college.

7. Schools Tender Committee

Membership Structure:

Chairman	The Deputy Principal or Deputy Headmaster appointed in writing by the Principal/ Headmaster
Deputy Chairman	The officer in charge of finance or equivalent appointed by the Principal/ Headmaster
Other members	At least six heads of departments or members of the teaching staff including the Matron or officer-in-charge of the boarding facilities where applicable appointed by the Principal or Headmaster,
Secretary	The officer heading the procurement unit.

8. Co-operative Societies Tender Committee

Membership Structure:

Chairman	The Deputy Chief Executive Officer appointed in writing by the Chief Executive Officer.
Deputy Chairman	The person in charge of finance appointed in writing by the Chief Executive Officer.
Other members	At least six heads of departments appointed by the Chief Executive Officer.
Secretary	The officer heading the procurement unit of the co-operative society

9. Voluntary Organizations/ Institutions Tender Committee

Membership Structure:

Chairman	The Deputy Chief Executive appointed in writing by the Chief Executive Officer.
Deputy Chairman	The person in charge of finance appointed in writing by the Chief Executive Officer.
Other members	At least five members of the governing body or committee of the Institution appointed by the Chief Executive Officer.
Secretary	The officer heading the procurement unit of the organization.

10. Central Bank of Kenya Tender Committee**Membership Structure:**

Chairman	The Deputy Governor appointed in writing by the Governor
Deputy Chairman	The person in charge of finance appointed in writing by the Governor
Other members	At least six heads of department appointed in writing by the Governor appointed in writing by the Governor
Secretary	The officer heading the procurement unit

11. Commissions (Permanent) Tender Committees**Membership Structure**

Chairman	A person appointed in writing by the accounting officer.
Deputy Chairman	The person in charge finance appointed in writing by the accounting officer
Other members	At least six heads of departments or equivalent positions appointed in writing by the accounting officer.
Secretary	The officer heading the procurement unit

12. Semi Autonomous Government Agencies**Membership Structure:**

Chairman	A person appointed in writing by the accounting officer.
Deputy Chairman	The person in charge of finance appointed in writing by the accounting officer
Other members	At least six heads of departments or equivalent positions appointed in writing by the accounting officer
Secretary	The officer heading the procurement unit.

13. Hospital Tender Committee**Membership Structure**

Chairman	The officer appointed in writing by the Medical Superintendent
Deputy Chairman	The Nursing Officer in charge

Other members	Hospital Administrator Public Health Officer Accountant in charge Catering Officer in charge Maintenance Officer in charge Pharmacist in charge Medical Clinician
Secretary	The officer heading the procurement unit of the hospital

14. Health Facility Tender Committee

Membership Structure

Chairman	The officer in charge of the health centre/ dispensary
Deputy Chairman	The Nursing Officer/Clinical Officer in charge as appropriate
Other members	Public Health Technician Laboratory Technician Two members of the facility management committee (other than the chairman) appointed in writing by the officer in charge of the facility
Secretary	The officer heading the procurement unit

15. Special Security Tender Committee

Membership Structure

Membership	The membership of each special security tender committee may be determined by the Director General in consultation with the respective security organ
------------	---

16. Tender committee for the Constituency Development Fund

(a) District Projects Tender Committee

Chairman:	Elected from among members
Members	District Commissioner of the District The chairpersons of the Constituencies Development Committee District Accountant of the District

Secretary District Development Officer of the district

(a) Constituency Development Fund Tender Committee

Membership structure

Chairman	Elected from among the members
Members	The district officer in the constituency Treasurer in the Constituency Development Committee Four members elected from the Constituency Development Committee
Secretary	The Constituencies Development Committee secretary shall be the secretary to the tender secretary

THIRD SCHEDULE**STANDARD TENDER DOCUMENTS**

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 consultants)
7. Standard tender document for procurement of general services
8. Request for quotation form.
9. Procurement requisition form.
10. Local procurement order.
11. Local service order.
12. Order amendment form.
13. Tender register.
14. Register of samples.
15. Confidential business questionnaire
16. Application for adjudication of tenders/quotation
17. Board of survey form
18. Disposal certificate
19. Destruction certificate
20. Contract agreement for goods
21. Counter requisition and issue voucher
22. Counter receipt voucher
23. Bin Card, stock verification, issue/receipt
24. Contract agreement for goods (term contracts)
25. Contract agreement for consultancy services
26. Contract agreement for consultancy services (time based)
27. Contract agreement for general services
28. Contract agreement for insurance services

29. Standard tender document for disposal
30. Standard tender document for concessioning
31. Standard tender document for insurance services.
32. Standard tender document for information technology
33. Standard tender document for maintenance services.
34. Standard tender document for design and build (turnkey)
35. Standard tender document for supply and Installation
36. Standard tender document for specialized goods and services
37. Standard tender documents for pre-qualification
38. Standard tender documents for preference and reservations
39. Standard tender documents for management contracts

FOURTH SCHEDULE
PART I
FORMS FOR REVIEWS

FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity or Director General*)

Request for review of the decision of the..... (*Name of the Procuring Entity or Director General*) ofdated the...day of20.....in the matter of Tender No.....of20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....Fax 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 of20.....

SIGNED

Board Secretary

(r.73(1))

FORM RB 2

**REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

REQUEST NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity or Director
Genera*)

- TO: 1) (*Procuring Entity or Director Genera*)l
- 2)(Applicant)

HEARING NOTICE

Whereasthe Applicant herein has instituted a complaint against(*Procuring
Entity or Director Genera*) 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 of20.....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

PART II**FEES FOR REVIEWS**

1. Administrative fee Kshs 2,000

2. Upon filing a request for review, the fees payable shall be as follows-

<i>Amount of Tender</i>	<i>Fees</i>
<i>A – Tenders of Ascertainable Value</i>	
(a) Does not exceed Kshs 2,000,000	1% subject to a minimum of Kshs. 10,000
(b) Exceeds Kshs. 2,000,000 but not over Kshs. 50,000,000	The fees for Kshs. 2,000,000 plus an additional fee of 0.1% on the amount above Kshs. 2,000,000
(c) Exceeds Kshs. 50,000,000	The fees for Kshs. 50,000,000 plus an additional fee of 0.025% on the amount above Kshs.50,000,000 subject to a maximum fee of Kshs 80,000
<i>B – Tenders of Unascertainable Value</i>	
<i>(d) Pre-qualification</i>	
Simple tenders	Kshs 10,000
Medium tenders	Kshs 20,000
Complex tenders	Kshs 40,000
<i>(e) “Unquantified Tenders ”</i>	
Simple tenders	Kshs 10,000
Medium tenders	Kshs 20,000
Complex tenders	Kshs 40,000
<i>(f) Any other Tenders</i>	Fees as determined by the Secretary subject to a minimum of Kshs. 10,000 and a maximum of Kshs. 20,000
3. Upon grant of an adjournment to a party by the Board	Kshs.5, 000
4. Fee for filing preliminary objection	Kshs.5, 000
5. Fee to accompany the review of Director General’s order (s.106 (3))	Kshs.20, 000/=
6. Filing fees on each request for a	Kshs.20, 000

review on debarment order (s. 117(3))	
7. The Secretary may demand additional fee if the fee paid at the time of filing is less than that ascertained to be chargeable.	

Dated on the 30th November, 2006.

AMOS KIMUNYA,
Minister for Finance.