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FINAL REPORT

**CONSULTANCY TO ASSIST IN THE DESIGN OF MANAGEMENT
SYSTEMS FOR THE GOVERNMENT OF KENYA PUBLIC
PROCUREMENT OVERSIGHT AUTHORITY (PPOA)**

VOLUME 2

FINANCIAL AND ADMINISTRATIVE VOLUME

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PROCUREMENT OVERSIGHT AUTHORITY (PPOA)**

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SECTION 1

Financial and Accounting Regulations and Procedures

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

The Public Procurement and Disposal Act 2005 (Act) establishes the Public Procurement Oversight Authority as a body corporate. It also establishes the following bodies:

- The Public Procurement Oversight Advisory Board
- The Public Procurement Administrative Review Board

In accordance with the Act, the Advisory Board shall have nine members nominated by the named professional bodies and the Director-General as the Secretary to the Board.

Core Functions

These are as delineated in the Act, Section 9.

Funds of the Authority

The following are the main sources of funds for the Authority:

- money appropriated by Parliament for the purpose of running the Authority
- loans or grants received by the Authority for its Activities
- revenue or fees collected for services rendered by the Authority
- capacity building levy

RESPONSIBILITIES OF THE DIRECTOR-GENERAL

The Director-General as the Chief Executive is responsible for sound financial management of the Authority. As the Authority is established under a statute, most funds will be provided by the Exchequer and shall be applied and accounted for in accordance with provisions for the following:

- The Exchequer and Audit Act
- The Government Financial Management Act, 2004
- The Public Audit Act, 2003
- The Public Procurement and Disposal Act, 2005
- The Public Procurement and Disposal Regulations, 2006
- These regulations and procedures
- Any other directives that may be issued from time to time

PREPARATION OF ESTIMATES

The Director-General shall, at least three months before the commencement of each financial year, prepare estimates of the revenue and expenditures of the Authority for that year and submit

to the Advisory Board for approval. The estimates shall make provisions for all expenditures of the Authority for the financial year, and in particular, shall provide for expenditure for:

- the payment of salaries, allowance, and other charges
- the proper maintenance of building and grounds of the Authority
- the maintenance, repair and replacement of equipment and other property of the Authority
- the payment of allowances and expenses of the Advisory Board
- the payment of allowances and expenses of the Administrative Review Board
- the payment of hiring and renting of premises for the Authority
- the payment of pensions, gratuities, and other charges in respect of former staff of the Authority

In addition, the Director-General will be responsible for the following:

- signing contract documents on behalf of the Authority
- proper conduct of financial transactions
- preparation of realistic budgets that confirm to grants
- ensuring that funds received by the Authority are strictly applied to purposes for which intended
- ensuring that all payments are in compliance with specific statutory authorities and other regulations
- ensuring policies are carried out efficiently and waste of public funds is prevented
- ensuring that in all transactions the Authority gets value for money
- ensuring adequate arrangements for custody and safety of Authority's assets and that proper systems are followed in acquisition and disposal of the assets
- ensuring that proper financial and accounting records and filing systems are maintained and safely kept
- ensuring that procurement plans are approved and reviewed as necessary
- ensuring that all contracts are complied with
- ensuring that all necessary committees are appointed and functioning, for example:
 - Finance and Budget Committee
 - Tender Committee
 - Audit Committee
 - Procurement Committee(s)

APPROVAL OF EXPENDITURE — CEILINGS

All procurement expenditures shall be affected as provided in the procurement matrix in the Public Procurement and Disposal Regulations, 2006, Schedule I. All other expenditures will be as per directives issued from time to time by the Director-General.

ANNUAL BUDGET

This is the primary source of reference for all expenditure of the Authority. It is the only acceptable method for allocating available resources to implement the Authority's policies and programs. The budgetary process will perform the following essential functions:

Control

As a control tool, the budget shall establish key points to assist the management in ensuring operations of the Authority are within legal and policy limits.

Management

As management decision-making process, the budget will assist in achieving the Authority's set targets, with the help of other inputs, including staff and equipment.

Planning

The budget will assist the Authority in planning revenue, expenditures, and future and present development requirements.

Procurement Plans

There shall be harmony in preparation of the annual budget and procurement plans. These must be closely linked for proper control.

FINANCIAL COMMITTEE

Within the Finance and Administration Division of the Authority, the following committees shall be established:

- Finance and Budget Committee
- Tender Committee
- Audit Committee
- Procurement Committee(s)

Finance and Budget Committee

This committee will be responsible for consolidation, compilation, amendment, and improvement of all submissions and preparation of work plans and budgets, consisting of the total of all division, unit, and section proposals. All divisions, units, and sections shall make their submissions to this committee not later than 31 March of each year. The Finance and Budget Committee shall collate the submissions to short- and long-term financial plans of the Authority. The results of the compiled requests shall be the estimates that should be approved by the Oversight Board and will form the budget, which shall be binding and shall be issued for implementation as approved.

Tender Committee

The membership and functions of the Tender Committee shall be as given in the Public Procurement and Disposal Regulations, 2006.

Audit Committee

This will be established as per guidelines in the general circular. Any officer so appointed shall be required to become conversant with the essential requirements in vote control procedures outlined below.

Procurement Committees

Any officer so appointed shall be required to become conversant with the essential requirements in vote control procedures outlined below. The committee shall be established as per the Public Procurement Regulations, 2006.

Vote Control

There shall be supplementary amendments as necessary and must be conveyed in writing. These major revisions of a current budget shall be considered in January each year. The funds allocated are to be used for the purposes for which they are budgeted and no payments are to be made beyond the budgeted figures. Authority to incur expenditures shall be limited to a few officers, who shall be appointed in writing by the Director-General.

Capital Development Plans

Capital development and other long-term plans shall be designed in such a manner that they shall have annual budgets. No supplementary components or new plans shall be accepted outside of the approved budget.

FINANCIAL ACCOUNTING

It is imperative that the financial management system in the Authority be strong enough to provide timely, reliable, and useful information for accountability and decision making. The objective in financial accounting will be to describe the main features of the accounting system of the Authority, which shall be based on the double-entry system of bookkeeping and accounts. The Authority's accounting structure and controls must be seen as an integral component in the overall management system, to ensure provision of a single common database for financial information. The Authority shall use automated accounting systems to prepare all accounting and related information.

This guideline will therefore establish how operations transactions will be recorded to achieve uniformity and comparability of accounting data over time. The required controls will be affected in the following areas.

Voucher Processing

The processing of payment vouchers will be done in accordance with standard processing routines. These routines are meant to document and enforce strict control over the flow of vouchers to avoid processing (payment of) forged or invalid vouchers. All payment vouchers shall be documented in registers and signed for by specifically identified officers at various sections/stages.

Flow of Vouchers

All payment vouchers shall be prepared in the Accounts Division. All demands for payment of goods and services that have been supplied or rendered to the Authority in accordance with valid Contracts shall be channeled to the division, with accompanying or supporting documents. These documents will have been confirmed by the receiving departmental heads or authority to incur expenditure (AIE) holder.

Voucher Preparation

At the beginning of each year, the Director, Finance and Administration shall open a vote book in which the above information shall be posted. In this book, additional information will focus on:

- vote allocation will determine the amount of funds available for spending
- uncommitted balance
- total payments to date commitments or liabilities

Voucher Examination

The prepared payment vouchers shall be received in this section, where they will be scrutinized to ascertain the following:

- All procurement procedures have been complied with the authority governing the payment.
- Existence of budget allocation on the item and whether there are sufficient balances.
- That the payments are duly supported by appropriate certificates, certified invoices, local purchase orders, local service orders, imprest warrants or proof of receipt of goods or services.
- All payment procedures have been complied with.
- When the examination is completed, the examination official has signed the appropriate certificate and released payments to the vote book section.

Vote Book Section

The payment voucher shall be entered in the vote book and appropriate certificate signed. The vote book official shall at all times ensure that the budgeted allocations are not exceeded and also indicate on the payment vouchers the balance remaining after each payment.

A.I.E. Holder

From the vote book section, the completed payment vouchers shall be forwarded to the AIE holder, who will sign the certificate to indicate that the expenditure detailed above has been incurred for the authorized purpose and should be charged to the items as appropriate.

Accountant-in-Charge

After the AIE holder has signed the payment voucher, the head of the Accounts Department or his/her delegated officer will scrutinize the payment voucher to ascertain that:

- the rates charged are according to the regulations and contracts
- they are fair and reasonable
- the authority on which the expenditure was incurred

Imprest

If all the above conditions are satisfied, the payment voucher will be authorized for payment and forwarded to the cash office where the payment will be done.

Cash advances to the officers who will be required to make payments that cannot conveniently be made through the cash office shall be controlled through issuance of office imprest. These will normally be safari imprests and shall only be used for the purpose for which they are specified.

The imprests shall be of temporary nature to be provided to officers to meet travel, accommodation, and other incidental expenses. These imprests shall be surrendered after the return of the officers from the field to station and in any case not later than 48 hours. Failure to surrender the imprest on the due date shall result in disciplinary action against the defaulter.

Issuance

To control expenditure, no officer shall be granted a second imprest until the first one has been accounted for. The processing of imprest warrants shall follow the same procedures as other payments. No warrants will be processed unless there are:

- adequate funds to meet the intended expenditure
- the safari notice has been approved by the department head
- the accountant in charge has confirmed that the officer does not have outstanding imprest
- all the particular details relating to the officer have been filled and confirmed by the division head
- the purpose for safari is valid and strictly official

Surrender

Imprest shall be supported by the following documents when surrendered:

- Work tickets, where transport has been provided.
- Air tickets, where transport has been provided.
- Air tickets, where the officer has been authorized to use air transport.
- No hotel bills or receipts to be accepted in support of any claim, as the officers' rates will be predetermined according to the Authority's approved per diem rates.
- All documents attached to the surrender voucher to be countersigned by the division head.

All outstanding imprest returns shall be prepared and forwarded to the head of the Accounts Department by the 5th of every month for remedial action.

Other Imprest

Imprest for office use shall be issued in form of standing imprest to be accounted for by the officer to whom it is issued. At all times, the standing imprest shall be equal to the fixed level, any difference being accounted for in the form of receipts, payment vouchers, and cash balances. These shall be subject to periodic inspection.

BANKING

Operation of Bank Accounts

The system will be used in the maintenance and control of bank accounts and the withdrawal and banking procedures to be followed by the Authority.

Opening of bank accounts shall be approved by the Director-General in consultation with Treasury. All receipts or monies to the Authority shall be banked promptly and shall be supported by stamped pay-in-slips for the day.

Payment vouchers and other supporting documents shall be made available to the signatories for verification prior to signing the checks or payment orders. Bank signatories shall initial and date all supporting documents/vouchers upon signing of the checks/payment order as proof that the vouchers have been paid.

Payments for goods and services shall be effected by means of checks.

Signing and countersigning blank checks is strictly prohibited.

All requests for new manual checkbooks shall be approved in writing by the authorized bank signatories at the request of the Director, Finance and Administration. All manual checkbooks and payment order books shall be stored securely by the Director, Finance and Administration to guard against misuse. Loss of any checkbook/payment order books shall be immediately brought to the attention of the Director-General and subsequently reported to the bank for cancellation. The matter should also be reported to the police as soon as is practicable.

Mode of Payment

Most payments, except for a few personal payments, shall be made by crossed checks. Cash payments will be limited to 20,000 Kenyan shillings. All payments to merchants shall be by crossed checks.

Check Signatories

It will be mandatory for every payment and checks to have two signatories, one of which shall be from the head of the Accounts Department. To avoid delays in check-signing, at least four check signatories shall be appointed by the Director-General.

Bank Reconciliation

A bank reconciliation statement for each bank account shall be prepared by the accountant at the end of each month and given to the Director, Finance and Administration for review. The reconciliation shall be signed and dated by the officer who prepares and the supervisor as evidence of such checks.

All known direct bank debits and credits shall be entered in the cashbook. All unknown direct bank debits and credits shall be noted and brought to the attention of the Director-General, who will write to the bank for follow up.

All dishonored checks shall be reported to the Director-General and immediate action taken to ensure that the drawer rectifies the irregularities. Appropriate reversing entries shall be posted in the books with the approval of the Director, Finance and Administration.

Un-presented checks, which are six months old, shall be brought to the attention of the Director-General, who shall issue a stop payment order to the bank. Appropriate reverse entries shall be passed in the accounts. The payee shall be issued with a new check, should the old one be confirmed lost in transit or misplaced.

Un-presented checks shall be aged by month. Where such checks are outstanding for more than two months, the Director, Finance and Administration shall seek explanation from the payee.

On a monthly basis, reconciliation shall be done between the collection /payments and the main account. Outstanding payments shall be brought to the attention of the Director-General for action.

After the Director, Finance and Administration has reviewed the bank reconciliation and all adjusting entries, the Director-General shall counter-sign them as an indication of her/his approval.

PAYROLL ADMINISTRATION

The procedures in this section deal with the financial aspects of the payroll. The Authority shall use automated payroll administration systems to prepare all payroll and related information.

Preparation and Approval of Payroll

The payroll for the Authority shall be within the approved budget. All benefits and allowances paid with the salary shall be in conformity with local tax laws and other government regulations.

Staff salaries shall be paid one month in arrears, i.e. at the end of every month. The Director, Finance and Administration, assisted by the Human Resource Manager, shall be responsible for preparation of the payroll. S/he shall check:

- accuracy and completeness of the payroll
- existence of persons shown therein
- accuracy of changes communicated by the Director
- recoveries or dues to third parties are complete
- computation of statutory dues, including income taxes
- that the payroll is reconciled with accounting records

The Human Resource Manager shall complete preparation of the payroll by the 20th of every month to avoid delay in salary payment. The Director, Finance and Administration shall sign the payroll as evidence of checking before submitting it to the Director-General for review and approval. On approval by the Director-General, the accountant shall raise a payment voucher, write the bank payment order and return the documents back to the Director, Finance and Administration for checking. All salaries shall be paid through the bank, unless in special circumstances, when payment can be made in cash. Prior approval of the Director-General will be required in this case.

The bank payment order and the transfer letter are sent to the banks for payment by the 24th of the month. The Director, Finance and Administration shall ensure that there are sufficient funds in the bank account before the checks are deposited in the bank. Each employee shall be issued with a monthly pay slip showing basic salary and all other allowances due, deductions, and net pay. Remittance of the statutory deductions shall be made at the salary payment.

The accountant shall maintain a record (register) of staff advances showing the date of advance, monthly recoveries and the outstanding balances. This record will be reviewed and initialed by the Finance and Administration Division on a monthly basis and reconciled to the general ledger account for advances.

Staff leaving the Authority shall be removed from the payroll immediately. The Director-General shall communicate this to the Director, Finance and Administration, who shall ensure that all amounts due from the staff, including outstanding advances, are recovered before final dues are paid.

Posting of the Payroll

The paid documents shall be forwarded to the accountant for posting and filing. Posting shall be done using the payment voucher and the journal voucher, which must be approved by the

Director, Finance and Administration before entering data into the computer system. The payroll shall be posted from the payroll summary generally following standard journal entries:

DR	Payroll expense ac (gross salary)	XXXX.XX
CR	TPR payable	XXXX.XX
CR	CSR payable	XXXX.XX
CR	Staff advances ac (with amount recovered through payroll)	XXXX.XX
CR	Bank (with the net pay per bank payment order)	XXXX.XX
CR	Cash (if any amount is paid through petty cash)	XXXX.XX
	To record the payroll for the month of _____ per the attached payroll list	

All purchases of fixed assets shall be subject to the procurement procedures listed under Public Procurement and Disposal Regulations and Procedures for the Authority. The Finance and Administration Division shall maintain a fixed assets register, which will show the following:

- item description
- serial or model number
- manufacturer/seller
- date of acquisition
- physical location
- condition of item
- cost in Kenyan shillings
- internal reference number
- annual depreciation rate
- depreciation charge for the year
- accumulated depreciation
- net book value

All fixed assets shall be clearly marked and tagged with a label showing the identification and serial numbers, where applicable. The identification and serial numbers shall also be shown in the fixed assets register as the reference numbers.

DISPOSAL OF ASSETS

The disposal shall be executed through a Board of Survey appointed by the Director-General as per the Public Procurement and Disposal Act 2005. PPOA shall device and adopt a sound policy to ensure that a recognized evaluation system is used for all assets before disposal. The assets of the Authority shall be disposed of on the following conditions:

- evidence of impairment
- obsolescence
- depreciation
- management deems it prudent to dispose

Annual and periodic physical verifications shall be done and results compared to the fixed assets register. The accountant shall be responsible for updating the assets register, if there are any changes.

Insurance of Fixed Assets

The Authority shall take appropriate insurance policies to cover its assets. The Director-General shall be responsible for implementing required insurance policies with reputable insurance companies.

ACCOUNTING DOCUMENTS

Format of Accounting Documents

The accounting documents shall be pre-printed and serially numbered. The following accounting documents shall be maintained in required formats by the Authority:

- receipt books
- local service order
- local purchase order
- checkbooks
- bank payment order books
- petty cash vouchers
- check payment vouchers
- journal vouchers

Accounting Documents Register

A separate register referred to as an accounting documents register shall be maintained for each of the specified accounting documents. All documents received and those issued out shall be recorded in the register. Each issue shall be signed for by the drawer/recipient. At no time shall a person hold more than one Active accountable document of the same nature. The Director, Finance and Administration shall maintain these registers.

Custody for Accounting Documents

The documents shall be kept in the custody of the Director, Finance and Administration and access to these documents shall be restricted to the key holder or persons approved upon his/her authority. The Director, Finance and Administration shall examine these books on a regular basis to ensure the documents are correctly recorded in the required formats and properly stored.

Completed Accounting Documents

The users shall account for all completed accounting documents. The accounting documents register shall show when such books were completed. Completed books shall be kept for a period of seven years before they are destroyed to maintain an audit trail in the event of an audit or a special investigation. They shall be destroyed only on the order of the Director-General.

Loss of Accounting Documents

Loss of accounting documents or part thereof shall be immediately reported to the Director-General. The circumstances surrounding the loss shall be investigated. The Director-General shall decide whether to report the matter to the police, publish the loss in the press, or take any other action in the circumstances, in the best interest of the Authority.

CODING

Transactions shall be identified and classified by allocating account codes detailed in the Authority's chart of accounts before posting into the general ledger. The financial statements (balance sheet and income and expenditure account and the cash flow statement) shall be derived from the general ledger. Transactions shall be captured into the ledger on a timely basis so as to maintain balances, which accurately reflect the financial position of the Authority at any given time. The Authority shall use automated coding and accounting systems to prepare all accounting and related information.

ACCOUNTING RECORDS

The Commission shall maintain the following accounting records in the required automated formats or as required:

- general ledger
- cash books
- petty cash book
- contract register
- fixed assets register
- invoice register
- payroll
- accountable documents register

General Ledger

The Authority shall maintain a computerized general ledger with the accounts as shown in the chart of accounts. Sub-accounts shall be opened under the respective series as appropriate. The Accountant shall be responsible for maintaining the master chart of accounts and must be consulted before any changes are done on the chart of accounts.

Posting of Transactions and Review Procedures

The accountant shall capture all accounting data from original vouchers/primary records. Posting of transactions to the general ledger shall be done through the following accounting documents.

- receipt voucher - to record all receipts in cash or check
- payment voucher - to record all payments by checks or payment orders
- petty cash voucher - to record all cash payments

- journal voucher - to record transactions other than those specified above

All the above documents constitute accounting documents, which must be serially numbered and approved by the Director, Finance and Administration before posting. The reference number shall in all cases be quoted when posting into the general ledger accounts.

Any adjustments, editing or correction of errors after posting has been done shall be done through journal Voucher entries prepared by the Accountant and approved by the Director, Finance and Administration. The adjusting journal voucher must refer clearly to the original journal voucher entry.

A 'POSTED' stamp shall be affixed on all posted documents, which shall indicate the date of posting and initials of staff who posted them.

The Accountant shall print a transactions listing and check it against the original vouchers/primary records before updating the general ledger, i.e. before activating the 'valid' command. The Director, Finance and Administration shall approve and sign the listing as evidence of reviewing the postings for correctness and completeness.

REPORTING PROCEDURES

The reporting procedures are meant to improve the management information system by ensuring that the resulting information is relevant, reliable and timely.

The general ledger is the primary source of the Authority's financial information. To achieve any meaningful reporting levels, the general ledger should be updated regularly, preferably daily, with all financial transactions that have occurred. Further, it is imperative that the date inputted in the computer system should be subject to prior- and post-review procedures to minimize errors and omissions.

It shall be the responsibility of the Director, Finance and Administration to ensure that routine monthly and year-end financial reports are prepared and presented to the Director-General within the stipulated deadlines.

Monthly Procedures

The monthly procedures shall be completed within six working days after the end of the month.

Reconciliations:

- preparation of reconciliations for all the bank accounts
- preparation of the petty cash reconciliation and review of the petty cash book
- reconciliation/analysis of other general ledger accounts, including all the suspense accounts
- reconciliation of the general ledger contract accounts to the individual contract cards

Reports:

- preparation of the monthly financial statements (income and expenditure a/c and the balance sheet)
- preparation of the budget execution report (actual expenditure/income versus budgeted expenditure/income)
- any other report or management information the Director-General may request

Quarterly and Year-End Procedures

Quarterly procedures: to be completed within 20 working days after the end of the quarter.

Year-end procedures: to be completed within 30 working days after the end of the year.

- preparation of the quarterly/annual financial statements (income and expenditure a/c, balance sheet, cash flow statement)
- preparation of the budget execution report (actual expenditure/income versus budgeted expenditure/income)
- any other report or management information the Director-General may request

Annual Financial Report and Accounts

The Authority shall prepare an annual financial report for each year. The annual report shall be completed for submission to Advisory Board and the Minister of Finance by 31 October. It is the responsibility of the Director-General, in conjunction with all directors, to ensure the report is prepared by this date. The annual report shall be published in the gazette and in such other manner as the Authority may determine. The Authority shall deliberate and adopt the report before it is published.

Management Reports

The Accounts Division/Department shall prepare monthly reports of the financial status of the operations of the Authority. This is in addition to other reports that may be required by the Director General.

ACCOUNTABILITY

- Every officer involved in the processing of payment shall be held personally responsible for his/her part in the process and each officer has therefore to ascertain the validity of documents before him and their contents. Verbal instructions or confirmation will not be accepted where documentary evidence is required.
- The officer in-charge of accounts shall write detailed accounting principles and procedures that shall serve as a basis of the Authority's accounting process. These principles and procedures (or their revised version) shall be issued two months prior to the beginning of any financial year and shall be the basis of accounting for that year.

- When a member of staff or any party is dissatisfied with a decision by any officer or officers or committee s/he shall seek redress from the Director-General, whose decision shall be final.
- Whenever an issue of policy interpretation arises, the Director-General may convene an ad hoc policy committee to deliberate on the issue and make recommendations as to the best course of action that may be taken by the Director-General. The committee may seek the opinion of experts from within or without the Authority, but the ultimate decision shall lie with the Director-General.

AUDIT

The Annual Accounts of the Commission shall be prepared, audited, and reported upon in accordance with the Public Audit Act, 2003. Issues raised in the audit report shall be responded to and dispensed with immediately.

PERIODIC REVIEW

A mandatory review shall be carried out after one year of operation. Thereafter, at least once every two years, a review should be carried out, unless the Director-General instructs to have an earlier review. The review will be dictated by the exigencies of the changing circumstances in the internal and external environment of the Authority.

SECTION 2

Composition and Terms of Reference for Advisory Board Committees

PROPOSAL FOR PPOA'S BOARD COMMITTEES

Public Procurement Oversight Advisory Board

The Public Procurement Oversight Advisory Board is established as an unincorporated body under the Public Procurement and Disposal Act, 2005.

The composition of Advisory Board shall consist of nine members appointed by the Minister and approved by Parliament and the Director-General.

In accordance with the Public Procurement and Disposal Act, 2005 the Advisory Board has the following functions:

- advise the Authority generally on the exercise of its powers and the performance of its functions
- approve the estimates of the revenue and expenditures of the Authority
- recommend the appointment or termination of the Director-General in accordance with this Act
- perform such other functions and duties as are provided for under this Act

The Act stipulates that the business and affairs of the Advisory Board shall be conducted as follows:

Chairman and Vice-Chairman

The Advisory Board shall elect one of its nominated members to be the Chairman of the Advisory Board and another of its nominated members to be its Vice-Chairman. Subject to an earlier resignation or termination, Chairman and Vice-Chairman shall each hold office until his/her current term as a member of the Advisory Board expires.

Secretary

The Director-General shall be the Secretary at the Advisory Board meetings.

Meetings

- The Advisory Board shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
- Meetings shall be convened by the Chairman or in his/her absence by the Vice-Chairman.
- Unless three quarters of the members otherwise agree, at least 14 days' notice of a meeting shall be given to every member.

- A meeting shall be managed by the Chairman or in his/her absence by the Vice-Chairman or in both their absences, by a person elected by the Advisory Board at the meeting for that purpose.
- Five nominated members of the Advisory Board shall constitute a quorum for the transaction of any business of the Board.
- A decision of the Advisory Board shall be by a majority of the members present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote.
- Minutes of all meetings shall be kept and entered in books kept for that purpose.
- The Advisory Board may regulate its own procedure. The Advisory Board may invite any person to attend any of its meetings and to participate in its deliberations, but such an invitee shall not have a vote in any decision of the Board.
- In line with the functions of the Advisory Board, the Board may consider establishing sub-committees, descriptions of which follow.

Background and Rationale

The creation of Board committees has a legal and statutory background as indicated below.

The State Corporations Act Cap 446, Part III Section 9 states that:

“A state corporation may establish committees consisting of members of the Board to deal with such matters as the Board may specify and notice of establishment of any committee in accordance with this section whether established before or after the commencement of this Act shall be served on the State Corporations Advisory Committee.”

The State Corporations Advisory Committee is established under Cap 446 Section 26 that also outlines its functions. In addition, Legal Notice No. 17, Legislative Supplement No.5 (of 11 February 2000) Section 18 states that:

“The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties the Board is authorized by this order to exercise or perform.”

It is desirable that the Board considers establishment of the following Board committees:

- Audit Committee
- Finance and Administration Committee

AUDIT COMMITTEE

Roles and Responsibilities

Outline financial, audit, and security management policies and guidelines

Identify key corporate risks, establish and formulate plans for mitigating control measures, and review implementation of the measures

Membership

- Three Board members
- Director-General
- Director, Finance and Administration
- Audit Manager - Secretary

One of the Board members to be the Chairperson

FINANCE AND ADMINISTRATION COMMITTEE

Roles and Responsibilities

To review annual estimates of revenue and expenditures of the authority, and recommend to the Board for approval

To review and approve the human resource policies relating to recruitment, remuneration and benefits, performance management, training and development discipline

To review and approve information communication technology plans, projects and the financial requirements involved

Membership

- Three Board members
- Director-General
- Director, Finance and Administration - Secretary
- Director, Technical Services
- Finance Manager)
- HR Manager) by invitation depending on the agenda
- ICT Manager)

One of the Board members to be the Chairperson

ADMINISTRATIVE REVIEW BOARD

A “request for review” means a request for administrative review filed with the Review Board under Section 93, 106 or 117 of the Act. The detailed workings of the Review Board are summarized in the regulations and listed below:

Subject	Regulations
Appointment and Tenure of Members	<p>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</p> <p>Subject to Paragraph (1), a member shall hold and vacate office in accordance with the member's terms of appointment.</p> <p>Composition and membership. Pursuant to Section 25 of the Act, the Review Board shall comprise of six members appointed by the Minister from among persons nominated by the following organizations:</p> <ul style="list-style-type: none"> • Kenya Association of Manufacturers • Law Society of Kenya • The Architectural Association of Kenya • The Institution of Engineers of Kenya • Institute of Certified Public Accountants of Kenya • Kenya Institute of Supplies Management • Institute of Certified Public Secretaries of Kenya • Chartered Institute of Arbitrators • Kenya National Chamber of Commerce and Industry • Kenya Institute of Management • Computer Society of Kenya • Pharmaceutical Society of Kenya • Federation of Kenya Employers • Central Organization of Trade Unions <p>Three other members appointed by the Minister; and a Chairman appointed by the Minister from among the persons appointed under Paragraph (a);</p> <p>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.</p> <p>The Director-General shall appoint a Secretary to the Review Board from amongst the staff of the Authority.</p>
Quorum, Panels, and Proceedings	<p>The quorum of the Review Board shall be three members including the Chairman.</p> <p>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.</p> <p>In the absence of the Chairman, the Review Board may designate one member to Act as Chairman for the purpose of that meeting.</p> <p>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.</p>
Resignation from Office	<p>The Chairman or any other member of the Review Board may at any time, by notice to the Minister, resign from his/her office.</p>
Termination of Appointment	<p>The Minister may terminate a person's appointment as a member of the Review Board only if the person is unable to perform the functions of his/her office by reason of mental or physical infirmity; is adjudged bankrupt; 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</p>

	is absent from three consecutive meetings of the Review Board to which the member has been invited without reasonable excuse.
Allowances	The Authority shall pay the members of the Review Board such allowances as may be determined by the Advisory Board.

Procedures in Reviews

Subject	Regulations
Mode of Filing Requests	<p>A request for review under the Act shall be made in Form RB 1 set out in the Fourth Schedule to these regulations.</p> <p>The request referred to in Paragraph (1) shall: state the reasons for the complaint, including any alleged breach of the Act or these regulations; be accompanied by such statements as the applicant considers necessary in support of its request; be made within 14 days of the occurrence of the breach complained of where the request is made before the making of an award; or the notification under sections 67 or 83 of the Act; be submitted in 15 bound copies and a soft copy, pages of which shall be consecutively numbered; be accompanied by the fees set out in Part II of the Fourth Schedule, which shall not be refundable.</p> <p>Every request for review shall be filed with the Secretary of the Review Board upon payment of the requisite fees.</p> <p>The Secretary shall acknowledge filing of the request for review.</p>
Notification of Filing of Request	<p>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.</p> <p>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.</p> <p>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.</p> <p>The Secretary shall, within 14 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.</p>
Notice of Hearing	<p>The Secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.</p> <p>The notice referred to in Paragraph (1) shall be in the format shown in Form RB 2 set out in the Fourth Schedule of the Regulations.</p>
Representation by Person of Own Choice	<p>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/her own choice.</p>
Preliminary Objection	<p>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.</p> <p>The preliminary objection filed under Paragraph (1) shall set out the grounds upon which it is based and shall be served on the applicant at least one day before the hearing.</p> <p>The applicant may file a reply to the preliminary objection before the time of the hearing of the request.</p> <p>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.</p> <p>If the Review Board dismisses the preliminary objection, it shall soon thereafter proceed to hear the request for review as scheduled.</p> <p>The fees chargeable for filing a preliminary objection shall be as set out in the Part II of the</p>

Subject	Regulations
	Fourth Schedule.
Invitation to the Hearing	<p>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.</p> <p>The invitation under Paragraph (1) shall set out the time, date, and place where the hearing shall take place.</p> <p>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.</p>
Disclosure of Interest	Where any member of the Review Board has a direct or indirect interest in any matter before the Review Board, s/he shall declare his/her 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	If on the day set for the hearing of a review for which due notification has been given, 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; 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; 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	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	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	<p>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.</p> <p>When a request for review is withdrawn, the Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.</p>
Hearing of Request	<p>Hearing of review proceedings shall be open to all parties to the review.</p> <p>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 in an unreasonable manner.</p>
Experts	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.
Rules of Evidence	The Review Board shall not be bound to observe the rules of evidence in the hearing of a request under these regulations.
Proof of Documents	An order of the Review Board certified by the Chairman and the Secretary to be a true copy thereof shall in any legal proceedings be prima facie evidence of the issuance of that order.

ADVISORY BOARD

Subject	Regulations
Establishment of Advisory Board	The Public Procurement Oversight Advisory Board is hereby established as an unincorporated body.
Composition of Advisory Board.	<p>The Public Procurement Oversight Advisory Board shall consist of</p> <ul style="list-style-type: none"> • nine members appointed by the minister and approved by Parliament from persons nominated by the prescribed organizations • the Director-General <p>The First Schedule of the Act shall apply in respect of the members of the Advisory Board.</p>
Functions of Advisory Board	<p>The functions of the Advisory Board are:</p> <ul style="list-style-type: none"> • to advise the Authority generally on the exercise of its powers and the performance of its functions • to approve estimates of the revenue and expenditures of the Authority • to recommend the appointment or termination of the Director-General, in accordance with this Act • to perform such other functions and duties as are provided for under this Act
Procedures of Advisory Board	<p>The business and affairs of the Advisory Board shall be conducted in accordance with the Second Schedule.</p> <p>Except as provided in the Second Schedule, the Advisory Board may regulate its own procedure.</p> <p>Five nominated members of the Advisory Board shall constitute a quorum for the transaction of any business of the Board.</p> <p>The Advisory Board may invite any person to attend any of its meetings and to participate in its deliberations, but such an invitee shall not have a vote in any decision of the Board.</p>
Membership of the Advisory Board	<p>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 the following organizations</p> <ul style="list-style-type: none"> • Institute of Certified Public Accountants of Kenya • Institution of Engineers of Kenya • Kenya National Chamber of Commerce and Industry • Kenya Federation of Master Builders • Kenya Institute of Management • Kenya Association of Manufacturers • Law Society of Kenya • Institute of Certified Public Secretaries of Kenya • Marketing Society of Kenya • Architectural Association of Kenya • Computer Society of Kenya • Institute of Surveyors of Kenya • Federation of Kenya Employers • Central Organization of Trade Unions <p>Each organization referred to in Sub-regulation (1) shall submit to the Minister the curriculum vitae of two members being nominated, of whom one shall be a woman.</p>

Provisions Relating to Members of the Advisory Board

Subject	Regulation
Appointment of Nominated Members	The nomination and appointment of the members of the Advisory Board under Section 22(1) (a) of the Act shall be in accordance with the prescribed procedures and requirements.
Term of Members	The term of office of each nominated member of the Advisory Board shall be three years. A person may not serve more than two terms as a nominated member of the Advisory Board.
Resignation	A nominated member of the Advisory Board may resign by a written resignation addressed to the Minister. A resignation is effective upon being received by the Minister or by a person authorized by the Minister to receive it.
Termination of Appointment	The Minister, on the recommendation of the Advisory Board, may terminate a person's appointment as a member of the Advisory Board only if the person: <ul style="list-style-type: none"> • is unable to perform the functions of his/her office by reason of a mental or physical infirmity • is adjudged bankrupt • is convicted of an offence under the Penal Code or this Act or an offence involving dishonesty • is absent from three consecutive meetings of the Advisory Board without reasonable excuse
Disclosure of Personal Interest	A member of the Advisory Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Advisory Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his/her knowledge, disclose the nature of his/her interest to the Advisory Board. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Advisory Board and the member shall not be present while that matter is being dealt with by the Advisory Board and shall not take part in any deliberations or vote relating to the matter.
Allowances	The Authority shall pay the members of the Advisory Board such allowances and expenses as are determined by the Minister for Finance.

Provisions Relating to the Conduct of Business and Affairs of the Advisory Board

Subject	Regulation
Meetings	The Advisory Board shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting. Meetings shall be convened by the Chairman, or in his/her absence, by the Vice-Chairman. Unless three quarters of the members otherwise agree, at least 14 days' notice of a meeting shall be given to every member. A meeting shall be presided over by the Chairman, or in his/her absence, by the Vice-Chairman; or in both their absences, by a person elected by the Advisory Board at the meeting for that purpose.
Voting	A decision of the Advisory Board shall be by a majority of the members present and voting and, in the case of an equal number of votes, the person presiding at the meeting shall have a second or casting vote.
Chairman and Vice-Chairman	The Advisory Board shall elect one of its nominated members to be the Chairman of the Advisory Board and another of its nominated members to be its Vice-Chairman. Subject to an earlier resignation or termination, the Chairman and Vice-Chairman shall each hold office until his/her current term as a member of the Advisory Board expires.
Secretary	The Director-General shall be the Secretary of the Advisory Board.
Minutes	Minutes of all meetings shall be kept and entered in books kept for that purpose.

SECTION 3

Composition and Terms of Reference for Management Committees in the PPOA

PREAMBLE

The Public Procurement and Disposal Act, 2005 (act) provides the Director-General with the powers necessary to properly manage the Authority in order to achieve required outcomes. The required outcomes include: delivery on core mandates effective resource management, effective delivery of services and ensuring compliance with the Act, and keeping the Advisory Board and the procurement units informed as required by the Act.

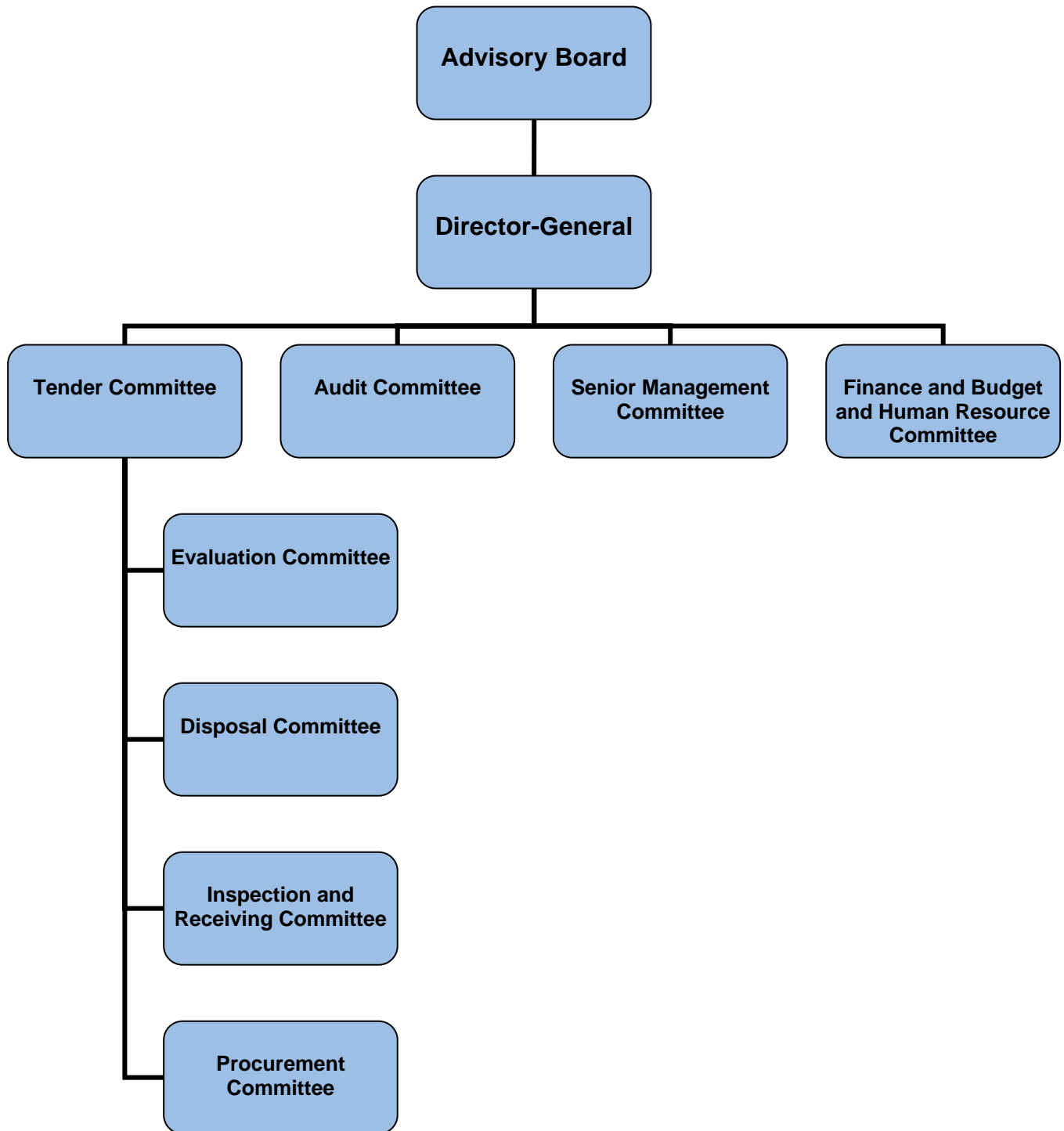
For the Authority to be effective efficient in fulfilling its broad mandates, it is necessary to set up a management structure through committees which will ensure that the Authority operates collaborating and cohesively and plans for the holistic and coordinated functioning at all levels.

The following terms of reference and composition are proposed for the various operational committees and Boards as indicated hereunder:

- Senior Management Committee
- Finance and Budget Committee
- Human Resource Management Committee
- Audit Committee
- Tender Committee
- Administrative Review Board
- Advisory Board

These committees are intended to enhance efficiency and accountability, but without introducing unnecessary bureaucracy in the management of the Authority.

Organization Chart Showing Management Committees



SENIOR MANAGEMENT COMMITTEE

Purpose	<p>The Senior Management Committee is a standing committee of the Authority. It is the supreme policy and administrative organ of the Authority. The main purpose of the committee is to provide strategic leadership and direction for the Authority and facilitate communication and resolution of business issues with the Advisory Board.</p>
Membership and Organization	<p>Chairman</p> <p>Director-General</p> <p>Members</p> <p>Director, Technical Services Director, Finance and Administration Manager, Review Board (Secretariat) Manager, Compliance and Policy Manager, Capacity Building Manager, Monitoring and Evaluation Manager, Finance Manager, Human Resources Manager, ICT Manager, Internal Auditor Secretary – Public Relations Officer DG Office</p>
Terms of Reference	<ul style="list-style-type: none"> • formulate, and implement the Authority's management and administrative policies in accordance with The Public Procurement and Disposal Act, 2005 • ensure appropriate and timely quarterly and annual reports for their divisions are prepared and presented to the committee or the Advisory Board (see below) • monitor implementation of the corporate strategy through operational and budget mechanisms, and review and modify the strategy as necessary in the light of feedback from operational plan • oversee that the Authority's resources are used with appropriate measure and economy to set an example to all procurement entities • facilitate Advisory Board meetings as needed <p>Note:</p> <p>The Committee shall be responsible for preparing and assisting the Director-General in submitting each report to the Advisory Board and to the Minister:</p> <ul style="list-style-type: none"> • in the case of a quarterly report, within one month after the end of the quarter to which the report relates • in the case of an annual report, within four months after the end of the year to which the report relates <p>Each report shall contain, in respect of the period to which it relates:</p> <ul style="list-style-type: none"> • a description of the Activities of the Authority • a report on the overall functioning of the public procurement system • a list of each procurement for which a procurement procedure was specially permitted under Section 92 of the Act • a report on the extent of preferential bias to local participation pursuant to Section 39 of the Act <p>Each annual report shall include the financial, management, and operational statements of the Authority for the year to which the report relates.</p> <p>The Minister shall, within 30 days after receiving a report, transmit it to the National Assembly.</p>
Meetings	<p>The Senior Management Committee shall meet at least two times a month. However, as may</p>

	<p>be deemed necessary:</p> <ul style="list-style-type: none"> • A minimum of three members, including the Chairman, present shall form a quorum. • The Committee may request any member of the staff of the Authority to attend meeting(s) to assist with its discussions on any particular matter.
Access	The Senior Management/Board committee members or their representatives shall have unrestricted and confidential access to the chair of the committee at all times.
Reporting	<p>Reports or minutes shall be made available to the oversight Board, clearly indicating its deliberations, conclusions and recommended plan of action.</p> <p>A register shall be maintained by the Secretary on all the resolutions deliberated upon by the committee for follow-up and evaluations of action taken.</p>
Information Requirements	<p>The Senior Management Committee, through the Secretary, shall be provided by the members with:</p> <ul style="list-style-type: none"> • a progress report from the members for summarizing and inclusion in the committee reports, records, and minutes • work performed compared with work planned • key issues emerging from work done • status of stakeholders response • any other relevant information and subject in accordance with functions of divisions and departments of the PPOA

THE FINANCE AND BUDGET HUMAN RESOURCES COMMITTEE

Purpose	The Finance and Budget and Human Resources Committee is a standing committee of the Authority and reports to the Director-General. The committee will be required to deliberate on all financial and budgetary issues of the PPOA and advise on recruitment, placement, training, promotion, welfare, and staff disciplinary matters in accordance with the applicable laws and regulations and the human resource manual.
Membership and Organization	<p>Chairman</p> <p>Director, Finance and Administration</p> <p>Members</p> <p>Director, Technical Services Manager, Human Resources Manager ICT Manager, Internal Auditor Secretary – Manager, Finance and Manager, Human Resources</p>
Terms of Reference	<ul style="list-style-type: none"> • formulate and implement the Authority's Finance and Budget in accordance with applicable procedures, government regulations, and the Public Procurement and Disposal Act, 2005 • ensure appropriate and timely financial quarterly and annual reports for the divisions are prepared and presented to the committee or the DG • promulgate policies and programs for revenue collection for PPOA • recommend to the Director-General methods of revenue collection for self sustenance of the PPOA • recommend operational budgets for all divisions of PPOA to the Director-General for approval • to consider, recommend or advise on proposals for write-offs/write-back of significant losses and/or accounting differences

	<ul style="list-style-type: none"> • to assist the Director-General in overseeing the implementation of the Authority financial, accounting and regulations and procedures • Initiating, developing, carrying out and monitoring measures designed to ensure high standards of equity and fairness in recruitment, promotion and discipline • to assist in the development and review of recruitment, training, promotion and disciplinary practices, procedures, and policies • to assist in the enforcement of the Authority's staff rules and regulations and the Code of Conduct and Ethics and make appropriate recommendations for review • to advise the Authority on all matters of staff training and development policies and to recommend to the Director-General any action necessary to ensure the effective and efficient delivery of training and development services • as needs are identified, support and foster staff training and development in consultation with the Director-General opportunities available • seek, allocate, and distribute staff training and development funds according to approved guidelines • review and approve staff requests for funding for self-selected training and development opportunities
Meetings	<ul style="list-style-type: none"> • The Committee shall meet at least two times in a month. However, the Chairman may convene additional meetings as may be deemed necessary. • A minimum of three members, including the Chairman of the committee present shall form a quorum. • The Finance and Budget Committee may request/co-opt any member of staff of PPOA to attend meeting(s) to assist it with its discussions on any particular matter.
Access	<p>The members of the Committee or their appointed representatives shall have unrestricted and confidential access to the Chair of the Committee at all times.</p>
Reporting	<ul style="list-style-type: none"> • Reports or minutes shall be made available to the Director-General, clearly indicating its deliberations, conclusions and recommended plan of action. • A register shall be maintained by the Secretary on all findings and recommendations deliberated upon by the committee for follow up and evaluation of action taken.
Information Requirements	<p>The Finance and Budget Committee, through the Secretary, shall be provided for each meeting with a progress report from all departments summarizing:</p> <ul style="list-style-type: none"> • Work performed compared with work planned • Key issues emerging from work done • Status of stakeholders response to findings and recommendations • Changes to the annual work plane • Any limitation in resources that may affect the implementation of the work plan. <p>The above list suggests minimum requirements for the inputs, which should be provided to the committee. In some cases, more information may have to be provided as requested by the committee.</p>

AUDIT COMMITTEE

Purpose	<ul style="list-style-type: none"> assist the Director-General in enhancing internal controls in order to improve efficiency, transparency, and accountability review audit issues raised by internal and external auditors resolve unsettled and implemented public accounts and public investments committees' (PAC/PIC) recommendation enhance communication among management and foster effective internal and external audit functions
Membership and Organization	<p>Chairman</p> <p>Director, Finance and Administration</p> <p>Members</p> <p>Director, Technical Services Manager, Finance Manager ICT Manager, Human Resources Secretary – Manager, Internal Auditor</p> <p>Note:</p> <p>Members may be appointed by the Director-General in consultation with the Board and may contain representative of the MOF, Permanent Secretary/Treasury.</p> <p>Director of Finance and internal audit shall form part of the technical team to guide the committee but shall not have voting powers. Other technical representatives may be appointed or selected as and when required.</p>
Terms of Reference	<ul style="list-style-type: none"> initiating, developing, carrying out, and monitoring measures designed to ensure high standards of equity and fairness in accounting discipline to assist in the development and review of audit procedures and policies, including use of IT to advise the Authority on all matters of accounting and auditing, training, and development policies and to recommend to the Director-General any action necessary to ensure the effective and efficient delivery of accounting and auditing functions
Meetings	<p>The Audit Committee shall meet at least four times a year. However, the Chairman may convene additional meetings as may be deemed necessary.</p> <p>Quorum</p> <p>A minimum of three members, including the Chairman of the Audit Committee, present shall form a quorum.</p> <p>Request to attend meetings to members</p> <p>The audit committee may request any member of the staff of the Authority to attend meeting(s) to assist it with its discussions on any particular matter.</p>
Access	<p>The internal and external auditors or their representatives shall have unrestricted and confidential access to the chair of the Audit Committee at all times.</p>
Reporting	<ul style="list-style-type: none"> Reports or minutes shall be made available to the Director-General, clearly indicating its

	<p>deliberations, conclusions and recommended plan of action.</p> <ul style="list-style-type: none"> • A register shall be maintained by the Secretary on all findings and recommendations deliberated upon by the Committee for follow up and evaluation of action taken.
<p>Information Requirements</p>	<p>The Audit Committee through the Secretariat shall be provided for each meeting with:</p> <ul style="list-style-type: none"> • Progress report from the head of internal audit unit summarizing: <ul style="list-style-type: none"> — work performed compared with work planned — key issues emerging from internal audit work done — status of management response to audit findings and recommendations — change to the annual work plan — any limitation in resources that may adversely affect implementation of internal audit work plan • The Audit Committee shall review and discuss all external audit reports and queries received and make appropriate recommendations for necessary action. The external audit representative may attend meetings of the audit committee, during which reviews and discussions take place.

TENDER COMMITTEE

Purpose	to adjudicate on procurement tenders or quotations where the value exceeds the threshold prescribed in the First Schedule the procurement threshold matching in the Public Procurement and Disposal Act, 2005
Membership and Organization	<p>Chairman</p> <p>Director, Finance and Administration</p> <p>Members</p> <p>Director, Technical Services Manager, Human Resources Manager ICT Manager, Internal Auditor Manager, Finance Secretary – Procurement Officer - PPOA</p> <p>Members may be appointed by the Director-General in consultation with the committee and may be technical experts or other consultants/experts as required.</p>
Terms of Reference	<p>The public entity shall establish a Tender Committee in the manner set out in the Second Schedule to the Regulations, 2006. The functions of the Tender Committee shall be to:</p> <ul style="list-style-type: none"> • 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 • approve the selection of the successful tender or proposal • award procurement contracts in accordance with thresholds prescribed in First Schedule • ensure that funds are available for the procurement under consideration • ensure that the public entity does not pay in excess of prevailing market prices • where aggregation of procurements has been proposed, to review and approve such aggregation • where packaging into lots has been proposed, to review and approve for the use of such lots • 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 • approve the list of tenderers in cases of restricted tendering pursuant to Regulation 54(3) • approve the list of persons qualified to submit proposals pursuant to Section 80 of the Act • approve the list of persons to be given requests for quotations pursuant to Regulation 59(2) • approve negotiations under the Act ,these Regulations, and as may be stipulated by the Authority • approve the amendment of contracts previously awarded by the Tender Committee, in accordance with the Act and these regulations; • review the quarterly reports on quotations that have been awarded by the Procurement Committee • undertake any other functions and duties as are provided under the Act, these regulations, or as may be stipulated by the Authority
Meetings	<ul style="list-style-type: none"> • The Tender Committee shall meet at least once a month. However, the Chairman may convene additional meetings as may be deemed necessary. • A minimum of four members, including the Chairman, present shall form a quorum <p>The Tender Committee may request or appoint an independent adviser or members of the procurement unit to explain submissions or provide technical advice, when required.</p>
Access	<ul style="list-style-type: none"> • The members or their representatives shall have unrestricted and confidential access to the chair of the committee at all times.

Reporting	<ul style="list-style-type: none"> • Report or minutes shall be made available to the Director-General following a committee meeting, clearly indicating its deliberations, conclusions, and recommended plan of action. • The Secretary of the Tender Committee shall record minutes of all Tender Committee meetings, which shall include a register of attendance, the date of the meeting, a list of all submissions considered, the decisions made on the submissions, a note on the basis for any evaluation made, any conflicts of interest declared by members and any dissenting opinions among Tender Committee.
Information Requirements	<p>The Tender Committee, through the Secretariat, shall be provided for each meeting with:</p> <ul style="list-style-type: none"> • a progress report from the department heads on previous approvals • key issues emerging from the implementation of past procurement approval • any limitations in resources that may affect the implementation of procurement progress <p>All internal procurement processes shall be strictly in accordance with the procurement thresholds matching in the Public Procurement and Disposal Act 2005.</p>

Note:

The PPOA relating to internal procurement arrangements shall follow strictly the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006. The organization and internal management arrangements for internal procurement of the Authority are provided in the internal procurement arrangements manual.

For Procurement Committee, Evaluation Committee, Disposal Committee, Inspection and Receiving Committee, please refer to the internal procurement arrangements manual in the next section.

SECTION 4

Organization of PPOA Internal Procurement Management Arrangements

INTRODUCTION

The PPOA relating to internal procurement arrangements shall follow strictly the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006. The organization and internal management arrangements for internal procurement of the Authority are provided in this manual.

The Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 outlines the principles to be followed by all the public sector procuring entities. Therefore, there is a need to provide necessary interpretations, clarifications, instructions, and examples to make the regulations intelligible and user-friendly. The organization and internal management arrangements for internal procurement of the Authority are provided in this manual. The procedures are expected to immensely help the PPOA officers in the public sector for its own procurement.

This manual is considered a starting point to enhance the knowledge and skills of PPOA procurement officers and ensure their tasks are easier in applying the Act and the regulations. It is expected that this manual will be a basis for a full development and treatment of the procurement procedures and subjects in the future when the detailed instructions for processing procurement Activities will be prepared and issued to PPOA staff and eventually to all procuring entities that use public funds for undertaking public procurement.

INSTITUTIONAL FRAMEWORK

The Public Procurement and Disposal Act, 2005 establishes the Public Procurement Oversight Authority as a body corporate and provides that the Authority shall have all the powers necessary or expedient for the performance of its functions. The Authority shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name, and holding and alienating movable and immovable property.

The PPOA is a permanent institution of the government, funded under the revenue budget. The PPOA will have no procurement or contracting functions at any level except for its own needs. The unit may provide technical or professional advice on generic procurement issues referred to it, but shall not get involved or provide opinion in any specific procurement evaluation or contract award, thus preserving its pristine role as a policy, technical assistance, training and oversight unit.

The Authority shall have the following functions:

- ensure that the procurement procedures established under the Act are complied with

- monitor the public procurement system and report on the overall functioning of it and present to the Minister for Finance such other reports and recommendations for improvements as the Director-General considers advisable
- initiate public procurement policy and propose amendments to the Act or to the regulations
- assist in the implementation and operation of the public procurement system and in doing so:
 - prepare and distribute manuals and standard documents to be used in connection with procurement by public entities
 - provide advice and assistance to procuring entities on procurement matters
 - develop, promote and support the training and professional development of persons involved in procurement
 - issue written directions to public entities with respect to procurement including the conduct of procurement proceedings and the dissemination of information on procurements
 - ensure that procuring entities engage procurement professionals in their procurement units
 - perform such other functions and duties as are provided for under the Act

STRATEGIC DIRECTION

The establishment of the Public Procurement Oversight Authority will enhance the capacity for transparent and competitive procurement practices so that that public may be able to realize value for money. The role of the Authority to build an optimum organizational, management structure, and other necessary institutional documents that are commensurate with modern management practices and that are in line with internationally accepted standards is crucial to the realization of the national ideal of an efficient, fair, and transparent procurement system in the country. The vision and mission of the Authority provides direction and motivation for enhanced performance and continuous self-improvement and operations.

VISION

“To be a world class Public Procurement Oversight Authority.”

MISSION

“To innovatively design and facilitate an effective supply chain system that provides value for money, by ensuring competition, fairness, transparency, and accountability, while contributing to national socio-economic development.”

MOTTO

“Spearheading best procurement practices for a better nation.”

CORE VALUES

The Authority's operations and service delivery to the public are based on a value system whose core elements will be:

- Integrity

- Ethics and Professionalism
- Impartiality

These key elements are underpinned by the following attributes:

- Promptness, Efficiency, and Effectiveness
- Creativity and Innovativeness
- Discipline
- Commitment and Team Work
- Customer Focus
- Social Responsibility
- Transparency and Accountability

OBJECTIVE OF THE PROCEDURES

The objective of the procedures is to supplement the Act and the regulations in summary by providing additional necessary interpretations, information, clarification, and instructions where necessary so that the procuring entities can follow appropriate processes for effective implementation of Activities required for procurement of goods, works, and services.

Adherence to the procedures is a mandatory requirement for all public procuring entities when they are undertaking procurement using public funds in order to ensure their compliance with the Act and the regulations.

Records of PPOA Procurement

The PPOA shall maintain the requirements for maintaining procurement Activity records during the entire procurement, from procurement planning to the completion of contractual liabilities, and for a defined period of time beyond completion as required by the relevant administrative rules or orders.

The procedure below sets down the documents to be retained on a long-term basis; the file containing these records shall be properly maintained and developed during the contract execution. The records shall be properly filed and maintained and should be easily accessible.

- Procuring entities shall preserve records and documents concerning their public procurement for a minimum period of five years from the date the supplier, contractor, or consultant finally discharge their contractual obligations. In special cases, as determined by the procuring entity or higher authority, records may be kept for a longer period; for instance, in the case of development projects, it can be up to five years from the date of completion of the project. In some important cases, the records may require preservation for longer time.

As a minimum each procurement record shall contain the following:

- a brief description of the goods and related services, works, and physical services or intellectual and professional services procured and the justification for using any method of procurement other than open tendering method

- a copy of the invitation for tender, request for proposals, request for quotations, including any amendments issued by the procuring entity and a copy of the published advertisement, if any
 - the names and addresses of tenderers who submitted tenders, proposals, or quotations and the name and address of the tenderer to whom the contract was awarded, including the awarded contract price
 - a copy of any invitation for pre-qualification, request for expressions of interest, or other invitation documents
 - minutes of the tender opening
 - all correspondence with tenderers
 - the evaluation criteria detailed in the tender/proposal document and the tender/proposal/quotation evaluation report prepared by the tender or evaluation committee
 - the record of approval of the tender/proposal evaluation report and the contract document
 - information concerning any decision to suspend or cancel the proceedings after they have been initiated
 - documentation with regard to any appeal or complaint concerning the procurement proceedings
 - delivery/acceptance reports, completion report, and measurement books for procurement of goods and/or works and completion report for procurement of services
 - all payment documentation, including an original copy of the bills and/or invoices for procurement of goods, works and services
- When a specific procurement proceeding has been completed, either by signing of a contract or termination of the proceeding prior to contract signature, the record of the proceeding shall be made available to any concerned person, e.g. personnel representing the government and any interested government agency, the procuring entity, tenderers, auditors, and the procurement post-review consultants.

However, unless ordered to do so by a competent court and subject to the conditions of any such court order, the procuring entity shall not disclose:

- information whose disclosure would:
 - be contrary to the law of Kenya

- obstruct law enforcement
 - be against the public interest
 - prejudice the legitimate commercial interests of the parties
 - prevent fair competition
- information relating to the examination and evaluation of tenders, proposals, or quotations and the Actual contents of those documents, other than a summary of the evaluation of the tenders, proposals or quotations received

Form of Communication

All communications between parties of the procurement (applicants, tenderers suppliers, contractors, consultants, and procuring entities) shall be in writing. The purpose of this is to ensure all communications between the parties are legally binding communications, indicated by the signing of the communication by the sender or an authorized officer/nominee of the sender. Verbal communications and information displayed on a Web site or transmitted by electronic mail or facsimile shall be confirmed in writing either by the procuring entity or by the applicant, tenderer, supplier, contractor, or consultant. The sender or an authorized nominee of the sender shall sign all communications.

Any communication made verbally, by telex, fax and/or e-mail shall be confirmed within a reasonable time by submission of an original written document in hand or machine writing, duly signed by the sender or an authorized officer/nominee of the sender.

Time may be important, so procuring entities should ensure that such confirming letter(s) are received not later than the date set by the procuring entity for the receipt of the concerned document, for example:

- before the closing date for the submission of a tender/proposal
- before the date for the submission of a response to a tender/proposal clarification and/or query
- before the date for the submission of a performance security
- before the date for the signature of a contract

Technical Specifications

The technical specification shall be prepared in a non-restrictive manner so that a fair and open competition is created between all qualified tenderers. Technical specifications and descriptions of the goods and related services and works and physical services shall be prepared in a manner that provides a correct and complete description of the object to be procured.

They shall clearly describe a procuring entity's requirements in respect of:

- name and/or description of the object of procurement to be supplied
- quality of the object of procurement to be supplied

- performance standards
- safety standards and dimensions
- symbols, terminology to be used in packaging, marking and labeling of the object
- processes and methods to be used in the production of the object of procurement
- requirements for conformity assessment tests

They shall, where appropriate, be:

- expressed in terms of performance requirements, rather than design or descriptive characteristics, e.g. if a generator is to be purchased, the performance requirements could be:
 - electricity output to be generated per hour
 - maximum volume of fuel to be consumed per kilowatt hour while in operation
 - maximum noise level while in operation
- based upon international standards, where such standards exist or otherwise, on recognized national standards or codes

There shall be no reference to a particular trademark or trade name, patent, design or type, specific country of origin, producer, or service supplier.

Technical specifications, which are prepared using the procedure detailed in the preceding paragraphs should enable fair and open competition among all tenderers. Specifications that are linked directly to design or descriptive characteristics limit competition, as only tenderers whose products match the stated design and/or description would be able to tender.

For example, if a procuring entity is purchasing a 4WD vehicle, it is not permitted to simply issue a tender for a named vehicle, nor it is permitted to write a detailed technical specification that is so directly linked to one manufacturer that other vehicle manufacturers would be unable to tender because the specification was so tightly written. No two vehicles are completely identical, but many vehicle specifications are relatively close and tenderers can compete if specifications are generalized, e.g. rather than saying a vehicle shall weigh 1,051 kg, the specification should state that the vehicle could weigh between 1,000 kg and 1,100 kg.

Similarly, in the case of purchase of computers, the generalized specifications prepared may state that only ISO-certified computers are acceptable, but under no circumstances shall the name of any particular brand be stated. If a procuring entity has insufficient technical expertise to either prepare a generalized technical specifications or to make the specifications fully understandable to tenderers, it is permitted to make reference to a particular branded product, but shall add the words “or similar/equivalent to” into the specification. Procuring entities shall, where possible, prepare the specifications in cooperation with the user/beneficiary unit of the supply or works or services.

Choice of Procurement Method

The procurement methods described in the Act and the regulations are applicable to the procurement of goods and related services and works and physical services. The regulations and the procedures assume that the procuring entity is able to define exactly the object of procurement and can specify it in detail in the tender documents. Otherwise, procurement proceedings shall not begin until such time as the procuring entity has been assisted in preparing a satisfactory technical specification against which tenders shall be invited.

TENDER DOCUMENTS

The preparation of the tender document is the responsibility of the procuring entity and it shall follow standard tender documents prepared and issued by the PPOA. In any case, the tender document shall contain sufficient information to enable competition to take place among tenderers on the basis of complete, unbiased, and objective terms. It is important to note that the estimated cost of the object of procurement has to be reassessed and approved as per the Act and the regulations prior to finalization of the tender document.

Although preparation of the tender document is the responsibility of the procuring entity, it shall be prepared in collaboration with the beneficiary and end-user, particularly in respect of the preparation of the technical specification. Furthermore, in the event that a procuring entity has any concerns in regard to any aspect of the required tender document, it may refer its concerns to the PPOA management for advice or guidance.

The tender document shall furnish all information necessary for a potential tenderer to prepare a tender for the goods or works. The details and complexity of the information required may vary with the nature of the proposed tender package. The tender document shall include:

- instructions for the preparation and submission of tenders
- information concerning the last date and place(s) for receipt of tenders including the date, hour, and place of the tender opening, with an announcement that the tenderer or its representative(s) may attend the tender opening
- tender submission sheet and sample formats for tender security, performance security, and manufacturers' authorization, where applicable
- the number of copies to be submitted with the original tender
- conditions of contract, general and particular
- specification of requirements, including time limit for delivery or completion
- evidence to be provided by the tenderer to demonstrate its qualifications for purposes of post-qualification verifications to be conducted by the procuring entity

- the period for which the tender shall remain valid
- the criteria to be taken into account in the evaluation of tenders and award of contract and the way in which those criteria shall be evaluated
- a requirement that a tenderer shall, in the form specified in the tender documents, pledge not to engage in any corrupt, fraudulent, collusive, or coercive practices of the kind referred to in the Act and the regulations
- a statement to the effect that the procuring entity may reject all tenders at any time prior to the acceptance of a tender
- a provision for holding a pre-tender meeting with potential tenderers, where appropriate, in order to provide clarifications on the conditions of the tender documents
- a notification in the tender data sheet concerning the process to be followed by a tenderer if it wishes to make any complaint arising under the Act and the regulations

By way of further explanation of the above regulations, procuring entities shall comply with the instructions when preparing tender documents.

Tender documents shall be so worded that they permit and encourage open competition and shall set out clearly and precisely:

- work to be carried out
- location of the work
- goods to be supplied
- place of delivery or installation
- schedule for delivery and completion
- minimum performance requirements
- warranty and maintenance requirements
- other relevant terms and conditions

In addition, the tender documents, where appropriate, shall define the tests, standards, and methods that shall be used to judge the compliance of the goods/equipment to be delivered or works to be performed, with technical specifications. Any drawings included in the tender document shall be consistent with the text of the technical specifications and an order of precedence between the two shall be specified in the tender document.

The tender document shall specify any criteria, in addition to price, that shall be taken into account in evaluating tenders and how these shall be measured or otherwise evaluated.

If tenders based upon alternative designs, materials, completion schedules, payment terms, etc., are permitted, the conditions for their acceptability and the method for their evaluation shall be stated in the tender document.

All prospective tenderers shall be provided the same information and be assured of equal opportunities to obtain additional information promptly upon request. Procuring entities shall provide reasonable access to work/project sites for visits by potential tenderers. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-tender meeting may be arranged at which potential tenderers may meet with the procuring entity's representatives to seek clarifications. Minutes of the pre-tender meeting shall be provided to all prospective tenderers, even those who do not attend the meeting.

Any additional information and/or correction of errors in the tender documents, which are identified as a result of this meeting, shall be circulated to all tenderers in the form of an addendum to the tender documents, which shall have a date and an issue number. The addendum must be circulated, allowing sufficient time before the deadline for the receipt of tenders to enable tenderers to take appropriate action. If necessary, the deadline for tender submission shall be extended.

The invitation of the tender price shall include the following: a tender price shall be invited on the basis of the delivered price of the goods to the destination or for the completion of works or installation, inclusive of all associated services to be performed by the tenderer (transport, insurance, training, specialized tools, manuals, etc.). The quoted price shall include all taxes and customs duties and clearance charges, except value-added tax. However, the tenderer will be required to indicate value-added tax in the priced schedule, to enable the procuring entity to take account of such tax in its budget.

The tender document shall state one of the following:

- that the tender price shall be fixed
- that price adjustments shall be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, material, and fuel

Price adjustment provisions are usually not necessary in simple contracts involving the delivery of goods or completion of works within 18 months. However, it is normal commercial practice to obtain firm prices for certain types of equipment, regardless of the delivery time and, in such cases, price adjustment provisions are not needed. Prices may be adjusted for delivery of goods or completions of works beyond 18 months by the use of a prescribed formula stated in the tender document. There is a wide range of price variation formula that are related to specific commodities, industries, and/or countries. Further guidance can be obtained from the PPOA officers on a case-by-case basis.

In the future, standard pre-qualification documents and standard bid documents issued by the PPOA will be mandatory for all procuring entities to use for procurement of goods and related services and works and physical services. However, depending on the nature of procurement, the procuring entities may introduce any adjustments in the data sheet and/or particular conditions of contract, provided those adjustments, under no circumstances, contradict the Act and the regulations and other manuals or procedures issued by the PPOA.

Provision of Tender Documents

Tender documents shall be made available to tenderers as soon as the relevant advertisement appears in the press. When a procuring entity makes a charge in a document, it shall not exceed the cost of producing and delivering the document to tenderers. The head of a procuring entity or an officer authorized by him/her will determine the price of the tender document.

Tender documents shall be advertised on a procuring entity's Web site, where possible. The advertisement is for information only and potential tenderers cannot use any documents downloaded from the entity's Web site for the purpose of tendering. All tenderers shall tender using tender documents purchased directly from the procuring entity. Any alternatives for making a tender document available, e.g. from an agent, bank, or consultant, shall be stated in the invitation for tender.

No tender document can be made available before the date of publication of the invitation for tender. A procuring entity cannot refuse to make tender documents available immediately to persons requesting them and willing to pay the corresponding price, provided the advertisement has been published in the press. There shall not be any pre-conditions (e.g. submission of documentary evidence) whatsoever for sale of tender document to any tenderer. The sale of tender documents shall be permitted up to the day prior to the deadline for the submission of tender.

Tender documents, as well as any modification to tender documents, shall be made available to tenderers by:

- the procurement unit or office of the procuring entity
- authorized agent (e.g. bank) of the procuring entity
- mail or courier at the request of potential tenderers against payment by the tenderer of the corresponding mailing charges in addition to the prices of the documents
- advertisement in the procuring entity's Web site (a downloaded document shall not be used for submission of tender)

Procuring entities that advertise tender documents on their Web site shall ensure that:

- the advertisement for tender document is not removed from the Web site prior to the closing date for the submission of tenders
- numbers and dates of issue of all modifications and clarifications to the tender document are also posted on the Web site

The procuring entity shall record all persons or firms to whom tender documents have been issued. Such records shall have a reference number and include full contact details: mailing address, telephone and facsimile numbers, and electronic mail address, if applicable. A tender shall not be accepted from any person or firm that is not recorded by the procuring entity as having received and where relevant, purchased the tender document, together with all subsequent addenda to the document.

Note: The use of the words “the procuring entity” may be interchanged with the words “the PPOA.”

For ease of reference, the organization and internal management arrangements for PPOA procurement as given in the Act and regulations are provided in detail below:

Subject	Provisions for PPOA
Threshold Matrix and Segregation of Responsibilities	<ul style="list-style-type: none"> • For the purpose of ensuring that its decisions are made in a systematic and structured way, PPOA shall establish procedures to provide for the making of decisions, relating to procurement. • The procedures required under Sub-section (1) shall be consistent with the Act and the regulations. • All procurement shall be: (a) within the approved budget of the PPOA and planned by the PPOA concerned through an annual procurement plan, (b) undertaken by a PPOA as per the threshold matrix as set out in the regulations, (c) handled by different officers in respect of procurement initiation, processing and receipt of goods, works and services. • A public entity shall establish a Tender Committee, procurement unit, and such other bodies as are required under the regulations for the purpose of making such decisions on behalf of the public entity as are specified in this Act and the regulations. • A committee or body established under Sub-section (4) shall be established in accordance with the regulations and shall (a) consist of not less than five members; (b) have as its secretary, the procurement professional in charge of the procurement unit. • PPOA shall not commence any procurement procedure until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract. • A procurement unit established under Sub-section (4) shall be staffed with procurement professionals whose qualifications have been recognized by the Authority. • For the purpose of this section, a "procurement professional" means a person who (a) has professional qualifications in procurement and supply management from a recognized institution, (b) is engaged in a calling or occupation in which recourse to procurement is directly or indirectly involved and has experience in the practice of procurement, and (c) is a member of a recognized institute of purchasing and supply. • The level of qualification and experience required of procurement professionals under Subsection (8) shall be as prescribed. • The Authority shall facilitate the establishment of an examination body for procurement professionals and shall ensure support for their professional association.
Responsibility for Complying with Act, etc.	<ul style="list-style-type: none"> • A public PPOA shall ensure that this Act, the regulations, and any directions of the Authority are complied with respect to each of its procurements. • The Accounting Officer of a public entity shall be primarily responsible for ensuring that the public entity fulfils its procurement obligations. • Each employee of a public entity and each member of a Board or committee of the public entity shall ensure, within the areas of responsibility of the employee or member, that this Act, the regulations, and any directions of the Authority are complied with. • Contractors, suppliers, and consultants shall comply with all the provisions of this Act and the regulations. • The Accounting Officer may use the procurement unit and Tender Committee of another

Subject	Provisions for PPOA
	<p>procuring entity, which shall carry out the procurement in accordance with this Act and the regulations. The Authority shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay or in such other instances as may be prescribed.</p>
Procuring Agents	<ul style="list-style-type: none"> • Subject to Sub-section (2), a public entity may appoint a procurement agent, on a competitive basis, to carry out such procurement proceedings on its behalf as may be prescribed. • The Authority shall pre-qualify procuring agents to be engaged by public entity pursuant to Sub-section (1). • A procuring agent shall be registered with the Authority and where the procuring agent is undertaking procurement on behalf of a procurement entity, the procuring agent shall comply with the provisions of this Act and the regulations.
Roles of Accounting Officer	<p>In addition to the responsibilities stipulated under section 27(2) of the Act, the Accounting Officer shall be responsible for:</p> <ul style="list-style-type: none"> • ensuring that the public entity establishes a Tender Committee and a Procurement Committee in accordance with the Act and these regulations • ensuring that the public entity establishes a procurement unit • signing contracts for the procurement and disposal Activities on behalf of the public entity for contracts entered into in accordance with the Act and these Regulations • ensuring that the procurement plans are prepared • ensuring that the public entity properly documents procurement proceedings and manage records in accordance with these regulations
Procurement Unit	<ul style="list-style-type: none"> • A public entity shall establish a procurement unit in accordance with Regulation 2006. • The level of qualification and experience required of procurement professionals under Section 26(9) of the Act shall be stipulated by the Authority. • The functions of the procurement unit shall be to: <ul style="list-style-type: none"> — maintain and update annually standing lists of registered tenderers required by the public entity and liaise with the Authority in respect of the Authority's register of suppliers and procuring agents — prepare, publish, and distribute procurement and disposal opportunities, including invitations to tender, pre-qualification documents, and invitations for expressions of interest — coordinate the receiving and opening of tender documents — maintain and safeguard procurement and disposal documents and records in accordance with these regulations — submit shortlists and lists of pre-qualified tenderers to the Tender Committee or Procurement Committee for approval — issue procurement and disposal documents to candidates in accordance with the Act and these regulations — propose the membership of evaluation committee to the Accounting Officer for approval — coordinate the evaluation of tenders, quotations, and proposals — recommend a negotiating team for appointment by the Accounting Officer where negotiations are allowed by the Act and these regulations and participate in negotiations — prepare and publish notices of award and notices of tender acceptance — prepare contract documents, in line with the award decision — prepare and issue rejection and debriefing letters — prepare contract variations and modifications to documents — maintain and archiving documents and records of the procurement and disposal Activities for the required period — provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures — implement the decisions of the Procurement, Tender, and Disposal Committees, including coordinating all Activities of these committees — act as a secretariat to the Tender, Procurement, and Disposal Committees — liaise with the Authority and other bodies on matters related to procurement and disposal

Subject	Provisions for PPOA
	<ul style="list-style-type: none"> — prepare and submit to the Authority reports required under the Act, these regulations and guidelines of the Authority — monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts — report any significant departures from the terms and conditions of the contract to the DG of the public entity — recommend for delegation of a procurement or disposal function to another procuring entity by the head of the procuring entity whenever a need arises — prepare consolidated procurement and disposal plans — advise the public entity on aggregation of procurement to promote economies of scale — coordinate internal monitoring and evaluation of the supply chain function — carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee — conduct periodic and annual stock-taking — certify the invoices and payment vouchers to suppliers — approve extension of the tender validity period — verify that the available stock levels warrant initiating a procurement process — carry out any other functions and duties as are provided under the Act and these regulations and any other functions that might be stipulated by the Authority
Tender Committee	<p>The public entity shall establish a Tender Committee in the manner set out in the Second Schedule to the Regulations, 2006. The functions of the Tender Committee shall be to:</p> <ul style="list-style-type: none"> • 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 • approve the selection of the successful tender or proposal • award procurement contracts in accordance with thresholds prescribed in First Schedule • ensure that funds are available for the procurement under consideration • ensure that the public entity does not pay in excess of prevailing market prices • where aggregation of procurements has been proposed, to review and approve such aggregation • where packaging into lots has been proposed, to review and approve for the use of such lots • 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 • approve the list of tenderers in cases of restricted tendering pursuant to Regulation 54(3) • approve the list of persons qualified to submit proposals pursuant to Section 80 of the Act • approve the list of persons to be given requests for quotations pursuant to Regulation 59(2) • approve negotiations under the Act, these regulations, and as may be stipulated by the Authority • approve the amendment of contracts previously awarded by the Tender Committee, in accordance with the Act and these regulations • review the quarterly reports on quotations that have been awarded by the Procurement Committee • undertake any other functions and duties as are provided under the Act, these regulations, or as may be stipulated by the Authority

Subject	Provisions for PPOA
Approvals by Tender Committees	<p>In considering submissions made by the procurement unit or evaluation committees, the Tender Committee may:</p> <ul style="list-style-type: none"> • approve a submission • reject a submission with reasons • approve a submission, subject to minor clarifications by the procurement unit or evaluation committee <p>The Tender Committee shall not:</p> <ul style="list-style-type: none"> • modify any submission with respect to the recommendations for contract award or in any other respect • reject any submission without justifiable and objective reasons • 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 <p>Any submission rejected by the Tender Committee may be resubmitted and the Tender Committee shall provide explanation and justification of its decision thereof.</p>
Procedure for Tender Committee Meetings	<ul style="list-style-type: none"> • 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. • The quorum of the Tender Committee shall be five members, including the Chairman. • Decisions of the Tender Committee shall be by consensus; where there is no consensus, the decision shall be through voting by simple majority; where there is a tie, the Chairman shall have a second or casting vote. • Where any member of the Tender Committee has a direct or indirect interest in any matter, s/he or shall declare an interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter. • Members of the Tender Committee may be paid such honoraria as the procuring entity may determine. • The Tender Committee shall cause to be prepared minutes of all its meetings and such records shall include: <ul style="list-style-type: none"> — a register of attendance — date of the meeting — list of all matters considered — 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 — a note on the basis for any evaluation made — any conflicts of interest declared by members — any dissenting opinions among Tender Committee members — such other records as may be necessary • The Tender Committee may invite independent advisers or members of the procurement unit to explain submissions or provide technical advice, where required. • 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 50 million shillings. • At least one observer shall come from a duly recognized private sector organization or discipline relevant to the procurement under consideration. • The failure of an invited observer to attend a meeting shall not nullify the procurement proceedings.

Subject	Provisions for PPOA
Tender Opening Committee	<ul style="list-style-type: none"> • The Accounting Officer shall appoint a Tender Opening Committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed: <ul style="list-style-type: none"> — The committee shall have at least three members. — At least one of the members must not be directly involved in the processing or evaluation of the tenders. • Immediately after the deadline for submitting tenders, the Tender Opening Committee shall open all tenders received before that deadline. • Those submitting tenders or their representatives may attend the opening of tenders. • The Tender Opening Committee shall assign an identification number to each tender. • As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register: <ul style="list-style-type: none"> — the name of the person submitting the tender — the total price of the tender including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed — if applicable, what has been given as tender security • The public entity shall, on request, provide a copy of the tender opening register to a person submitting a tender. • Each member of the Tender Opening Committee shall: <ul style="list-style-type: none"> — sign each tender on one or more pages as determined by the Tender Opening Committee — initial, in each tender, against the quotation of the price and any modifications or discounts • The Tender Opening Committee shall prepare tender opening minutes, which shall set out: <ul style="list-style-type: none"> — a record of the procedure followed in opening the tenders — the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders
Disposal Committee	<ul style="list-style-type: none"> • The public entity shall, for the purposes of Section 128 of the Act, establish a Disposal Committee composed of at least five members as follows: <ul style="list-style-type: none"> — the officer in charge of finance — the head of the procurement unit, who shall be the Secretary — the head of the accounting department — two heads of end-user departments, of whom one shall be the head of the end-user department disposing of the stores or equipment • The Disposal Committee shall select a chairperson from amongst its members. • The Disposal Committee shall pursuant to Section 128(2) of the Act, first meet within 14 days of its appointment and subsequently at least once in every quarter. • The Accounting Officer shall, pursuant to Section 129(4) of the Act, give the Disposal Committee a written notice as to whether s/he accepts or rejects the recommendations of the Disposal Committee within 14 days of receipt of the recommendations.
Disposal to Employees	<ul style="list-style-type: none"> • The public 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: <ul style="list-style-type: none"> — 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 — the employee is in possession of the stores or equipment to be disposed and may be given the first priority to purchase the same • Every disposal made by the public entity under Paragraph (1) shall be documented by the

Subject	Provisions for PPOA
	Accounting Officer or DG of the public entity within 14 days of the disposal.
Responsibilities of User Departments	<p>A user department shall be responsible for:</p> <ul style="list-style-type: none"> • initiating procurement and disposal requirements and forward them to the procurement unit • participating in the evaluation of tenders, proposals and quotations • reporting any departure from the terms and conditions of the contract to the procurement unit • forwarding details of any required variations to contracts to the procurement unit for consideration and action • maintaining and archive records of contract management • preparing any reports required for submission to the procurement unit, the Procurement Committee, the Tender Committee, head of procuring entity or the Accounting Officer • undertaking conformity assessments of supplied goods, works, and services with the specifications of the contract documents • endorsing the issuance of goods, works, and services received notes • preparing technical specifications and submit the same to the procurement unit • assisting in the preparation of procurement and disposal plans • making clarifications on tenders, requests for quotations, and any other matter as may be required • carrying out any other functions and duties as provided under the Act and these regulations or as may be stipulated by the Authority
Procurement Committee	<ul style="list-style-type: none"> • A procuring entity shall establish a Procurement Committee • The Procurement Committee shall be responsible for procurement below the threshold of the Tender Committee set out in the First Schedule • The Procurement Committee shall be composed of: <ul style="list-style-type: none"> — an official delegated by the head of the procuring entity or the Accounting Officer, who shall serve as the Chairman of the committee — the finance officer or an officer carrying out related functions — three other members appointed by the head of the procuring entity or the Accounting Officer — The head of the procurement unit shall appoint an officer to serve as secretary to the Procurement Committee <p>Approvals by Procurement Committee</p> <ul style="list-style-type: none"> • In considering submissions made by the procurement unit, the Procurement Committee may: <ul style="list-style-type: none"> — approve a submission — reject a submission with reasons — approve a submission, subject to minor clarifications by the procurement unit • The Procurement Committee shall not: <ul style="list-style-type: none"> — modify any submission with respect to the recommendations for contract award or in any other respect — reject any submission without justifiable and objective reasons • Any submission rejected by the Procurement Committee may be resubmitted and the Procurement Committee shall provide explanation and justification of its decision thereof. <p>Procedure for Procurement Committee meetings</p> <ul style="list-style-type: none"> • The quorum for a meeting of the Procurement Committee shall be the Chairman and at least two other members. • 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/her place.

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	<ul style="list-style-type: none"> • 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. • 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. • Where any member of the Procurement Committee has a direct or indirect interest in any matter, s/he or shall declare an interest in the matter and shall not participate in the deliberations or decision-making process of the committee in relation to that particular matter. • The Procurement Committee may invite independent advisers or members of the procurement unit to explain submissions or provide technical advice, where required. • The Procurement Committee shall cause to be prepared minutes of all its meetings and such records shall include: <ul style="list-style-type: none"> — a register of attendance — date of the meeting — list of all matters considered — 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 — a note on the basis for any evaluation made — any conflicts of interest declared by members — any dissenting opinions among Procurement Committee members — such other records as may be necessary
Evaluation Committees	<ul style="list-style-type: none"> • 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. • An evaluation committee established under Paragraph (1) may consist of: <ul style="list-style-type: none"> — a separate Financial Evaluation Committee and Technical Evaluation Committee or — a combined Financial and Technical Evaluation Committee • 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. • No person shall be appointed under Paragraph (3) if such person is a member of the Tender Committee of the procuring entity. • A Technical Evaluation Committee established in accordance with Paragraph (2)(a) shall be responsible for: <ul style="list-style-type: none"> — technical evaluation of the tenders or proposals received strictly in adherence with the compliance and evaluation criteria set out in the tender documents — performing the evaluation with all due diligence and within 30 days after the opening of the tenders • 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. • A Financial Evaluation Committee established in accordance with Paragraph (2) shall be responsible for: <ul style="list-style-type: none"> — financial evaluation of the tenders or proposals received strictly in adherence with the compliance and evaluation criteria set out in the tender documents or request for

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	<p>proposals</p> <ul style="list-style-type: none"> — performing the evaluation with all due diligence and within five days from the time of completion of the technical evaluation <ul style="list-style-type: none"> • Under no circumstances may any member of an evaluation committee enter into direct communication with any of the tenderer participating in a tender or proposal that such evaluation committee is considering. • 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. • The report prepared under Paragraph (9) shall include: <ul style="list-style-type: none"> — minutes of the opening of the tenders or proposals — the results of the preliminary evaluation, with reasons that any tenders or proposals were rejected — the scores awarded by each evaluator for each tender or proposal — a summary of the relative strengths and weaknesses of each tender or proposal — the total score for each tender or proposal — 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	<ul style="list-style-type: none"> • A procuring entity shall establish an Inspection and Acceptance Committee. • 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. • The Inspection and Acceptance Committee shall immediately after delivery of the goods, works or services: <ul style="list-style-type: none"> — inspect and, where necessary, test goods received — inspect and review goods, works, or services in order to ensure compliance with the terms and specifications of the contract — accept or reject, on behalf of the procuring entity, the delivered goods, works or services • The Inspection and Acceptance Committee shall: <ul style="list-style-type: none"> — ensure that the correct quantity has been received — ensure that the goods, works, or services meet the technical standards defined in the contract — ensure that the goods, works, or services have been delivered or completed on time, or that any delay has been noted — ensure that all required manuals or documentation have been received — issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract

SECTION 5

Code of Ethics

The Public Procurement Oversight Authority is established under an Act of Parliament. The Act established procedures for efficient Public Procurement and for the disposal of unserviceable obsolete or surplus stores, assets and equipment by Public entities and to provide for related matters. It is recognized that the procurement entities operate huge funds for procuring goods and services. Further, procurement processes, if not properly streamlined through procedures and regulations, would be prone to abuse. It is also evident from past trends and practices that there have been many instances of misappropriation of resources in procuring goods and services.

These misdeeds are inherent in the personnel in procuring entities and suppliers and results in unrealistic prices, sub-standard goods and services, and single-sourcing, and discourages competition.

The Act therefore intends to meet a number of objectives aimed at value for money and ensuring quality services. It also aims to raise the overall public image on the malpractices in public procurement. The specific objectives as per Section (2) of the Act are:

- maximize economy and efficiency
- promote competition and ensure that competitors are treated fairly
- promote integrity and fairness
- increase transparency and accountability
- increase public confidence
- facilitate the promotion of local industry and economic development

The Authority is, therefore, mandated to oversee and ensure that procurement rules, regulations, and procedures are strictly adhered to by all procuring entities. This calls for committed dedicated and honest employees of the Authority. The same applies for all members of the Board of the Authority and members of established committees of the Authority.

Further, such employees should be beyond reproach and handle themselves with integrity. All Authority employees must therefore recognize and appreciate the fact that every single penny spent to procure is taxpayers' money. The underlying principle should be that all employees of the Authority are collectively accountable for prudent spending for value for each cent.

The conduct of all those engaged to render services by the Authority must be guided by the vision, mission, and values already spelled out.

The conduct of the employees and members of the Authority must at all times reflect a high degree of responsibility, integrity, honest, diligence and professional ethics.

The Code of Conduct and Ethics for the Authority must be observed in addition to the staff rules and regulations and any other laws preliminary. In particular, employees should take special cognizance of The Public Officer Ethics Act, 2003. This code shall apply to all employees of the Authority.

CODE OF CONDUCT AND ETHICS

Citation		The code may be cited as the Public Procurement Oversight Authority Code of Conduct and Ethics, 2006.
Director-General Authority		The Chief Executive of Public Procurement Oversight
Advisory Board		The Advisory Board of the Public Procurement Oversight Authority
Employee		A person engaged by Public Procurement Oversight Authority
1	Compliance with the Code	An employee will comply with the entire General Code of Conduct and Ethics set out in Part III of the Public Officer Ethics Act. 2003 (No.3 of 2003).
2	Faithfulness to Oaths or Affirmations	An employee shall be true and faithful to the oaths or affirmations taken, in accordance with the Anti-Corruption and Economic Crimes Act, 2003 (No.3 of 2004) Public Procurement Oversight Regulations, as the employees may sign on engagement by the Authority.
3	Conflict of Interest	An employee shall avoid being in a position in which his/her personal interests conflict with official duties.
4	Prohibition against Standing for Election Political Neutrality	An employee shall not stand for election as a member of the National Assembly or a local authority or hold a political office. He/she shall: <ul style="list-style-type: none"> • refrain from Active politics, except for exercising the right to vote at elections • regardless of political opinions, an employee will offer services impartially, with honesty and objectivity
5	Public Comments	An employee shall not: <ul style="list-style-type: none"> • make public comments that support or criticize a political party • make public comments that may compromise, or may reasonably be seen to compromise, the political neutrality of his office • publicly comment, except in furtherance of his/her official duties, on matters in relation to which s/he has been professionally involved, without the express authority of the Director-General • unless otherwise in the express authority of the Director-General any views, comments or opinions expressed in public shall not be taken the views of the Authority
6	Professionalism	All employees shall maintain high professional standards and perform their duties with efficiency, integrity, and impartiality at all times.
7	Canvassing for Favors	All employees shall not canvass or lobby, directly or indirectly, for any favors in the Authority or in the procurement entities that they are overseeing.
8	Private Affairs - Outside Activities	Whereas an employee may engage in private affairs, he/she shall ensure that his/her non-official Activities do not interfere with his/her official duties or affect the dignity of his/her office.
9	External Employment	An employee shall not engage in any external or extra remunerative employment. For engagement in voluntary Activities, permission may only be granted in exceptional circumstances, where the work undertaken is of public benefit and interest and does not therefore compromise the role of the Authority.
10	Endorsing of Private Activities, etc.	Employees shall not use their position or title or any authority associated with their public office in a manner that could reasonably be construed to imply that the Authority or the government sanctions or endorses any Activities directly or indirectly handled by them.
11	Pecuniary Embarrassment	Employees shall live within their means and avoid incurring any financial liability that is not within their means. Employees shall ensure that any borrowing is within their ability to finance

		<p>without any form of financial hardship or embarrassment.</p> <p>Employees shall not be subject of orders for warrant of arrest or warrant of attachment of salary issued in execution of a judgment.</p> <p>Employees shall not be declared bankrupt or be subject of a bankruptcy order.</p>
12	Gifts	<p>An employee shall not without, the general or special permission of the Director-General, accept or solicit gifts, rewards, benefits or any other valuable present in any form, whether in appreciation for any Act done or for any other reason.</p> <p>The Director-General, in consultation with the Board of the Authority, shall consider and determine how such gifts should be treated.</p>
13	Harambee Fundraising	<p>An employee shall not preside over a harambee, play a central role in its organization or play the role of "guest of honor."</p> <p>An employee shall not solicit harambee funds, except in rare circumstances for a cause personally affecting him, and even in such a case, s/he shall first obtain written permission from the Director-General.</p> <p>A public officer shall not participate in a harambee in such a way as to reflect adversely on his/her integrity or impartiality or to interfere with the performance of his/her official duties.</p>
14	Confidentiality	<p>An employee shall ensure that confidential or secret information or documents entrusted to his/her care are adequately protected from improper or inadvertent disclosure.</p> <p>An employee shall comply with the Official Secrets Act (Cap. 187 of the Laws of Kenya) and shall follow the Authority's procedures and directives for safeguarding information and documents and shall not disclose any information in contravention therefore.</p> <p>An employee shall not disclose to any person who is the subject of an investigation by the Authority the fact that he or she is subject of such investigation or the details of such an investigation or disclose to any other person either the identity of any person who is subject to an investigation or any other details of such an investigation.</p>
15	Press Statements	<p>An employee shall not issue or make press statements or communicate any information to the press on any matter under jurisdiction of the Authority without the express authority of the Director-General.</p>
16	Abuse of Office	<p>An employee shall not abuse office or take advantage of his or her position to the detriment of another person or organization, by demanding or accepting any property, gift or benefit of any kind as an inducement for the granting of a favor or performance of any Act or omission in connection with his/her duties.</p>
17	Public Officer as Expert Witness	<p>Unless authorized in writing by the Director-General, an employee shall not agree to be an expert witness, other than on behalf of the Authority or the government, in a proceeding in which the Authority or Board of the Authority or the government is a party or has a substantial interest.</p> <p>An employee who has been summoned by the court or other appropriate authority to appear as an expert witness shall before appearing notify the Director-General that s/he has been so summoned.</p>
18	Leaving the Country	<p>An employee shall not leave Kenya without permission of the Director-General.</p>
19	Breach of Code	<p>Where an employee has committed, whether directly or by an agent, a breach of this code, appropriate action will be taken generally in accordance with the Authority staff rules and regulations and/or other applicable laws.</p>
20	Review of Code	<p>This code is subject to review as and when the Authority may deem necessary.</p>