

LOCAL GOVERNMENT TRAINING INSTITUTE
P.O.BOX 1125, Dodoma, Phone: 026-2961101, Fax: 026-2961100
E-mail: rsc@lgti.ac.tz, website: www.lgti.ac.tz



PARTICIPANT'S HANDBOOK

**STANDARD TRAINING MANUAL FOR LOCAL GOVERNMENT
AUTHORITIES IN PROCUREMENT AND CONTRACT MANAGEMENT**

Version 1.1

March 2017

The Standard Training Manual for Local Government Authorities in Procurement and Contract Management has been developed by:

- Dr. Ramadhan Mlinga (Consultant) assisted by Muhsin M. Danga (LGTI); with
- Peer review and quality assurance by the Project Implementation Unit comprising PPRA's Directorate of Capacity Building & Advisory Services (Awadhi Suluo, Project Manager), BTC's Technical Assistance Team (Frits Raijmakers, Abbas Kajwangya) hereto assisted by PO-RALG.

FOREWORD

Decentralization has been one of the major policy initiatives of the Government of the United Republic of Tanzania. The most recent policy reform commenced two decades ago and was formulated in 1998 as Decentralisation-by-Devolution (D-by-D). The policy has the main objective to empower citizens, devolve fiscal resources, democratize state power and facilitate effective service delivery in our communities to improving people's welfare. It is also intended to improve transparency and accountability in local governments, promote good governance and participatory democracy.

Under the decentralization policy, a range of powers, responsibilities and functions are transferred to Local Government Authorities at Council and sub-Council levels. Besides the responsibility of planning, mobilising, allocating and managing fiscal resources, the function of procurement and contracts management was fully transferred to Local Governments as entrenched in the Public Procurement Act (PPA) of 2004 and subsequent revisions made under PPA 2011 and amended in 2016.

In the course of implementing public procurement reform, we have realized that many Local Government Authorities - which constitute around one-third of all Procuring Entities in Tanzania - do not have adequate knowledge, skills and competence to handle core areas and processes of Procurement and Contract Management. This is partly related to the complex, multi-sectoral organisation and the wide range of services provided by the Local Government Authorities at various levels (Council, Ward, Village and Service Delivery Units).

Experience also shows that procurement capacity development and training is yet to receive the required priority and resources at operational and strategic levels of the Local Government Authorities. Hence, there is need to guide Local Government Authority staff and officials (i.e. job families) in the use and application of procurement law, regulations, procedures, processes, roles, responsibilities, tools and systems by addressing required hard and soft competences to improve job performance. The aim is to improve compliance and performance of the Councils in the procurement functions and processes, and ultimately attain Value-for-Money of Local Government Authority procurement.

In view of the above, and in line with the Local Government Training Institute's mandate to provide long- and short-terms training to Local Governments, the Institute has developed the Standard Training Manual in Procurement and Contract Management for Local Government Authorities. The manual contains nine modules as follows:

Module	Title
N° 1	Introduction to Public Procurement, General Principles and Practices
N° 2	Internal Set Up of Public Entities With Respect to Procurement
N° 3	Introduction to Basic Principles of Procurement Planning
N° 4	Procurement Methods

Module	Title
N° 5	Procurement Process for Goods, Works and Non-Consultancy Services
N° 6	Procurement Process for Consultancy Services
N° 7	Management of Procurement Contracts
N° 8	Monitoring of Procurement and Keeping Records
N° 9	Asset Management and Their Disposal

This Participant's Handbook comprises Participant's Instructions, Reference Notes and Case Studies. The Handbook provides detailed guidance on the use and application of the Public Procurement Act and the Public Procurement Regulations to staff and officials of Local Government Authorities. All Local Governments, stakeholders and training providers are enjoined to use the handbook whenever they are conducting training in procurement capacity building for Local Government Authorities. The Handbook also serves as reference material for the pre- and in-service training programmes provided by the Local Government Training Institute. The Handbook should, however, be used together with the Constitution, the Public Procurement Act and its Regulations, Local Government Finances Act, and any legislation relevant to a particular module.

Finally, the Institute would like to express deep appreciations and gratitude to our partners and collaborators in the invaluable assistance they gave the Institute in developing, rolling-out and final production of the training manual. The Standard Training Manual for Local Government Authorities in Procurement and Contract Management is one of the main outputs of the Enhancement of Procurement Capacity of Local Government Authorities project (EPC-LGAP). The Project was jointly implemented from 2013 to 2017 by the PPRA and the Belgian Development Agency (BTC) in partnership with the President's Office - Regional Government and Local Government (PO-RALG).

The Institute invites stakeholders to provide feedback on the usefulness of the handbook and undertakes to offer any clarification wherever required and to support training in Procurement and Contract Management in Local Governments.



Dr. Mpamila Madale
Ag Rector
Local Government Training Institute

ABBREVIATIONS

AO	Accounting Officer
APP	Annual Procurement Plan
APP	Annual Procurement Plan
AQRB	Architects and Quantity Surveyors Registration Board
BTC	Belgian Development Agency
CAG	Controller and Auditor General
CPI	Compliance and Performance Indicator
CRB	Contractors Registration Board
CS	Consultancy Services
D-by-D	Decentralisation-by-Devolution
EC	Evaluation Committee
EOI	Expression of Interest
ERB	Engineer Registration Board
G	Goods
GN	Government Notice
GPN	General Procurement Notice
GPSA	Government Procurement Services Agency
IAG	Internal Auditor General
IAG	Internal Auditor General
ICT	International Competitive Tendering
LGA	Local Government Authority
LGTI	Local Government Training Institute
LPO	Local Purchase Order
NBAA	National Board of Accountants and Auditors
NC	Negotiation Committee
NCS	Non-Consultancy Services
NCT	National Competitive Tendering
PCCB	Prevention and Combating of Corruption Bureau
PDS	Proposal Data Sheet
PE	Procuring Entity
PH	Participants' Handbook
PMIS	Procurement Management information System
PMU	Procurement Management Unit
PO-RALG	President's Office Regional Administration and Local Government
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPPD	Public Procurement Policy Division
PPR	Public Procurement Regulations
PPRA	Public Procurement Regulatory Authority
PSPTB	Procurement and Supplies Professionals and Technicians Board
RC	Regional Commissioner

RFP	Request for Proposal
RN	Reference Notes
SCC	Special Conditions of Contract
SME	Small and Medium Enterprises
SPN	Specific Procurement Notice
SRFP	Standard Request for Proposal
STD	Standard Tender Documents
TANESCO	Tanzania Electric Supply Company
TANROADS	Tanzania National Roads Agency
TB	Tender Board
TDS	Tender Data Sheet
TM	Trainers Manual
TOR	Terms of Reference
UD	User Department
URT	United Republic of Tanzania
VfM	Value for Money
W	Works

CONTENTS

FOREWORD	i
ABBREVIATIONS	iii
CONTENTS	v
INTRODUCTION: PROCUREMENT AND CONTRACT MANAGEMENT TRAINING MANUAL	vi
GENERAL OBJECTIVE	vi
SPECIFIC OBJECTIVES	vi
PROCUREMENT AND CONTRACT MANAGEMENT CURRICULUM – SUMMARY	vi
TARGET PARTICIPANT GROUP	viii
DURATION AND METHODOLOGY	viii
PARTICIPATIVE TRAINING	viii
MODULE 1: INTRODUCTION TO PUBLIC PROCUREMENT, GENERAL PRINCIPLES AND PRACTICES	1
PARTICIPANTS INSTRUCTIONS	1
REFERENCE NOTES	11
Case Study	28
MODULE 2: INTERNAL SETUP OF PUBLIC ENTITIES WITH RESPECT TO PROCUREMENT	40
PARTICIPANTS INSTRUCTIONS	40
REFERENCE NOTES	46
Case Study	52
MODULE 3: INTRODUCTION TO BASIC PRINCIPLES OF PROCUREMENT PLANNING	57
PARTICIPANTS INSTRUCTIONS	57
REFERENCE NOTES	62
Case Study	70
MODULE 4: PROCUREMENT METHODS	71
PARTICIPANTS INSTRUCTIONS	71
REFERENCE NOTES	76
MODULE 5: PROCUREMENT PROCESS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES	83
PARTICIPANTS INSTRUCTIONS	83
REFERENCE NOTES	92
Case Study	108
MODULE 6: PROCUREMENT PROCESS FOR CONSULTANCY SERVICES	131
PARTICIPANTS INSTRUCTIONS	131
REFERENCE NOTES	146
Case Study	164
MODULE 7: MANAGEMENT OF PROCUREMENT CONTRACTS	167
PARTICIPANTS INSTRUCTIONS	167
REFERENCE NOTES	170
MODULE 8: MONITORING OF PROCUREMENT AND KEEPING OF RECORDS	181
PARTICIPANT'S INSTRUCTIONS	181
REFERENCE NOTES	187
MODULE 9: ASSET MANAGEMENT AND THEIR DISPOSAL	203
PARTICIPANT'S INSTRUCTIONS	203
REFERENCE NOTES	206

INTRODUCTION: PROCUREMENT AND CONTRACT MANAGEMENT TRAINING MANUAL

GENERAL OBJECTIVE

This training aims at contributing to the strengthening of procurement capacity in Local Government Authorities by enabling participants acquire the relevant knowledge and skills which will enable them carry out procurement and contract management operations successfully and enable their organisations achieve value for money.

SPECIFIC OBJECTIVES

As an outcome, it is expected that participants will feel more confident in the procurement and contract management aspects, as a result be able to address many of the weaknesses which are always reported in audit reports prepared by PPRA, Internal Auditors and Controller and Auditor General. Furthermore the training will motivate the participants implement what they have learned into their day to day execution of procurement and contract management activities.

PROCUREMENT AND CONTRACT MANAGEMENT CURRICULUM – SUMMARY

Module		What is Covered	Duration
M1	Introduction to public procurement, general principles and practices.	Aims to put the public procurement system in context, by explaining its meaning and strategic importance, the governing principles, as well as the legal and regulatory framework of public procurement in Tanzania and LGAs. It will also inform the participants the provisions of the Public Procurement Act and Regulations aimed at empowering Tanzanian citizens through public procurement	6 hrs
M2	Internal setup of public entities with respect to procurement.	Intended to enable participants understand key institutions within a PE established to oversee procurement function, their roles and responsibilities.	6 hrs
M3	Introduction to basic principles of procurement planning	Enables the participants to Appreciate the importance of Procurement Planning in order to avoid unnecessary delays in the procurement process.	6 hrs
M4	Procurement Methods.	Provides guidance on various procurement methods which can be used by a PE to carry out procurement of works, goods, consultancy and non-consultancy services. This will enable those involved to carry out procurement appreciate the range of methods available and the circumstances under which they may be used to suit a procurement in question.	4 hrs

Module		What is Covered	Duration
M5	Procurement process for goods, works and non-consultancy services	Provides guidance on how PEs can prepare and carry out procurement of goods, works and non-consultancy services. The Module aims at developing basic skills of practitioners in tender documents preparation, invitation of tenders, evaluation and award for goods, works and non-consultancy services contract.	8 hrs
M6	Procurement of Consultancy Services	Provides guidance on how PEs can select and employ consultants using procedures stipulated under PPA 2011 and its Regulations. The Module aims at developing basic skills of practitioners in tender documents preparation, invitation of tenders, evaluation and award for consultant services.	8 hrs
M7	Management of procurement Contracts.	Provides guidance on how PEs can manage procurement contracts. It aims at demonstrating basic skills of contract management which are necessary to ensure that a PE gets the intended product or service	6 hrs
M8	Monitoring of Procurement and Procurement Records Keeping	Designed to enable participants appreciate the provisions within PPA 2011 and Its Regulations with regard to Compliance with the law and monitoring to ensure that PEs are complying with the law. It will also enable them appreciate the importance of records management in the procurement and contract management process as provided for in the Public Procurement legislations and other relevant legislations.	5.5 hrs
M9	Assets Management and their Disposal.	Provides guidance on how PEs can manage acquired assets to ensure that they minimise losses and that they are utilised as intended. It also covers the disposal of assets whose useful life has come to an end.	4 hrs

TARGET PARTICIPANT GROUP

Target Participants for this training are varied but they consist of various job families involved with procurement at Local Government Authorities. They include the following:

- Members of Full Council;
- Members of Finance and Planning committee
- Accounting Officer
- Members of the Council Management Team;
- Members of Tender Board;
- Members of User Departments;
- Procurement and Supplies Officers;
- Legal Officers; and
- Accountants and Internal Auditors.

DURATION AND METHODOLOGY

This Procurement and Contract Management training has been designed as a 10 days training. However the training shall be modular based and a timetable will be provided by your trainer.

The training aims to be interactive and participatory. In addition to lectures/presentations, the following will be used:

- Group and plenary discussions;
- Group exercises;
- Brainstorm questions;
- Example based Questions; and
- Written questions.

PARTICIPATIVE TRAINING

To enable participants share their day to day experiences they will be required, LGTI when inviting training participants, the invitation letter to request them to bring the following documents:

1. Procurement and Value for Money audit reports recently carried out by PPRA;
2. Tender documents for any tender for Goods, Works, Consultancy and Non-Consultancy services recently floated by their Entity;
3. Tender Evaluation Reports for any tender for Goods, Works, Consultancy and Non-Consultancy services recently floated by their Entity; and
4. Case studies (work experience) in order to provide a base of case studies for future learning.

MODULE 1: INTRODUCTION TO PUBLIC PROCUREMENT, GENERAL PRINCIPLES AND PRACTICES

PARTICIPANTS INSTRUCTIONS

Module Outline:

Session	Duration	Components
Introducing the Module	10 Minutes	Module Overview and Objectives Learning Outcomes Target Participants Module Content.
Session 1:- Understanding What is Procurement	50Minutes	Definition of Procurement Categories of Procurement and their examples Exercise
Session 2:- Strategic Importance of Procurement to Public Bodies	60 Minutes	Define what is a Public Entity in relation to procurement; Global Contribution of Procurement to National Expenditure Potential of Savings through good procurement and Its impact to Organisation's operations Group Discussion and Exercise
Session 3: Guiding Principles of Public Procurement in Tanzania	45 Minutes	The Principles of Economy and Efficiency, Competition; Equal opportunities; Integrity and Accountability, Transparency, Equity Exercise
Session 4: Regulatory Framework of Public Procurement in Tanzania	45 Minutes	The Public Procurement Act and Its Origins; Public Procurement Regulations – GN. No. 446 of 2013 and GN. No. 330 of 2014; Procurement Guidelines issued by PPRA; Group Discussion
Session 5: Eligibility and Qualification of Bidders to Participate in Procurement	30 Minutes	Registration requirements for local and foreign bidders Qualification requirements for bidders Exercise
Session 6: Handling of Procurement Complaints	30 Minutes	General Provisions on Procurement Handling Complaints at PEs level Handling of Complaints at PPAA Handling of Complaints by PPRA.
Session 7: Empowerment of Tanzanian Citizens Through Public Procurement- Part 1	50 Minutes	Purpose of Preference Scheme Who qualifies for Preference Scheme Registration with PPRA to be eligible Margin of Preference Exclusive Preference

Session	Duration	Components
Session 8: Empowerment of Tanzanian Citizens Through Public Procurement- Part II	40 Minutes	Splitting of Contracts Timely Payments Simplified Requirements Monitoring Compliance by PPRA

Introduction:

Introducing the Module

Session Objectives

To enable the participants to state module contents, objectives and proposed time allocated.

! In this session you will able to state module contents, objectives and proposed time allocated

Session 1: Understanding what Procurement is

Session Objectives

To enable participants to clarify the meaning of procurement and different categories of procurement

! In this session you will to define procurement and mention different categories of procurement

Training Materials

Section 1.1 of the Reference Notes

PPA 2011-S.3

Exercise1-1

The list of requirements below was extracted from the records of Mafichoni District Council. You are required to classify the items into the categories of goods (G) non-consultant services (NCS) consultancy services (CS) and Works (W) by ticking the appropriate column.

S/N	Procurement Activity	Works	Goods	Non-Consultancy Service	Consultancy service	Not procurement
1	Drilling bore hole					
2	Acquisition Security service					
3	Supply of Laptop Computers					
4	Recruitment of ten casual labourers					
5	Outsourcing of revenue collections					
6	Designing HRM inventory software					
7	Printing of Various Documents					
8	Acquisition of Building Materials and Hardware					
9	Rehabilitation of Primary School Buildings					
10	Revenue Collection from Cattle Markets					
11	Outsourcing Provision of Break Tea to District Offices					
12	Periodic Maintenance of Roads					
13	Buying Fuel and Lubricants					
14	Routine Maintenance of Roads					
15	Food, Wood, Detergents and Solar Panels to District Hospital					
16	School and Office Furniture					
17	Computers and Accessories					
18	Vehicle Spare Parts and Tyres					
19	Boreholes Rehabilitation					
20	Survey and siting of deep boreholes					
21	A Study to Establish New Sources of Revenue					
22	Maintenance of Gardens-outsourced					
23	Uniform for District Hospital Staff					
24	Rehabilitation of District Government Buildings					
25	Routine Computer Servicing					

S/N	Procurement Activity	Works	Goods	Non-Consultancy Service	Consultancy service	Not procurement
26	Motor Vehicles, Generators, Bicycles and Motorcycles					
27	Running Staff Canteen					

Session 2:

Strategic Importance of Procurement to Public Bodies

Session Objectives

To enable participants appreciate the importance of procurement in the country and in their organisation

! In this session you will be able to identify how good conduct of procurement can contribute to the development of the country and to the success of your organisation

Training Materials

Section 1.2 of the Reference Manual

Group Discussion 1-1

“Because of its size and complexity Procurement is a hotbed of challenges- decisions and choices made in procurement affect the organisation/entire public sector”

Briefly discuss with your neighbor the understanding of the above statement in relation with your existing knowledge of public Procurement. Can you give any examples of procurement decisions made that have had impact in your organizations and/or the country at large.

After the discussion you will be required to select one member to present to the rest of the class in maximum three minutes.

Exercise 1-2

In groups of two or three answer the following questions with respect to your organization.

How much money does your organization spend through procurement?

How much money is lost through bad procurement?

How much could be achieved through money lost through bad procurement?

What is the compliance level of your organization with PPA 2011 and Its Regulations? What is its implications with respect to attaining value for money?

The group is given up to 10 minutes of discussion which will be followed by three minutes presentation by a selected member of the group.

Session 3:

Guiding Principles of Public Procurement in Tanzania

Session Objectives

To enable participants to explain the principles that govern public procurement in the country

! In this session you will be introduced to pillars and principles on which the procurement regime in the country is built on.

Training Materials

Section 1-3 of the Reference Manual

PPA 2011-S.4A;

GN. 446-R.4 to R.8

Exercise 1-3

There is a popular public outcry that prices of goods and services obtained through public tendering are usually on the higher side compared to when one is buying directly from shops using cash?

Discuss in groups of two or three on the truthfulness of the above statement. If that is true what do you think are the causes of that situation and what can be done to arrest it?

READ: Case Study – Ni Nini Kiini cha Bei Kubwa Zitolewazona Wazabuni at your spare time.

Session 4:

Regulatory Framework of Public Procurement in Tanzania

Session Objectives

To enable participants to describe procurement reforms and the evolution of the procurement system currently in use in the Country.

! In this session you will be assisted to describe the history of procurement reforms in the country and the various laws and guidelines governing public procurement in Tanzania and in particular the LGAs.

Training Materials

Section 1.4 of the Reference Manual

PPA 2011-S.2

Group Discussion 1-2

The Public Procurement Act establishes various organs/institutions to govern procurement matters in the country. Mention such five key institutions and their roles/ responsibilities with respect to procurement activities.

Homework 1-1

PPRA is mandated by PPA 2011-S.9(1)(e) and S.106 to issue Guidelines from time to time for the better carrying out of the objectives or any functions under the Act. Together with the requirement to prepare and issue Standard Tender Documents under GN 446-R184 (3), PPRA is required to prepare and issue various procurement guidelines.

Each Group is required to visit PPRA's website www.ppra.go.tz and establish various guidelines which PPRA have prepared and the circumstances for use of those Guidelines.

What would be your advice to a PE that wants to execute something of which the Guidelines required to be prepared by PPRA is not yet out?

Session 5:

Eligibility and Qualification of Bidders to Participate in Procurement

Session Objectives

To enable participants to explain legal capability requirements for bidders to participate in procurement opportunities

! In this session you will get to understand eligibility and qualification requirements of local and foreign bidders who wish to participate in procurement proceedings in the country.

Training Materials

Section 1.5 of the Reference Manual.

PPA 2011-S.51

GN. 446-R.9

Group Discussion 1-3

Discuss in Groups of two or three on whether it is allowed for Limited Liability Companies whose shareholders are the same to tender for the same assignment?

Exercise 1-5

Juma is a junior employee in your organization and he owns a small vendor business. You have a staff function and Juma submits a tender for catering services. Would you award him a contract?

Discuss in groups of two and three and in the end one member of the group will be required to make a presentation on the decision of the group clearly giving reasons that led to whether they will or will not award the contract to Juma.

Session 6:

Handling of Procurement Complaints

Session Objectives

To enable participants to apply legal requirements in handling complaints submitted by bidders.

! In this session you will get know the procedures to be used to handle any complaints raised by the bidders about procurement processes and other related matters.

Training Materials

Section 1.6 of the Reference Manual.

PPA 2011-S.88 to S.101 Read together with Public Procurement (Amendment) Act, 2016

GN. 446-R.104 to R.107

Session 7:

Empowerment of Tanzanian Citizens through Public Procurement Part 1

Session Objectives

To enable participants to appreciate the need of favouring local firms when they participate in the procurement proceedings,

To enable participants to apply framework of PPA 2011, its amendments of 2016 and its Regulations in favouring local firms

! In this session you will recognize LGAs obligation to favour local companies operating in the country and within their locality, who is eligible to enjoy preference, and the type of preferences provided in the Law.

Training Materials

Section 1.7.1 to 1.7.4 of the Reference Manual.

PPA 2011-S.54

GN. 446-R.30 to R.45

Exercise 1-6

Find below a discussion that was picked up from the Tanzania Public Procurement Forum <http://ppra.forumotions.net/>

Do Margin of Preference cause inefficiency?

RSM on Fri Apr 01, 2011 7:31 am

Dear Forum members,

Public Procurement Act and its Regulations provides for a margin of preference of up to 10% for local firms when competing with International firms. My question is - does that provision encourage efficiency on the part of a local firm?

I will give a scenario for you to consider before you give your comment.

Vichekesho Municipal Council invited tenders for a construction of a commercial office building whose estimated construction costs was 140 billion Tsh. Five contractors submitted their Bids as follows:

Contractor	Tender Figure	Add 10% margin of preference to foreign firm	Ranking
A (Foreign)	145,000,000,000	159,500,000,000	5
B (Foreign)	138,000,000,000	151,800,000,000	2
C (Foreign)	142,000,000,000	156,200,000,000	4
D (Local)	148,000,000,000	148,000,000,000 (margin of preference not applied)	1
E (Foreign)	140,000,000,000	154,000,000,000	3

In the evaluation, after adding 10% margin of preference as required by the law, the local firm D was evaluated to be the lowest, with the lowest evaluated bid of Tsh. 148 billion which is 8 billion above the estimated costs but also the higher than all bids submitted by foreign contractors.

Questions:

1. Would you proceed and recommend D for the award of contract in accordance with the provisions of granting margin of preference to local firms?
2. If yes, is this not encouraging inefficiency on the part of the local contractor, by accepting to pay him Tsh 10 billion more than B who submitted a lowest bid at Tsh 138 billion or Tsh 8 billion above the client's estimate?

Session 8:

Empowerment of Tanzanian Citizens through Public Procurement Part 2

Session Objectives

To enable participants to apply other measures provided in PPA 2011, its amendment of 2016 and Its Regulations in facilitating easy participation of local firms,

To enable participants to appreciate the mandate of PPRA in monitoring and implementation of the preference scheme

! In this session you will get realize the other measures included in PPA 2011, its amendment of 2016 and its Regulations: splitting of contracts, timely payments to suppliers and service providers, simplified requirements for participating in the procurement proceedings. You will also get know the mandate of PPRA to ensure compliance with preference scheme requirements and how that can be achieved.

Training Materials

Section 1.7.5 to 1.7.9 of the Reference Manual.

PPA 2011-S.69 (5)

GN. 446-R.41 to R.45

MODULE 1:

INTRODUCTION TO PUBLIC PROCUREMENT, GENERAL PRINCIPLES AND PRACTICES

REFERENCE NOTES

1.1 Procurement – General Definition

Procurement is the acquisition of appropriate goods, works and/or services at the best possible *total cost of ownership* to meet the needs of the public entity in terms of quality, quantity, time, and delivery.

PPA 2011-S.3 Defines “Procurement” as “buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a Procuring Entity spending public funds on behalf of a ministry, department or regional administration of the Government or public body and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation, award and management of contracts;”

Procurement as a function should ensure acquisition of the right goods (equipment, material, consumables), works (construction, repairs, rehabilitation), and services (individual consultants, consulting firms, training, workshops) required to satisfy certain needs at the right time, from the right supplier or service provider, in the right quantities, in the right quality, and at the right price.

Public procurement enables Public Institutions defined in PPA 2011-S.3, to procure inputs which are vital for their operations and investments. The procured inputs can be in the form of physical infrastructure built or in strengthened institutional and human capacities, both of which lay foundations for national development.

In procurement terms and in line with the PPA 2011 and its Regulations, those inputs are generally grouped into four main categories as follows:

- Works – which includes:
 - All work associated with the construction, reconstruction demolition, repair or renovation of a building, structure, road or airfield; and
 - Any other civil works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;
 - Services which are tendered and contracted on the basis of performance of a measurable physical output such as transport of people or goods, drilling, mapping, photography or seismic investigations.

Generally, contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the service covered by the contract.

Goods - which includes: Raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual

property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;

Consultancy services: means activities of an intellectual and advisory nature that do not lead to a measurable physical output and includes design, supervision, training, advisory, auditing, software development and similar services.

Non-consultancy service: which includes: any object of procurement other than goods, works and consultancy services. It includes services of a skilled or non-skilled nature, which is not a consultancy service and includes, but is not limited to, cleaning, security, maintenance, and repair services.

1.2 Strategic Importance of Procurement to Public Entities

All public entities defined in Section PPA 2011-S.3 require various inputs to enable them deliver services to the people. These include various physical infrastructure such as roads, water supply mains, school buildings, hospital buildings etc; goods such as vehicles, books, medicines, furniture etc; consultancy services such as design of buildings, conducting of feasibility studies, management and advisory services etc; and non- consultancy services such as security, cleaning services etc. The quality, timeliness, local appropriateness and affordability of these procured inputs by the public entity can largely determine whether the public investments and operations will succeed or fail.

Refer to the definition of Procuring Entity and Public Body in PPA 2011-S.3

Globally procurement accounts for roughly sixty to eighty percent of most budgets of public institutions. This amount of financial resources cannot be ignored as such resources are scarce and ought to be put into good use by creating value to the public entity.

Public procurement provides the largest domestic market and it is a bridge between the public and private sector. It is a means of providing public entities with inputs they require to fulfil their mandate and at the same time it is a means that enables the private sector to do business with the public entities. Therefore, a good procurement system benefits both the public and the private sector as well as ensuring that goods and services reach the citizens for whom they are intended. A good procurement system will ensure better contract performance and improved development outcomes for all.

It is important to appreciate that procurement is a process that takes time, and for this reasons it has sometimes been dubbed as bureaucratic, slow etc. Much time is spent in the procurement planning and tendering processes, but equally important is the time spent in contract implementation and management. Much of the procurement process is supposed to be highly visible, and when this is not the case, controversy, finger pointing is apparent and exposes those involved in the procurement process (public and non-public officials) to scrutiny and second-guessing for procurement choices they made, deferred or discarded.

1.3 Guiding Principles of Public Procurement in Tanzania

The public procurement policies are based on the need to make the best possible use of public funds, whilst conducting all procurement with honesty and fairness. The overall objective of the public procurement system is to provide value for money to the Government by ensuring that public funds are spent in a transparent, efficient and fair manner.

All public officers and members of Tender Boards undertaking or approving procurement actions are guided by the following basic considerations of the public procurement policy in Tanzania: -

Refer to the definition of Procuring Entity and Public Body in PPA 2011-S.3

The need for economy and efficiency in the use of public funds and in the implementation of projects including the provision of related goods and services;

Economy: Procurement is a process that is aimed at providing the Procuring Entity best value for the money spent. For complex purchases, value may imply more than just price. Other factors such as quality and delivery and appropriateness (just to mention a few) also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

Efficiency: The best public procurement system is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the Procuring Entity and the procurement personnel in its employ.

The promotion of economy, efficiency and value for money practices is fundamental to any good public procurement system. Diligent application of principles of value for money and economic efficiency can bring substantial savings of public funds. Savings can either be in the form of direct savings obtained through cheaper prices for goods or services or can be in the form of indirect savings obtained through provision of quality goods or services thus eliminating the need of redoing. PE are therefore encouraged to adopt procurement practices that promote fair competition in all tenders, discourage the use of fake competition; and use methods of aggregation where appropriate in order to take advantage of economies of scale.

The best interests of the Procuring Entity, in providing all eligible suppliers, contractors, and service providers as per the requirements of the PPA 2004, equal opportunities to compete in the provision of goods, executing works or providing services;

Equal Opportunities: Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities

Encouragement of national manufacturing, contracting and service industries;

Encouragement through Preference Schemes: Local manufacturing, contracting and service industries are given preference in bidding for public contracts so as to boost the national economy. Goods being procured are "manufactured goods" involving assembly, fabrication, processing etc., where a commercially-recognized final product is substantially different in basic characteristics of its components and raw materials. As for services, local service providers may either bid alone or in joint venture with fellow Tanzanian or foreign firms to qualify for the preference.

The importance of integrity, accountability, fairness and transparency in the procurement process.

Integrity and Accountability: Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

Ethical issues are amongst some of the obstacles in achieving value for money. People involved in procurement should ensure the following: avoidance of collusion, avoidance of conflict of interest, provision of equal opportunities, confidentiality and limited disclosure, avoidance of all corrupt practices in procurement, avoidance of all fraudulent practice in procurement, avoidance of obstruction and undue delay in procurement processing and exerting inappropriate influence on any procurement procedure.

Transparency: Good procurement should also be seen to be transparent and fair. The policy establishes and then maintains rules and procedures that are accessible and unambiguous to all parties in the process. The procurement process should not only be fair, but should be seen to be fair.

Promotion of transparency in procurement can act as deterrence for corruption. PPA 2011 and its Regulations require that all PEs to the extent possible make their procurement proceedings transparent through public advertisement of tenders and disclosure of the procurement proceedings, a task which is assigned to PMUS. PEs are therefore required to keep procurement records. To facilitate this PEs are required to maintain a complete record of the procurement proceedings, which may be made available to any person after the tender has been awarded with a requirement to avoid disclosure of proprietary commercial information.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified bidders, contractors, service providers and consultants. This directly and concretely benefits the PE, responsive contractors, suppliers, service providers, consultants, the Government and other development partners.

A procurement system that does not embrace the above elements stimulates hesitation to compete, submission of inflated bids/proposals containing risk premium, or submission of deflated bids/proposals followed by delayed or defective performance during the contract implementation stage. A poor procurement system may also result in bidders/consultants colluding to defraud the government and other procuring public bodies, bribery by frustrated or unscrupulous bidders and consultants, bad value for those entities and betrayal and abuse of the public trust for personal gain.

In summary a sound procurement system must ensure that there is economy and efficiency; it provides equal opportunities and preference to local firms; its embraces integrity accountability, fairness and transparent in the procurement process. A procurement system that does not contain these basic principles stimulates hesitations of potential bidders to compete, submission of inflated bids/proposals containing a risk premium, or submission of deflated bids/proposals followed by delayed or defective performance during the contract implementation stage. A poor procurement system may also result in bidders/consultants colluding to defraud the government and other procuring public bodies, bribery by frustrated or unscrupulous bidders and consultants, bad value for those entities and betrayal and abuse of the public trust for personal gain.

1.4 Regulatory Framework of Public Procurement in Tanzania

1.4.1 Overview

The regulatory framework for procurement in Tanzania is basically hinged on the following:

- The Public Procurement Act No. 7 of 2011;
- The Public Procurement (Amendment) Act No. 5 of 2016;
- The Public Procurement Regulations GN. No 446 of 2013;
- Local Government Tender Boards (Establishment and Proceedings) Regulations GN. No. 330 of 2014;
- Standard Tender and Proposal Documents;
- Tender/Proposal/Quotation Evaluation Guidelines;
- Guidelines for Preparation of Responsive bids;
- Procedural Forms as issued by PPRA; and
- Other Circulars periodically issued by the PPRA.

The backbone of the regulatory framework is the PPA 2011 (as amended in 2016) and its regulations on procurement of goods, works, non-consultant services and disposal of public assets by tender and employment and selection of consultants. This framework is summarised in Figure 1.1.

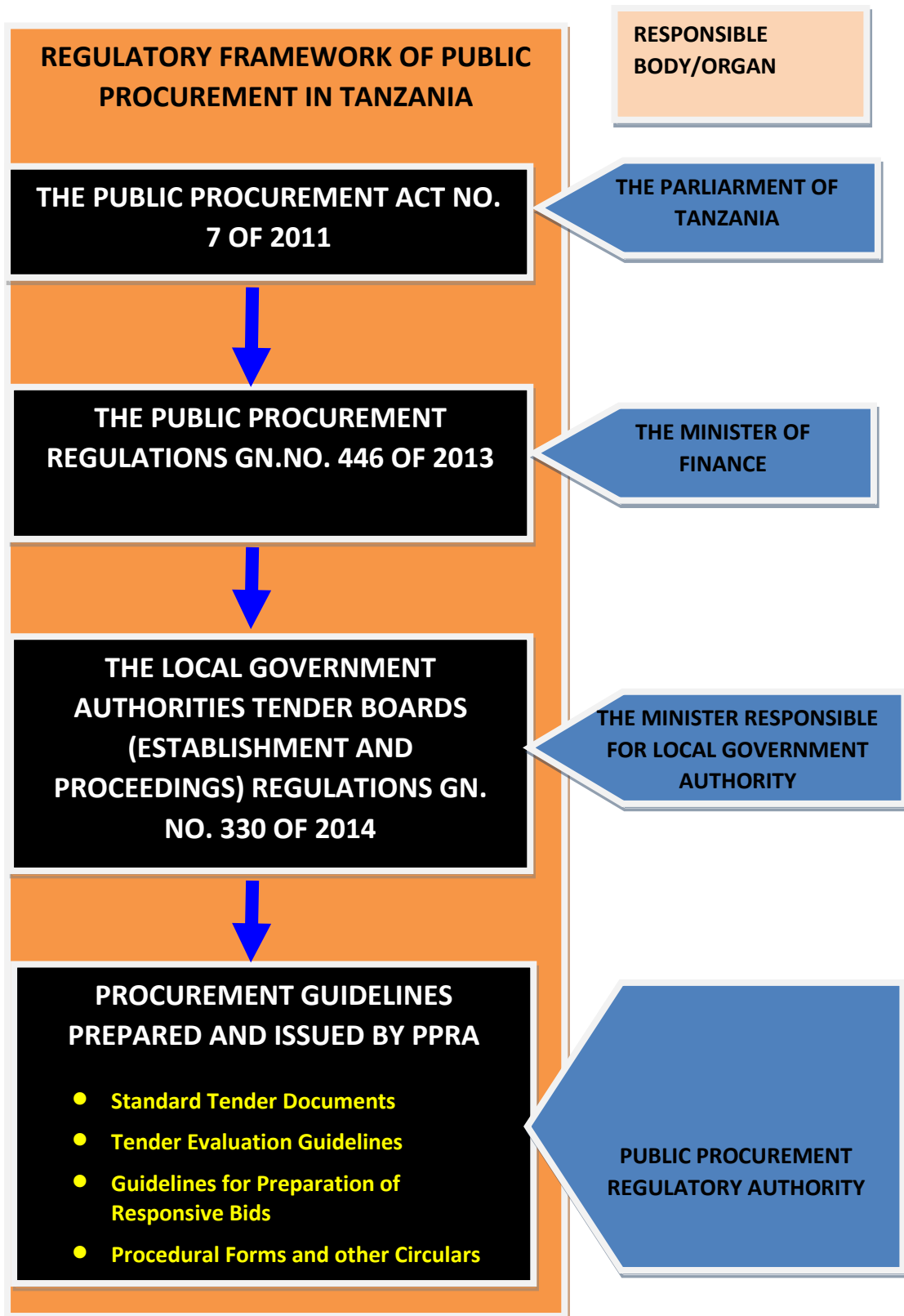


Figure 1.1: Regulatory Framework of Public Procurement in Tanzania

1.4.2 The Public Procurement Act No. 7 of 2011

The PPA 2011 is an Act that repealed the Public Procurement Act, 2004 with a view to make better provisions for the regulation of Public Procurement in the Government of the United Republic and to provide for other related matters.

According to Section 2(1) of PPA 2011, the Act applies to the following:

- All procurement and disposal by tender undertaken by a Procuring Entity except where it is provided otherwise in this Act;
- Non-Government entities, for procurement financed from specific public finances; and
- Public Private Partnership projects, in their relevant stages.

1.4.2 The Public Procurement (Amendment) Act of 2016

The major amendments to the Act are summarized in the below table:

S/n	Change / Issue	Particular of Amendment
1.	General Improvements	<ul style="list-style-type: none"> • Prudent use of market prices • Reducing procurement process / transaction costs • Increasing opportunity for participation of special social groups e.g. women, youth, elderly, people with disabilities • Promotion of industrial development using locally produced raw materials, products and services • Establishing and adopting government approved standards • Making special procedures for commercial oriented entities to procure inputs of production, etc
2	Specific Issues (PPRA related)	<ul style="list-style-type: none"> • PPRA in collaboration with AGO & Professional Bodies preparing, updating and issuing of authorized versions of standard Bidding Documents and other documents • PPRA to build capacity of stakeholders involved in public procurement • PPRA to obtain price information for standardized common items and services from relevant public bodies • Under Sect. 10(3) PPRA may order suspension of proceedings/implementation of any matter under investigation
3	Powers of PPRA	<ul style="list-style-type: none"> • Section 18(1): Powers of the authority • (e) excludes “tenderers” because of complaints review mechanism already in place • Section 23(2): Appointment of the CEO (of PPRA) need not be “registered” for professionals as there are other professions without registration
4	Functions of Accounting Officer	<ul style="list-style-type: none"> • Section 36: Functions of the AO (l): emphasizes on submitting “details” and not just a list of procurement contracts awarded and Annual Procurement

S/n	Change / Issue	Particular of Amendment
		Plan (APP) for the next Financial Year (FY) (n): emphasizes on the use of Procurement Management Information System (PMIS) and e-procurement
5	Witnessing on Contract Signing	<ul style="list-style-type: none"> New section 46A: Witnessing on contract signing As per the law or legal instrument establishing the Procuring Entity (PE) , or where not available any person enumerated under the Notaries Public and Commissioner for Oaths Act
6	Removal of "Closed" Framework Agreements	<ul style="list-style-type: none"> Section 50(1): Removal of "closed" framework agreements within the procurement of Common Used Items and Services (CUIS) (3): Open framework agreement contains specific terms and conditions but does not contain agreed price New sections 55A-55D: Local content Emphasis on local firms with 100% local ownership
7	Cool off Period Reduced to 7 Working Days	<ul style="list-style-type: none"> Section 60 (3): Cool off period reduced to 7 days Contract is formed when a written acceptance is communicated to the successful tenderer
8	Procurement Contract Entering Into Force	<ul style="list-style-type: none"> (10): A procurement contract "enters into force" when the formal contract is signed by parties to the contract
9	Selection of Procurement Methods	<ul style="list-style-type: none"> Section 64: Selection of methods of procurement (2)(c): Includes special groups, e.g. Women, youth, elderly, and persons with disability Instead of "restricting the issue of tenders" PE's to set aside a specific percentage of the procurement volume to special groups
10	Procuring directly from Manufacturers, Dealers, Wholesalers or Service Providers	<ul style="list-style-type: none"> Section 65A: Procuring directly from manufacturers, dealers, wholesalers or service providers Certain goods and services Procedure to be prescribed in Regulations
11	Emergency Procurement	<ul style="list-style-type: none"> Section 65: Emergency procurement (1)-(2): Emphasis on "emergency "and not "urgent" Former subsection (3) and (4) deleted: GPSA no longer involved in approving emergency procurement
12	Established and Approved Standards of Items or Services to be Procured for Government Use	<ul style="list-style-type: none"> Section 65B: Established and approved standards of items or services to be procured for Government use: Standards to be issued by relevant Government organs Manner to be prescribed in Regulations Certain goods for Government use may not need approved procurement standards

S/n	Change / Issue	Particular of Amendment
13	Fraud, Corruption and Debarment	<ul style="list-style-type: none"> • Section 83: Fraud, corruption and debarment • (2): PE is expected to conduct due diligence and not investigation; Can only declare a bidder ineligible • Corrupt practices can only be established by court of law and not by a PE • Emphasizes that debarment can only be declared by the Authority and not by a PE
14	Establishment of Appeals Authority	<ul style="list-style-type: none"> • Section 88: Establishment of Appeals Authority • (4): Deleted; to enhance good governance and avoid dual role within the institutional framework • Dual roles: resolving disputes and complaints while also serving as governing board (budget approving authority) • Section 89: Appointment of Executive Secretary • (3): Executive Secretary will not be supervised or directed by Appeals Authority • Section 91: Funds of the Appeals Authority • (3): deleted as the Appeals Authority is no longer a governing board for approving banks for its accounts • Section 93: Annual Management Plan and Budget • The authority for approval is now the PS of the ministry responsible for finance, and not the members of PPAA
15	Right to Review	<ul style="list-style-type: none"> • Section 96: Settlement of complaints/disputes by AO <ul style="list-style-type: none"> (4): Bidder given 14 days instead of 28 days (6): AO given 7 days instead of 14 days • Section 97: Review by Appeals Authority <ul style="list-style-type: none"> (2): Bidder given 7 days instead of 14 days (after AO decision or expiry of time given to AO without decision) (3): Bidder given 7 days instead of 14 days (for contract already in force) (5): More remedies: <ul style="list-style-type: none"> (g) Compensation to PE for costs incurred if it wins the case; (h) Set aside, vary or confirm decision by PPRA to blacklist; (i) Any other order or relief as it may deem fit to grant
16	Review Proceedings and Judicial Review	<p>Section 99: Certain rules applicable to review proceedings (1) & (2): deleted to reduce time and cost of occasioned complaints by unsuccessful bidders</p> <p>Section 101: Judicial review</p> <ul style="list-style-type: none"> (2)(b): A tenderer who is a public institution or a PE challenging the decision of the Appeals Authority: To state their positions to the AG immediately after the leave has been granted by the High Court (3): AG to state case containing positions of both parties and file a case marked "Case Stated" to the High Court for opinion.

S/n	Change / Issue	Particular of Amendment
17	E-procurement	<ul style="list-style-type: none"> • New Section 63: e-procurement • (1): Emphasis on the use of e-procurement including PMIS by PEs; Manual procedures only where electronic facility is not available

1.4.3 The Public Procurement Regulations GN. No 446 of 2013

These regulations came into force on 15th December 2014 and they repealed The Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Regulations GN. No 97 of 2005 and the Public Procurement (Employment and Selection of Consultants) Regulations GN. No 98 of 2005. They are applicable to:

- All procurement of goods, works and non - consultant services undertaken by a Procuring Entity except where the context provide otherwise in which case the provisions of the Act shall prevail;
- Selection and Employment of Consultants;
- Disposal of Public Assets by Tender; and
- Procurement under public private partnership.

The regulations have been formulated in accordance with PPA 2011-S.105 and they amplify the provision of the Act with regard to procurement principles and how to carry out procurement.

1.4.4 Local Government Tender Board (Establishment and Proceedings) GN No. 330 of 2014

These Regulations published on 12th September 2014 repealed the Local Government Tender Board (Establishment and Proceedings) GN No.177 Regulations of 2007. The regulations were prepared for the purpose of setting out the procedures for the establishment and conduct of LGAs TB. These Regulations have been formulated in accordance with PPA 2011-S.31 (3).

1.4.5 Procurement Guidelines

PPA 2011-S.9(1)(e)&106 mandates PPRA to prepare and issue guidelines from time to time for the better carrying out of the objectives or any functions under the Act. In line with this provisions PPRA has prepared various guidelines which are discussed below:

- Standard Tender and Proposal Documents
- PPA 2011-S.70 has a mandatory requirement that all PEs undertaking Procurement in Tanzania use the appropriate standard model tender documents as prepared and issued by the PPRA. The Standard Tendering Documents [STDs] shall generally be worded so as to permit and encourage competition and shall set forth clearly and precisely all the information necessary for a prospective tenderer/consultant to prepare tender for the goods, works, non-consultant services or proposal for consultancy services to be provided.
- The Standard Tendering and Proposal Documents are aimed at providing Procuring Entities with common standard draft documents containing basic contractual provisions and

safeguards which are required by the Government of Tanzania in the execution of public procurement and the use of public funds.

The STDs and Standard Request for Proposals (SRFP) are specifically aimed at achieving the following:

- Increasing predictability and uniformity in the tender and selection process,
- Increasing efficiency of the tender and selection process and reduce costs,
- Reducing unresponsive bids and proposals and thus increasing competition; and
- Reducing preparation and review time.

For the procurement of goods, works and Non-Consultancy services, the STDs require the minimum of changes and are user friendly. Changes to the STDs are introduced through the Tender Data Sheet (TDS), Special Conditions of Contract (SCC). The Bidding document will also require the PE to include such aspects as the Specifications, Scope of Work, Bills of Quantities and Technical/Engineering drawings (for works contracts).

While Selecting and Employing Consultants in Public Financed contracts, the use of the Standard Request for Proposal (SRFP) is based upon internationally acceptable model formats, which have been adapted to suit the particular needs of procurement within Tanzania. The SRFP has 6 Sections, of which Section 1 (Instruction to Consultants) and Section 3 (General Conditions of Contract) must not be altered or modified under any circumstances.

The way in which a PE addresses its specific needs is through the information provided in the Proposal Data Sheet (PDS) and the Special Conditions of Contract (SCC) as well as in the detailed requirements of the procurement in the Terms of Reference (TOR).

The SRFP, when properly completed will provide all the information that a Consultant needs in order to prepare and submit a viable proposal that provides a sound basis on which a Procuring Entity can fairly, transparently and accurately carry out an evaluation process on the proposals submitted by the Consultants.

Tender Evaluation Guidelines

The Standard Tender Evaluation Guideline have been prepared by the Public Procurement Regulatory Authority (PPRA) for use by public authorities and their implementing agencies in the evaluation of tenders, in accordance with the provisions of the GN.446. The Standard Tender Evaluation Guideline is intended specifically to assist in the evaluation of tenders procured through International Competitive Tendering (ICT). The guideline is also useful, with appropriate modifications, for evaluation under National Competitive Tendering (NCT), International and National Shopping procedures.

Proposal Evaluation Guidelines

The guidelines sets out the format of a sample evaluation report that facilitates the evaluation of consultants' proposals and the subsequent review of the proposals by the tender boards. The use of the guideline is strongly recommended by the PPRA but not mandatory. The actual evaluation conducted by the PE shall conform to the requirements (criteria) as set out in the Request for

Proposals provided to the consultants. It is expected that the evaluation will be carried out by competent, diligent and qualified personnel who are well knowledgeable in the subject matter of the consultancy and the procurement process that goes with it.

Guidelines for Preparation of Responsive Bids

When Procuring Entities advertise for bid opportunities they aim at obtaining maximum competition from the bidders and realise Value for the money to be spent in the procurement/selection process. This can only be achieved if bidders submit commercially and technically responsive bids or proposals, so that eventually they are compared on their price or quality as the case maybe.

The Guidelines for preparation of responsive bids/proposals are intended to assist bidders/consultants to prepare responsive bids/proposals in conformity with the bidding or RFP documents. In addition, bidders and consultants are required to read and understand the PPA 2011 and its Regulations

1.5 Qualification and Eligibility of Bidders

PPA 2011-S.51 (1) requires that all tenderers need to participate in procurement proceedings, have to qualify by meeting appropriate criteria set out in accordance with the Act and Regulations. Subsection 4 of the same section puts importance on the qualification criteria to be made known to and applied equally to all tenderers.

GN. 446-R.6 (2) requires PEs not to deny pre- qualification, if required, to a firm for reasons other than legal capacity, financial capability and experience to successfully perform the contract. Circumstances under which pre-qualification may be denied are shown in GN.446-R6 (3) & (4). For government owned enterprise may participate if the enterprise is legally and financially autonomous; operates under commercial law; and is registered by the relevant professional registration body or authority – GN.446-R6 (5).

GN.446-R.9(5) requires an eligible tenderer to provide to the PE evidence of his eligibility, proof of compliance with the necessary legal, technical and financial requirements and their capability and, adequacy of resources to carry out the contract effectively.

1.6 Handling of Procurement Complaints

1.6.1 General Provisions

PPA 2011 has changed the complaints review process in which now any aggrieved tenderer shall be required to submit his complaint for review to the Accounting Officer and if not satisfied, he shall be entitled to appeal to PPAA as shown in Figure 1.2. PPRA has now been taken off the complaints review process to enable it carry out its advisory role without potential of any conflict of interest. Under the new system, the Accounting Officer is required to give a decision within seven (7) working days and is empowered to constitute an independent review panel from within or outside the organization to review the complaint and advise him. Further, the Act has provided sections which make PPAA independent from the Ministry of Finance – (PPA 2011-S.88 to 94).

Refer to PPA 2011-
S.95, 96 & 97

There is contradiction of what is provided in PPA 2011 and GN. No. 446, and GN. No. 330 with respect to handling of complaints particularly with regard to the following:

- Including PPRA in the complaints review process – GN. 330-R.44;
- Time given to the Accounting Officer to handle complaints – GN. 330-R.43(3);
- In accordance with of PPA 2011-S.2 (5), the provisions of the Act are taken to prevail, and therefore in this section the provisions of the Act have are the ones being discussed.

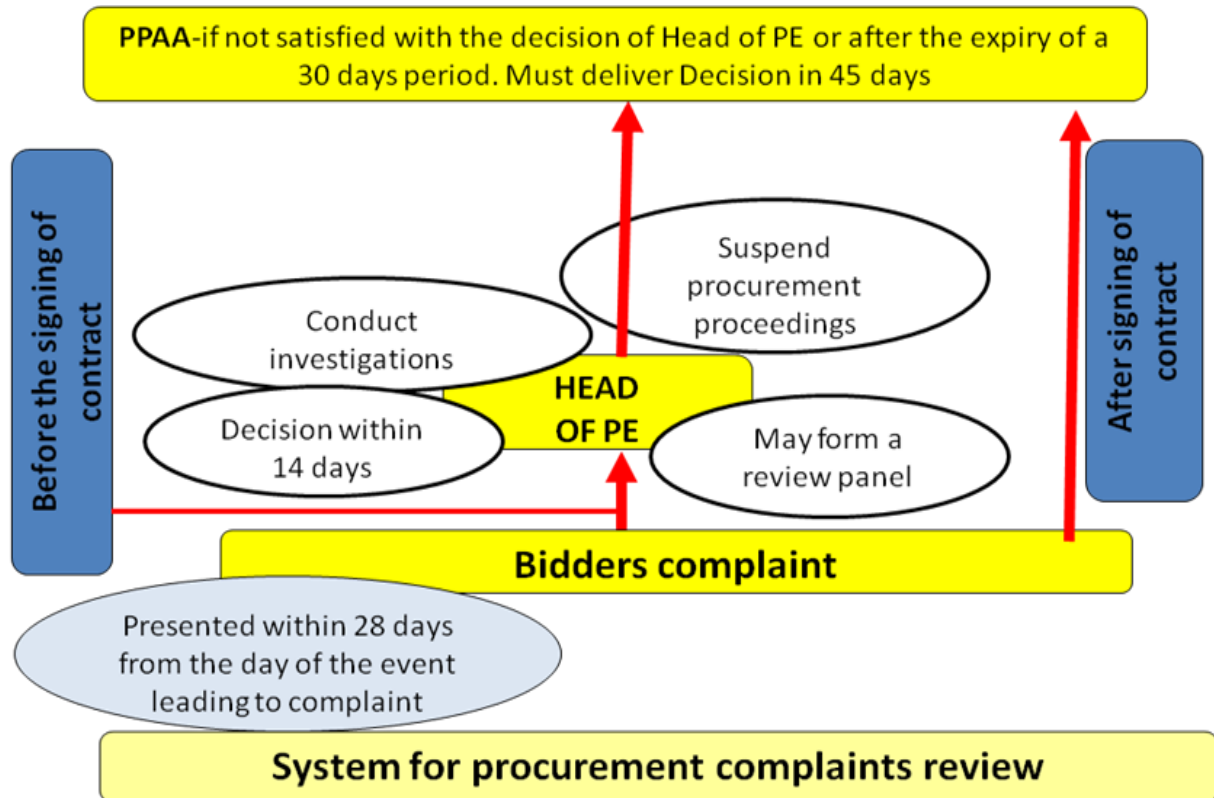


Figure 1.2: Procurement Complaints Review Procedure

1.6.2 Handling of Complaints at the PEs level

GN. 446-R.105 requires the bidder to submit an application for administrative review to the Accounting Officer of a PE within seven working days of becoming aware of the circumstances leading to the complaint or dispute.

It is important to note the following with regard to handling of procurement complaints at PE level as provided in PPA 2011 and GN. 446.

- The Accounting Officer of a PE is not allowed to entertain a complaint after the contract has entered into force – GN. 446-R.105 (4);
- The Accounting Officer of a PE, having received a complaint, must suspend procurement or disposal proceedings until he delivers a written decision on the complaint – GN. 446-R.106 (1);
- Upon receipt of application for administrative review, the Accounting Officer shall conduct an investigation and shall be required to deliver a written decision to a complainant and other tenders who participated in the proceedings within seven (7) working days. – GN. 446-

106(2) & (5). The decision shall be copied to PPRA and the copy shall be submitted within seven days from the date of its delivery – GN. 446-106(7);

- The Accounting Officer may form a review panel to advise him on the submitted complaint in accordance with PPA 2011-S.96 (2) and the panel shall consist of people with expertise and experience in the subject of a complaint GN. 446-106(3) & (4); and
- If the Accounting Officer fails to issue a decision within seven (7) working days, his competence to entertain a complaint shall cease and the bidder shall be free to lodge his complaint to PPAA. The same is applicable in a situation where the bidder is not satisfied with the decision of the Accounting Officer. In both cases, the submission of a complaint to PPAA shall be within seven (7) working days from the expiry of the period of determination of a complaint by the Accounting Officer or the date of communication of the decision.

1.6.3 Handling of Procurement Complaints at PPAA Level

Public Procurement Appeals Authority (PPAA) has been established by PPA 2011-S.88. According to the Act PPAA has original jurisdiction to hear and determine complaints against procuring entities where a procurement or disposal of contract is already in force and appeals arising from administrative decisions made by the Accounting Officer and shall review PPRA’s decision arising from blacklisting of tenderers - GN. 446-107.

Important things to note with regard to handling of procurement complaints at PPAA level:

- The determination of procurement or disposal dispute by PPAA is guided by its rules made under PPA 2011-S.105 (2) (g);
- A tenderer may submit a complaint or dispute directly to PPAA if the complaint or dispute cannot be entertained under PPA 2011-S.96 because of entry into force of the procurement or disposal contract, and provided that the complaint or dispute is submitted within seven (7) working days from the date of becoming aware of the circumstances giving rise to the complaint;
- PPAA shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the Procuring Entity in which case the PE shall be required to submit all the relevant documentations and information pertaining to the particular tender; and
- PPAA shall, within forty five days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any; and The decision of PPAA shall be final unless is subject for judicial review under PPA 2011-S.101

Box 1.1 Remedies that may be issued by PPAA – PPA 2011-S.97(5)

- declare the legal rules or principles that govern the subject matter;
- prohibit the PE from acting or deciding unlawfully or from following an unlawful procedure;
- require the PE that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- annul in whole or in part an unlawful act or decision of the PE;
- revise an unlawful decision by the PE or substitute its own decision for such a decision;
- require the payment of reasonable compensation to the tenderer submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the PE;
- order payment of compensation to the PE for any reasonable cost incurred by PE in whose favour a decision has been made by the Appeals Authority;
- set aside, vary or confirm the decisions made by the Authority to blacklist; or
- any other order or relief as it may deem fit to grant

read together with section 37 of the Public Procurement (Amendment) Act, 2016). PPAA may provide remedies provided in PPA 2011-S.97 (5) reproduced in Box 1.1.

The decision of the PPAA shall be binding to the parties on the complaint or appeal and such decision may be enforced in any court of competent jurisdiction as if it were a decree of the court.

PPRA upon receipt of reports of findings from the Accounting Officer or decision of PPAA, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of this Act.

1.7 Preference Scheme to Local Firms

1.7.1 General Overview

Any good public procurement system should, as discussed herein, have measures that promote the local players.

The participation of local firms in the public tenders is being hampered by lack of capacity in terms of capital, equipment, experience and human resources. The measures contained in the PPA 2011, its amendment of 2016 and its Regulations to increase participation of local firms in the tender process are in three categories as follows:

- Packaging (splitting) of contracts in sizes which allows the participation of small firms;
- Setting aside contracts of up to a certain value to local firms only; and
- Granting a margin of preference in favour of local firms in the tenders where they compete with foreign firms.

1.7.2 Eligibility to participate in the Preference Scheme

As a matter of principle, PPA 2011-S.54 (2) requires PEs when procuring goods, works or services of international or national bidding especially in evaluating and comparing bids, to grant margin of preference for the benefit of bids for goods manufactured, mined, extracted or grown in the United Republic of Tanzania (URT) and works performed by Tanzanian contractors or services provided by Tanzanian Consultant. However, this requirement must have been clearly stipulated in the bid documents.

PPA 2011-S.54(3) provides that individual Tanzanian contractors or consultants are eligible for margin of preference if they meet the following criteria; they are incorporated or registered in the URT, at least fifty percent of the authorised capital of the company is owned either by the Government or by citizens of Tanzania, they do not subcontract more than ten percent of the contract price and there is no arrangements whereby major part of the net profit or other tangible benefits of the domestic company will accrue or be paid to persons not citizen of Tanzania or to companies which would not be eligible.

In case of joint ventures of local companies they must meet the following criteria; individual member companies are incorporated or registered in the URT, at least fifty percent of the ownership of individual companies are held by citizen of Tanzania, the joint venture itself is registered in Tanzania, do not subcontract more than ten percent of the contract excluding provisional sums to foreign

firms and do not have arrangement whereby any major part of the profits will accrue or be paid to persons not citizen of Tanzania or to companies which would not be eligible.

For partners or individual persons trading as contractors or consultants, they must meet criteria such as; the majority of capital shares are held by citizen of Tanzania and the partners or individual persons shall not subcontract more than ten percent of the contract price excluding provisional sums, to foreign firms, partners or individual.

1.7.3 National Preferences

PPA 2011-S.54 makes it mandatory to a PE (when procuring goods, works or services by means of international or national tendering) to grant a margin of preference for the benefit of local players

Margin of preference of up to 10 percent in favour of local firms for works, consultancy and non-consultancy services is provided in GN. 446-R.34 and amplified in the 9th and 13th Schedule. The applicable preference depends also to the input of foreign firms in the association with local firms either through joint venture and subcontracting arrangements as shown in Box 1.2. A preference of 15% with regard to domestically manufactured or produced goods has been provided in GN. 446-R.37. revoked

Box 1.2: Preference Scheme for Local Suppliers, Contractors, Consultants and Service Providers-9th& 13th Schedule GN. 446

A: Margin of Preference in favour of local contractors or service providers, or association between local and foreign contractors or service providers under national and international competitive tendering.			
(a)	Margin of Preference under National and International competitive tendering for local contractors or service providers.		Margin of preference shall be 10%
(b)	Margin of Preference under National and International competitive tendering or selection for association of local and foreign contractors or service providers.		
	Input of foreign contractors, consultants or service providers. In the association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference
		25 -49%	Margin of preference shall be 8%
		0 -24%	Margin of preference
<p>The Authority shall in consultation with various industry stakeholders prepare guidelines to determine the level of input of foreign contractors, consultants or service providers in the association, and as part of the registration for eligibility to the preference scheme shall determine the margin of preference which shall be granted to a particular association between local and foreign contractors, consultants or service providers. B: Margin of Preference for goods mined or manufactured in Tanzania shall be 15%.</p>			

The inclusion of local firms and experts in consultancy assignments has been covered in GN.446-R.35 revoked, through apportioning of maximum weight of 15% and 10% in the criteria for participation of local firms and national experts in the assignment respectively. Similarly the use of local experts in works and non-consultancy services is covered in GN. 446-R.36 revoked, and PPRA is required to issue guidelines which will address how inclusion of key local staff in the assignments and the use of locally manufactures, produced or mined materials will be taken into account.

1.7.4 Exclusive Preference:

PPA 2011-S.54 provides for exclusive preference, i.e. setting aside contracts exclusively for local persons, where financial resources are exclusively provided by a Tanzanian public body. It is mandatory for PEs under those circumstances to set aside contracts for local firms. The GN. 446-R.39 provides the limits of exclusive preference shown in Box 1.3.

Where the Procuring Entity does not proceed with the local person or firm set-aside under subsection (1), and procures on unrestricted basis, the Procuring Entity shall include in the procurement file the reason or reasons for the unrestricted procurement. Important provisions under exclusive preference include:

Box 1.3: Exclusive Preference to Local Firms

<i>Procurement type</i>	<i>Value (Tshs)</i>
Works	10,000,000,000
Goods	2,000,000,000
Non-Consultant Services	2,000,000,000
Consultants -Firms	3,000,000,000
Consultants - Individual	50,000,000

- Where Procuring Entity receives only one acceptable offer from a responsible local person or firm in response to procurement set-aside, the Procuring Entity may consider to make an award to that person or firm;
- Where the Procuring Entity receives no acceptable offers from responsible local persons or firms, the set-aside procurement shall be withdrawn and if the requirements are still valid, new offers shall be resolicited on unrestricted basis; and
- In addition to provided exclusive preference, the Minister of Finance, on advice of PPA, may grant special considerations for procurement of goods, services or works for the purpose of promoting the growth of local companies or public owned local companies in which the Government has shares.

Also regional preference based on the locality of the firms has been recognized in which case PEs, particularly those in the local governments, are allowed through GN. 446-R.40 to reserve contracts up to a certain value to firms located in their locality. This move will encourage establishment of businesses outside major cities and towns of the country.

1.7.5 Splitting of Contracts

PPA 2011-S.49 as a matter of principle requires procuring entities to aggregate their procurement requirements to obtain a large tender which would allow them obtain value of money through economy of scales and reduced procurement costs. PPA 2011-S.49 (1) (c) particularly prohibits splitting to defeat the use of appropriate procurement methods. For example, GN.

Box 1.4: Regional Preference to local firms

Procurement type	Value(Tshs)
Works	1,000,000,000
Consultancy Services	200,000,000
Goods	200,000,000
Non-Consultant Services	200,000,000

No. 446 allows the use of Request for Quotation obtained from at least three (3) suppliers, contractors or service providers for procurement whose value does not exceed Tsh. 120 million in the case of goods, Tsh. 200 million in the case of works and Tsh. 100 million in the case of non-consultancy services. With this provision, the PEs could decide to avoid using other methods of open tendering by splitting its requirements to small lots of value not exceeding the given thresholds in order to justify the use of quotations.

However, in order to build capacity of the locals, splitting of contracts to sizes which can be implemented by local firms is allowable under GN. 446-R.42 .A PE wishing to split a contract for wide

participation of local firms should ensure the lots are such that local firms are able to compete and must obtain approval of PPRA.

1.7.6 Timely Payment as a Capacity Building Measure

Failure to pay supplier and service providers on time has been a very serious problem. Timely payment of contracts under preference scheme has been included as a financial capacity building measure. This will be possible if a PE before signing a contract under a preference scheme is assured of availability of funds. GN. 446-R.44 puts accountability on PEs to ensure timely payments.

Refer to GN. 446-R.10(4) and R.44 on PEs Obligations to Effect Payments on Time

1.7.8 Simplified Requirements for Participating in Procurement Proceedings

One of the major obstacles faced by SMES in participating in procurement proceedings is the conditions attached for participation including payment of exorbitant fees to collect tender documents and requirements to submit tender securities.

PPA 2011-S.69 (5) and GN. 446-R.183 (3) has put a limitation on the tender fees to be charged by the PEs for the collection of Tender documents.

Refer to PPA 2011-S.69(5) and GN.446-R 183 (3) as a Guide on How to Set Tender Fees

The use of tender securing declaration instead of tender securities in all tenders subject to exclusive preference scheme is provided for in GN.446-R 41. It is important to remind bidders that failure to comply with the terms of the tender securing declaration shall lead to debarment for a period not less than six months and not exceeding two years –PPA 2011-S.62 and GN.446-R 93(3) (b).

1.7.9 Monitoring of Preference Scheme

GN.446-R 45 puts accountability on PPRA to ensure that PEs implement the preference scheme by maintaining a database of all contract awards under preference scheme and publish it in the TPJ and Tender Portal-.

Case Study 1.1

Ni nini Kiini cha Tatizo la Bei Kubwa Zitolewazo na Wazabuni?

Mhadhiri, Chuo Kikuu Cha Dar-es-Salaam

Hivi siku za karibuni kumezuka mjadala kuwa kwa kutumia Sheria ya Ununuzi ya Umma, Taasisi za Umma zinaishia kununua huduma na bidhaa kwa bei kubwa ukilinganisha na kama wanguenunua moja kwa moja bila kuitisha zabuni.

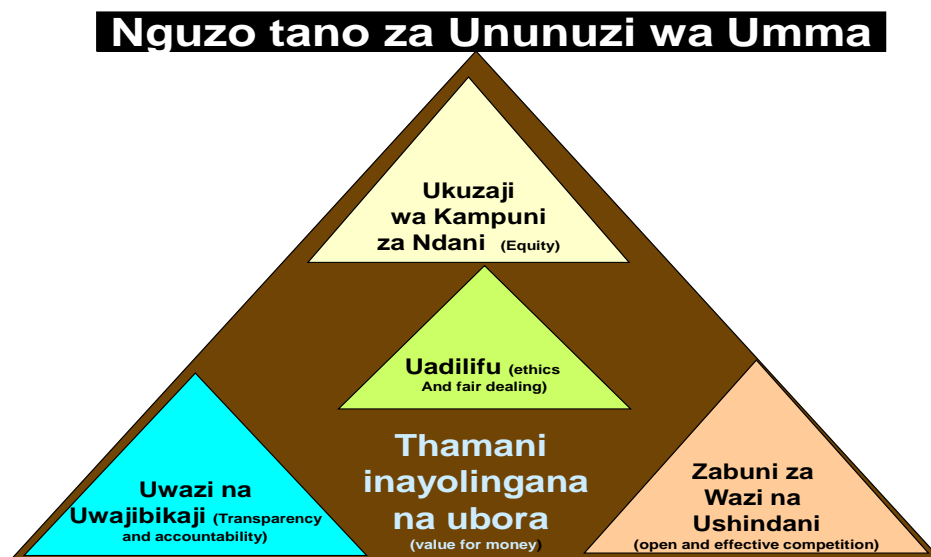
Labda nianze kwa kusema kuwa lengo kubwa la kuwoko kwa Sheria ya Ununuzi ni kuziwezesha Taasisi za Umma kupata *thamani ya fedha inayolingana na ubora wa huduma na vifaa vinavyonunuliwa*. Nguzo hiyo muhimu imeonyeshwa kwenye Mchoro Namba 1 ambao nimekuwa nautumia mara kwa mara katika mada zangu ninazoandika na ambao nitautumia pia hapa pamoja na Mchoro Namba 2 kuonyesha tatizo la bei kubwa kutoka kwa wazabuni linatokana na nini.

Ili Taasisi ziweze kupata thamani ya fedha inayolingana na ubora wa huduma na vifaa vinavyonunuliwa inabidi mambo yaliyoainishwa kwenye Mchoro Namba 1 yatekelezwe. Kuwepo

ushindani ulio sawa kwa wazabuni wote bila ya kuwa na upendeleo itahakikisha kuwa tunakuwa na ushindani wa kweli na hivyo kutimiza malengo ya ushindani ambapo ni kupata bei nafuu.

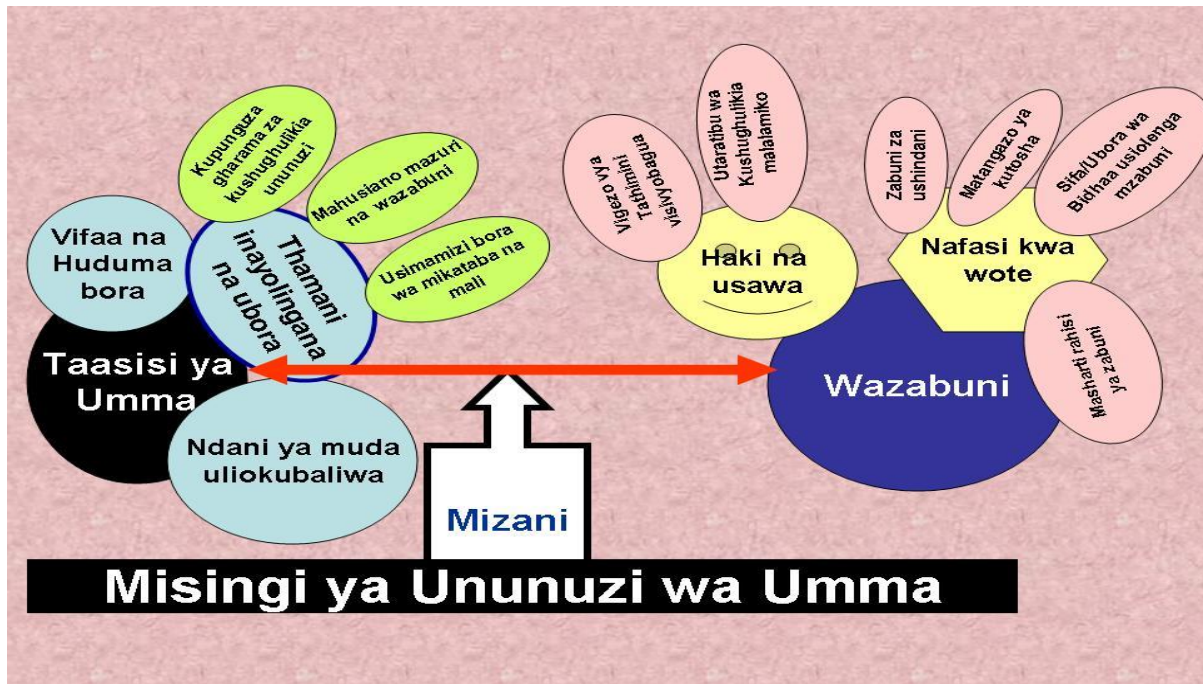
Kunapokuwepo na uadilifi na kutendana haki katika manunuzi kutafanya mfanyabiashara aone aibu kuibia serikali kwa kutoa bei ambazo hazilingani na soko au kukubali ushawishi wa watendaji wa serikali wa kuongeza bei au kuleta bidhaa dhaifu ili wagawane kile kinachopatikana. Vilevile uadilifu utawafanya watendaji wa serikali wasikubali kupokea vishawishi kutoka kwa wafanyabiashara ili wawape zabuni hata pale wasipostahili au ili wakubali bidhaa au huduma duni. Uadilifu vile vile utamfanya Mtendaji wa Serikali aone aibu kuipa kampuni yake au ya ndugu yake zabuni kwa upendeleo.

Uwazi na uwajibikaji utawezesha watendaji wa serikali wawe tayari kuweka na kutoa taarifa muhimu za mchakato wa manunuzi yanayoendeshwa na taasisi zao na waweze kuwajibika na matatitizo yatakayojitokeza katika masuala yote ya manunuzi. Na mwisho kujenga uwezo wa kampuni za ndani ni muhimu kwani hiyo itachochea kukua kwa uchumi zaidi na hivyo kuwezesha kuongezeka kwa mapato ambayo ni muhimu katika kuhakikisha kunakuwepo pesa za kutosha kutoa huduma kwa wananchi na hivyo kazi nyingi zaidi kwa wazabuni.



Mchoro Namba 1: Nguzo muhimu za ununuzi wa Taasisi za Umma

Kifungu 43 cha Sheria ya Ununuzi wa Umma ya mwaka 2004 kinasisitiza umuhimu wa Watendeji wa Taasisi za Umma kuzingatia nguzo hizo muhimu kama inavyoonyeshwa kwenye Mchoro Namba 2.



Mchoro Namba 2: Misingi muhimu za ununuzi wa Taasisi za Umma kama ilivyoainishwa kwenye Sheria

Suala la bei kubwa kutoka kwa Wazabuni nitaliangalia katika maeneo mawili yaliyoonyeshwa na Mchoro Namba 2. Eneo la kwanza ni mahusiano mazuri kati ya Taasisi ya Umma na Wazabuni ili kuiwezesha Taasisi ya Umma kupata thamani inayolingana na ubora wa bidhaa au vifaa vinavyonunuliwa. Na eneo la pili ni katika kuwatendea haki wazabuni wanaoshinda zabuni katika kuhakikisha kuwa wanalipwa malipo kwa vifaa au huduma walizotoa ndani ya muda ulioopo ndani ya Mkataba.

Kabla sijaangalia maeneo hayo mawili, labda tu nianze kwa kusema kuwa wengi wa wale wanaosema kuwa kununua bidhaa moja kwa moja kutoka kwa wazabuni bei inakuwa nafuu wanazungumzia pale mtu anapoingia dukani yeye binafsi na kununua kwa kutumia fedha taslimu. Ni nini maana ya kununua kwa bei taslimu kutoka dukani? Maana yake ni kuwa muuza vifaa au mtoa huduma (1) hana gharama zozote za kuandaa na kurejesha zabuni iliyoitishwa na Taasisi ya Umma, (2) hana wasiwasi wowote wa kucheleweshewa malipo yake, na (3) wakati mwingine kwa wale ambao ni wakwepaji wa kulipa kodi, anaweza kufanya ujanja wa kukwepa kulipa kodi itokanayo na mauzo hayo. Bei anayoitoa inakuwa ni bei ya mpita njia yoyote na hana sababu ya kuweka bei ya juu, ingawaje kwa sababu nilizozieleza kwenye Mchoro Namba 1 wapo watendaji ambao hata wanapokwenda kununua huduma au vifaa kwa bei taslimu wanaomba wapewe bei ya juu ili wagawane na muuzaji ile ziada ya bei. Hivyo kutokana na kukosekana na uadilifu hata ununuzi kwa kutumia fedha taslimu bado Taasisi inaweza kununua bidhaa kwa bei kubwa kuliko ile ya soko. Hilo si tatizo la Sheria ya Ununuzi ambayo moja ya misingi yake ni kusisitiza uadilifu, bali ni tatizo la kukosekana kwa uadilifu ambalo kwa sasa linaonekana kuwa ni kama donda ndugu katika nyanja nyingi za jamii yetu.

Yamekwishatolewa mapendekezo mbalimabli ambayo najua Wakala wa Ununuzi Serikalini wakishirikiana na PPRA wanayafanyia kazi. Moja ya mapendekezo hayo ni kuwa na bei elelezi za

huduma na vifaa, na kuweka utaratibu kama uliopo kwenye bidhaa za petroli ambapo Taasisi za Umma hazitaruhusiwa kununua kwa bei zaidi ya bei hizo elekezi. Vile vile upo utaratibu mwingine unaopendekezwa wa kununua kwa fedha taslimu kwa kutumia njia mbali mbali za mitandao zilizopo ikiwemo kutumia "purchase cards". Sio lengo langu katika mada hii kujadili mapendekezo hayo ingawaje ninakiri kuwa yakitelezwa katika mazingira ya uadilifu, basi kwa kiasi kikubwa Taasisi za Umma zinaweza kupata bidhaa na huduma kwa bei ambayo inalingana au hata chini ya bei ya soko.

Naomba sasa nirejee kwenye mada yangu ya bei kubwa kutoka kwa wazabuni na nianze na eneo la mahusiano mazuri kati ya Taasisi ya Umma na Mzabuni. Hili ni eneo ambalo kwa maoni yangu linachangia kwa kiasi kikubwa wazabuni kutoa bei kubwa pale wanaposhiriki kwenye zabuni kutokana muono wao wa jinsi ile Taasisi inavyofanya nao biashara. Eneo la kwanza la mahusiano tayari nimeligusia hapo juu, ni kuwa je watendaji wa Taasisi tuna sifa ya uadilifu? Je hatupokei rushwa ili kutoa zabuni? Je hatupokei rushwa ili kumlipa mzabuni malipo yako ndani ya muda unaostahili? Bahati nzuri au mbaya yale yote ambayo watendaji wa Taasisi za Umma tunayafanya na tunavyoshughulia zabuni na malipo ya wazabuni yanafahamika kwa wazabuni wengi ambao wanashiriki kwenye zabuni zinazoitishwa na Taasisi zetu. Kwa hiyo kwa mzabuni yoyote mwenye akili ataweka bei ya juu ukilinganisha na ile anayouza kwa bei taslimu kila anaposhiriki kwenye zabuni ambayo anajua kuwa atatakiwa atoe rushwa ili ashinde zabuni na/au vile vile atatakiwa atoe rushwa ili kulipwa malipo yake sahihi na ndani ya muda unaofaa. Kiasi gani ataongeza kitategemea ni usumbufu kiasi gani anaotua ataupata anapofanya biashara na Taasisi ile. Na kwa wazabuni ambao ni waadilifu wakijua Taasisi ina matatizo hayo ya kuokesekana kwa uadilifu basi huamua moja kwa moja kutoshiriki kwenye zabuni zilitishwazo na Taasisi hizo.

Eneo la pili la mahusiano mazuri kati ya Taasisi ya Umma na wazabuni na ambalo linaendana na kuwatendea haki wazabuni ni kuhakikisha kuwa mzabuni analipwa malipo yake ndani ya muda uliokubaliwa kwenye mkataba baada ya kuleta vifaa au kutoa huduma waliyokubaliana ndani ya mkataba. Kifungu 36(g) cha Sheria ya Ununuzi ya Mwaka 2011 kinamtaka Afisa Masuuli (Mtendaji Mkuu wa Taasisi) kuhakikisha kuwa ana fedha za kufanyia manunuzi ndani ya Taasisi yake. Pia Kanuni 10(4) ya Tangazo la Serikali Namba 446 la Mwaka 2013 linazitaka Taasisi za Umma kuhakikisha kuwa zinawalipa wazabuni malipo yao kama ilivyoanishwa kwenye mikataba ili kuhakikisha kuwa inalinda uaminifu wa Taasisi katika kufanya malipo kwa wadai wake, na pia Taasisi ihakikishe kuwa kabla ya kusaini mkataba inayofedha za malipo chini ya mkataba huo. Sambamba na matakwa hayo ya Sheria na Kanuni, nyaraka za zabuni zitolewazo na PPRA zinasisitiza kuwa malipo ya mzabuni yalipwe ndani ya siku 28 baada ya hati ya madai ya malipo kuwasilishwa na kuidhinishwa, na kwa malipo yakayocheleweshwa mzabuni atastahili kulipwa riba inayolingana na viwango vya riba ya kukopesha inayotozwa na benki za biashara.

Pamoja na msisitizo huo uliopo kwenye Sheria, Kanuni na Nyaraka za zabuni zilizoandaliwa na PPRA, tatizo la ucheleweshaji wa malipo ni kilio cha wazabuni wengi wanaofanya biashara na Taasisi za Umma. Iko mifano mingi tu ya ucheleweshaji wa malipo ya wazabuni ambapo malipo mengine yamecheleweshwa hata zaidi ya miaka miwili. Mzabuni anayejua kuwa akishatoa huduma malipo yake yatacheleweshwa, moja kwa moja huanza kujilinda kwa kutoa bei kubwa ili kulinda thamani ya pesa yake aliyotumia kwa sasa kwa kujua kuwa kama atatoa bei ya sasa ya soko, mwaka mmoja au miwili atakayolipwa baadaye kiasi hicho hakitakuwa na thamani ya sasa. Pamoja na kuwa Nyaraka za Zabuni zimempa uwezo mzabuni kudai riba, wengi wanaona kwa kufanya hivyo watakuwa wanaharibu uhusiano wao na Taasisi husika.

Suala la kumlipa mzabuni ndani ya muda uliowekwa kwenye mkataba pamoja na kuwa ni haki yake, kwa mfanyabiashara mdogo mdogo vile vile ni suala la kumjengea uwezo. Wengi wa wafanya biashara wadodo wanalo tatizo na mitaji midogo. Sheria ya Ununuzi na Kanuni zake imetoa upendeleo kwa kampuni za kizalendo, ambapo mfano kazi za hadi shs bilioni moja za ujenzi zinatakiwa zifanywe na kampuni za ujenzi za kizalendo (*ili kujua mikakati ya kuongeza na kuboresha uwezo wa kamouni za ndani kushiriki kwenye zabuni za Umma soma makala ya Dr. Laurent Shirima Jarida hili toleo la terehe 2 July 2013*). Hembu fikiri kampuni ndogo imeshinda zabuni na kwa vile haina sifa za kupata mkopo kutoka benki, ili kuonyesha kuwa ina uwezo wa kufanya ile kazi imefanya jitihada kukopa kutoka kwa ndugu, jamaa na marafiki mtaji unaohitajika kuifanya kazi hiyo ikiwa na matumaini kuwa itawalipa wote waliowakopesha mara baada tu ya kupata malipo yao. Unapocheleweshea kampuni kama hiyo malipo yake maana yake ni kuwa umeshaifilisi moja kwa moja. Mkakati uliowekwa kwa makusudi wa kujenga uwezo wa kampuni za ndani, unakuwa sasa ni mkakati wa kuziua kampuni hizo kwa kuzicheleweshea malipo.

Ninajua kuwa mara nyingi Taasisi hazifanyi makusudi kuchelewesha malipo bali inasababishwa na kutopata fedha iliyotengwa kwenye bajeti ndani ya muda au kutoipata kabisa. Ili kuhakikisha kuwa hatuingii kwenye migogoro ya kushindwa kuwalipa wazabuni ni vizuri tukazingatia Kifungu 36(g) cha Sheria ya Ununuzi ya Mwaka 2011 kinachomtaka Afisa Masuuli kuhakikisha kuwa ana fedha za kufanyia manunuzi ndani ya Taasisi yake na Kanuni 10(4) ya Tangazo la Serikali Namba 446 la Mwaka 2013 zinazozitaka Taasisi za Umma kuhakikisha kuwa kabla ya kusaini mkataba inayo fedha za malipo chini ya mkataba huo.

Naelewa hii ni mada pana na ambayo inagusa masilahi ya Taasisi za Umma na Wazabuni. Tutaondokana na tatizo la bei za ajabu ajabu kama watendaji wa Taasisi za Umma tutakuwa waadilifu kwa kutopokea rushwa kutoa zabuni na kufanya malipo yanayostahili kama ilivyoainishwa na mikataba. na kama tutawatendea haki wazabuni ya kuwalipa ndani ya muda unaostahili. Na katika hili anayetakiwa kuanza na kuonyesha njia ni Taasisi za Umma. Mabango tuliyoyaweka kwenye ofisi zetu ya kupinga vitendo vya rushwa yasiwe ni picha bali tuyatekeleze kweli. Na tijisikie vibaya kuchelewesha malipo ya wazabuni.

Case Study 1.2

Participation in tenders for Companies Owned by the same people

RSM on Thu Jun 10, 2010 11:13 am

Dear Forum Members,

This is true case study which happened in the era of Central Tender Board in 2004.

Procuring Entity A advertised a tender to sell some cereals. Previous experience had shown that, they had a tender for the sale of the same commodity which was divided into two bid lots of 8,000 tons each which ended up to be won by only one company. So in this tender, in order to enable many small companies to participate, they decided to divide it into eight smaller lots of 2,000 tons each and they put a condition that companies can bid for as many lots as possible but no company will be awarded more than two lots.

Almost 20 bidders participated in this tender, and it was won by four companies X, Y, Z and W. However, instead of awarding the tender to the four companies, the PE looked into the ownership of the four companies, only to discover that majority shareholder to all the four companies was the same person?

I will not discuss what happened for the time being. But the PE ended up awarding the contract to the four companies. Do you think they were right?

RJM on Fri Jun 11, 2010 2:31 pm

This is a big call!

RSM, I will try to analysis as follows:-

Who is the tenderer?

S. 3, PPA, 2011 defines "tenderer" as any natural or legal person or group of such persons participating or intending to participate in procurement proceeding with a view to submitting a tender in order to conclude a contract and includes a supplier, contractor service provider or asset buyer .

What is a company?

According to the free encyclopaedia, in English law, a company is a form of body corporate or corporation, generally registered under the Companies Acts or similar legislation. It does not include a partnership or any other unincorporated group of persons.

What is the body corporate?

According to the free encyclopaedia, Legal personality (also artificial personality and juristic personality) is the characteristic of a non-human entity regarded by law to have the status of a person. A legal person (in Latin 'persona ficta'), also legal person, artificial person, juristic person, and body corporate) has rights, protections, privileges, responsibilities, and liabilities under law, just

as natural persons (humans) do. Legal personality allows one or more natural persons to act as a single entity (a composite person) for legal purposes. In many jurisdictions, legal personality allows such composite to be considered under law separately from its individual members or shareholders. They may sue and be sued, enter into contracts, incur debt, and have ownership over property. Entities with legal personality may also be subject to certain legal obligations, such as the payment of tax. An entity with legal personality may shield its shareholders from personal liability.

From what quoted above, the company/firm is established by the legal person or persons. I believe in the Article of Association/Memorandum of Association of companies X, Y, Z and W will depict the same names [legal persons] which can be interpreted that they are being own by the same legal persons.

RSM, I think here is where I need to go back to school or to look for a “learned brothers” for correct interpretation.

In the situation at hand whereby company X, Y, Z and W are participate in one tender can we apply test of “one bid per bidder”? This can be found in most of the Standard Bidding Documents in the Instruction to Bidders. The referred ITB Clause [One Bid per Bidder]:-

[1] A firm shall submit only one bid, in the same Bidding process, either individually as a Bidder or as a partner in a joint venture.

[2] No firm can be a subcontractor while submitting a bid individually or as a partner of a joint venture in the same Bidding process.

[3] A firm, if acting in the capacity of subcontractor in any bid, may participate in more than one bid but only in that capacity.

[4] A Bidder who submits or participates in more than one bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the bids in which the Bidder has participated to be disqualified.

[a] In the situation at hand is there a competition?

[b] Who is competing against whom?

[c] Can this rescue one to disqualify such companies?

GEVE on Tue Jun 22, 2010 6:38 pm

Section 3 of the Companies Act (Cap. 212 of the Laws of Tanzania) provides that:

“(1) Any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability”

(2) Such a company may be either –

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or
- (c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

You may note from above that once a company is incorporated or registered under the Companies Act is regarded as "a legal person having all status as a natural person including but not limited to a right to sue and being sued on its own capacity or name independently from its shareholders/owners/subscribers to the Memorandum and Articles of Association.

In that case, the status of the company, the company is allowed dealing with other companies or individuals free from any legal liability attached to its members (limited liability), unless there is a breach of statutory obligation under the Companies Act or other laws of the country. For example, shareholders could use a company to obtain funds dishonestly, avoid taxes; use the name of company for illegal business etc. Under this situation, the law will regard the shareholders are acting as an agent of their company, hence may bound by the same liabilities and rights of their company through "lift of the veil of incorporation" to make the directors or individual owners of the company, personally liable.

Can the two separate companies owned by same individual bid for tender

Regulation 8 of the Public Procurement Regulations, 2013 (GN. No.446) provides to allow for participation in the invitations to tender and in award of contracts equally to all natural persons, companies or firms or public or semi -public agencies of Tanzania and foreign countries;

Normally, tenders are invited based on certain conditions, it is sometimes obvious to see PE invites tender from individual or a company owned by nationals or a company in which certain percent of the share capital is owned by nationals.

In this kind of invitation, it is open for both individuals owning a certain company and their own companies to bid in the same tender as separate legal entities without any legal problem.

There are also tenders where Joint Venture (JV) or Consortium is allowed. In some case also, one company can act or represent others in all tendering process depending on terms and conditions of tender (see Section 54(3)(1)(b) and 54(4) read together with Reg. 9(9) (10) of PPR, 2013 GN. No.446 of the PPA, 2011 recognises joint ventures & consortiums).

However, if the tender documents have a restriction to define widely the status of bidder by excluding owners or subsidiary companies (those affiliated to the group of companies) to participate in that particular tender, then it will help PE to make wise decision of eliminating such kind of bidders during evaluation on the basis of non- compliance of tender conditions.

Otherwise, it should be noted that by our Procurement law, it is required that all tender condition to be set forth in the pre-qualification documents, if any, and in the solicitation documents or other

documents for solicitation of proposals, offers or quotations, and shall apply equally to all suppliers, contractors, service providers or buyers. The Procuring Entity are restricted not to impose criterion, requirement or procedure with respect to the qualifications of suppliers, contractors, service providers or buyers other than those provided for in the Public Procurement Regulation (see Regulation 116 (3) & (4) of GN No. 446/2011).

Splitting of tender

Regulations 73(1) and (3) of the PPR, 2013 (GN No. 446), restricts a Procuring Entity not divide its procurement into separate contracts for the purpose of avoiding international or national competitive tendering, unless with the prior approval of the PPRA.

Limitation for fair Competition

Under the Fair Competition Act, 2003 it is illegal for companies or firms to engage in anticompetitive behaviour which in the procurement can for example make few companies controlling public tenders and creating price setter and price taker situation. For instance, in monopolistic situation, the companies can be regard as one taking the lead in the negotiation instead of clients. Also, this situation tends to move out other small and unpopular out from the market.

In the procurement, anti- competitive behaviour may include bid rigging, and in particular cover pricing, in breach of the Fair Competition Act. Cover pricing occurs where one or more bidders in a tender process obtain an artificially high price from a competitor, distorting the tender process.

To the PE, anti-competitive behaviours in the procurement can be cross-checked through compliance to the tender condition during pre-qualification. The suspicious bidding patterns may involve:

- Bids received at the same time or containing similar or unusual wording.
- Identical prices.
- Bids containing less detail than expected.
- The likely bidder failing to submit a bid.
- The lowest bidder not taking the contract.
- Bids that drop on the entry of a new or infrequent bidder.
- The successful bidder later subcontracting work to a supplier that submitted a higher bid.
- Expected discounts suddenly vanishing or other last minute changes.
- Suspiciously high bids without logical cost differences (e.g. delivery distances).
- A bidder betraying discussions with others or with knowledge of previous bids.

The PE has a right to apply the provisions of PPA on sanctions or to contact with the Fair Competition Commission for the investigation in case it realises that there are clear signs of breach of fair competition in the tendering process.

RSM on Wed Jun 23, 2010 6:42 am

Geve + RJM,

You have both enlightened us of various aspects of company law as well as the provisions of the public procurement Act. You have however not answered the question which I put forward

I will not discuss what happened for the time being. But the PE ended up awarding the contract to the four companies. Do you think they were right?

I also understand that RJM has put up some questions. Can other forum members provide answers?

Mauka on Tue Jun 29, 2010 9:17 pm

In addition to Geve contribution

I can say the PE was right to award contracts to those four companies on the basis that, company itself is an association of many persons who contribute money and employ it for the common purpose.

Normally, the persons who contribute money are known as members or shareholders. In this case, two or more person can form a company regardless its private or public or partnerships.

However, the company in the eyes of law is generally considered to be a new legal entity separate from its shareholders. It will suffice to say that, the company will become a fourth person separate and different from these three persons individually or collectively. This means, a company as legal entity has its own legal existence and properties and it is capable of being sued and suing.

In this perspective "that PE" made right decision because those four companies were taken as legal persons distinct from the individuals who are its shareholders and I don't think if there is prohibitions on the shareholders of company A to be a shareholder of company B as long as the shareholder is competent to enter into contract.

RSM on Wed Jun 30, 2010 5:39 pm

Mauka+Geve+RJM,

Let me and explain how a decision to award the tender to the four companies was made:

1. That according to what Mauka has rightly prescribed the four companies were taken as legal persons distinct from the individuals who are its shareholders and to remove any doubt about this the PE scrutinised particulars of each of the four companies - its individual business profile, its audited accounts, payments of taxes etc for the last three years which was required to be part of their submission- all the four firms had track records as companies.

2. That the companies did not compete in the same lots. There were eight lots and each company was required to compete in all lots but the award would be made for two lots only. Therefore although the companies, based on the instructions, could participate in all eight lots, they chose each to tender for two lots only of which eventually they came out as winners.

Anything more to comment?

Mauka on Wed Jun 30, 2010 8:31 pm

RSM,

I got you very well but take an example these four companies X, Y, Z, W (with the same shareholders) decide to enter into "gentlemen agreement" in order to secure all the lots and obtain reasonable gains or to exercise their bidding systematically. Therefore, they decide to submit a losing bid with assurance that they will receive subcontracts or contracts in exchange from the successful bidder and hence divides the obtained higher price and share reasonable profits between them.

Do you think the said PE had considered the possibility of "gentlemen agreement" before awarding a contract to them?

Am putting this argument forward because, this practice is too common in subcontracting.

RSM on Thu Jul 01, 2010 6:59 am

Mauka,

In my submission i mentioned the following:

That the companies did not compete in the same lots. There were eight lots and each company was required to compete in all lots but the award would be made for two lots only. Therefore although the companies, based on the instructions, could participate in all eight lots, they chose each to tender for two lots only of which eventually they came out as winners

This element is very important because if the firms had participated in the same lots, one could conclude that there was a possibility for them to collude and influence the results. But in this particular case each company chose to tender for only two different lots and in all the lots there were more than 10 bidders. Surely under those circumstances it is difficult to say that they were in a position to influence the results.

What they did to me, is using a network of companies owned by the same person (WITHOUT BREAKING THE COMPANY LAW), to increase their chances of winning by putting in as many bids as possible in the same way we do in a lottery by buying as many tickets as possible. And may be this calls for a big question: Can a person, who is a majority shareholder, establish more than one company with the same objects?

RJM on Thu Jul 01, 2010 11:47 am

RSM+GEVE+MAUKA,

From the discussions, it seems that even if companies X, Y, Z, and W decided to participate in all lots there were no harm since they regarded as legal persons distinct from the individuals shareholders. Even the issues such as collusion and influence of the results need to be proof beyond reasonable doubt existed. If this is the case, I am afraid to say there is no competition in line with what RSM has pointed out "Can a person, who is a majority shareholder, establish more than one company with the same objects?" What is the motive of establishing four different companies in same line of business? Is this monopolistic situation GEVE is talking about? Can we use Fair Competition Act, 2003 provisions to disqualify these companies??

GEVE wrote,

However, if the tender documents have a restriction to define widely the status of bidder by excluding owners or subsidiary companies (those affiliated to the group of companies) to participate in that particular tender, then it will help PE to make wise decision of eliminating such kind of bidders during evaluation on the basis of non-compliance of tender conditions.

Can we put this restriction in the tender documents without breaking other legislations?

RJM on Thu Aug 05, 2010 3:49 pm

Mauka + GEVE + RSM

From the discussion above, four companies were taken as legal persons distinct from the individuals who are its shareholders and in such case the companies could have participated in all lots without comprise the law.

In connection with the above, can the bid documents [submissions] of all companies signed by one person duly authorized [given Power of Attorney] by the firms? What could be the interpretation?

Ffmwalongo on Fri Oct 15, 2010 7:00 am

Those were different persons in law, so the PE was right to do the way it did.

RJM on Wed Oct 20, 2010 1:17 pm

Fmwalongo, although somehow I have been convinced by other contributors that these are different entity but still not convinced if the "law" you are referring is giving justice those who participating in the tender process taking into account below unanswered questions?

[1] What is the motive of establishing four different companies in same line of business? Who is competing against who?

[2] Is this monopolistic situation GEVE is talking about? Consider yourself as a bidder participating in the tendering process clouded by this scenario.

Let us discuss in consideration with the questions I put forward above.

Rutaihwa on Wed Mar 07, 2012 10:10 am

To members

When I came across this discussion, I observe that there are elements of Fraudulent Practice from the initial stage which leads the formation of 4 companies with the same owners. In this case no fairness practices in this process. The aim of selling is to obtain the highest evaluated price. So there was no need to restrict the bidders to be awarded only Two Lots While there are capable for more lots at the highest price.

MODULE 2: INTERNAL SETUP OF PUBLIC ENTITIES WITH RESPECT TO PROCUREMENT

PARTICIPANTS INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Module Overview and Objectives Learning Outcomes Target Participants Module Content.
Session 1- Defining an LGA Procuring Entity	20 Minutes	Definition of Procuring Entity with respect to LAGs
Session 2:-Internal Setup of Procuring Entities	Minutes	Responsibilities of The Finance Committee Accounting Officer Tender Board PMU User Department Evaluation Committee Negotiation Team
Session 3: Delegation of Procurement Authority	90 Minutes	Delegation of Procurement Authority By the Accounting Officer Tender Board and PMU
Session 4: Handling of Disagreements in the PE	60 Minutes	Procedures for handling disagreements between Accounting Officer and Tender Board Tender Board and PMU PMU and User Department PMU and Evaluation Committee
Session 5: Prohibition and Probity in Procurement	30 minutes	Prohibited Actions by Public Officers and Bidders involved in Public Tenders

Introduction:

Introducing the Module

Session Objectives

To enable participants to state module contents, learning outcome and proposed time allocation.

! In this session you will get to know the module contents and its objectives

Session 1: Defining an LGA Procuring Entity

Session Objectives

To enable participants to define a Procuring Entity within the context of Local Government Authorities

! In this session you will get state the meaning of a Procuring Entity as defined by PPA 2011

Training Materials

Section 2.1 of the Reference Manual.

PPA 2011-S.3

GN.330 – R.3

Group Discussion 2-1

In order for the XXX Local Government Authority to generate revenue and provide entertainment to its citizens, it has decided to establish an Entertainment Company in collaboration with a private investor. The LGA own 80% of the shares in the company.

Will that company be regarded to be a Procuring Entity?

Session 2: Internal Setup of Procuring Entities

Session Objectives

To enable participants to describe the roles and responsibilities of various organs in the PEs with respect to Procurement

!In this session you will be able to describe the role of Finance Committee, the Accounting Officer, the Tender Board, the Procurement Management Unit, the User Department, and the Evaluation Committee.

Training Materials

Section 2.2 of the Reference Manual.

PPA 2011-S.33(2); S 33(3); S 36; S.37; S.39; S.40; S.48(1),(4)& (5) and Public Procurement (Amendments) Act, 2016

GN. 330-R.7; R.17; R.18; R.22; R.24; R.25; R.26; and R.27

Exercise 2-1

Discuss the principal processes in relation to functions of Accounting Officer (AO) Tender Boards (TB), PMU, User Departments (UD), Evaluation Committees (EC), Negotiation Teams (NT) etc.

No.	Principal Process	AO	TB	PMU	UD	EC	NT
1	Preparation of Terms of Reference						
2	Approval of ToR						
3	Preparation of cost estimate and the budget						
4	Preparation of Advert of Expression of interest (EOI)						
5	Approval of EOI advert						
6	Advertisement of EOI						
7	Receipt of EOI and opening						
8	Evaluation of EOI						
9	Approval of Short list						
10	Preparation of RFP						
11	Approval of RFP						
12	Issuance of RFP						
13	Receipt of proposals and Opening of Technical Proposals						
14	Evaluation of Technical Proposals						
15	Approval of Evaluation report						

No.	Principal Process	AO	TB	PMU	UD	EC	NT
16	Opening of Financial Proposals						
17	Evaluation of financial proposals						
18	Approval of financial or combined evaluation report						
19	Negotiation						
20	Award of contract						
21	Signing of contract						

Session 3: Delegation of Procurement Authority

Session Objectives

To enable participants to state provisions of the law with regard to delegation of procurement authority from higher levels to lower levels in the organisation.

! In this session you will be able to state how the procurement authority of the Accounting Officer, Tender Board and Procurement Management Unit can be delegated.

Training Materials

Section 2.3 of the Reference Manual.

PPA 2011-S.42 & S.43

GN. 446-R.46 to R.50

Group Discussion 2-2

Due to high workload and in order to increase efficiency, your LGA has decided to contract out procurement functions. They have appointed firm A to handle the preparation of tender documents, the evaluation of tenders and the supervision of contract. What are your views on that?

Session 4: Handling of Disagreements

Session Objectives

To enable participants to apply the provisions of the law on how to handle disagreements of various organs involved with procurement activities in the PE.

!In this session you will be able to handle disagreements between Accounting Officer and Tender Board, Tender Board and PMU, PMU and User Departments, and PMU and Evaluation Committee

Training Materials

Section 2.4 of the Reference Manual.

PPA 2011-S.36 (4) and

GN.446-R.51 to R.54

Group Discussion 2-3

As members of Tender Board, you have received tender award recommendations in favour of Company A. The tender Board refused the award to the recommended bidder A and instead proceeded to award the tender to Bidder B. The reason for TB refusal to award the tender to A was as follows:

“Bidder A did not possess the required qualifications which included three years of experience. According to the documents submitted by bidder A, the company was registered in 20 April 2011 while the tender in question was advertised in 19th May 2011”

Discuss in groups of two or three on whether the TB was correct to refuse award to Bidder A and their decision to proceed to award the tender to Bidder B.

Session 5: Prohibition and Probity in Procurement

Session Objectives

To enable participants to explain matters which are prohibited under the PPA 2011 and PPR 2013 which may impact on the Integrity of the Procurement process

!In this session you will be able to describe how public officials and business people are required to conduct themselves when participating in the procurement process.

Training Materials

Section 2.5 of the Reference Manual.

PPA 2011-S.

GN 446-R.7

GN. 330-R.6

Group Discussion 2-4

In groups of two or three, discuss the following:

You are the Head of Procurement Management Unit, and have a friend whom you were together in a college and he now runs a construction company and invites you for a business lunch. Two questions can be posed here. First would you accept? And second, if you accept, would that be construed to be an effort to influence you to favour him in future tenders with your organization?

Let's take the same situation further. Assume that you meet this friend, whom you have not seen for many years. You update each other of your current status in life and you learn that he is running a very successful construction company and he learns that you are the Head of Procurement Management Unit in your organization, which apparently is one of the largest Procuring Entity in the country. He then extends an invitation to you to visit him during your holidays and he will pay for your air ticket and meet all your costs for accommodation. You work out the costs for that holiday trip and you realize that it is likely to be Tsh 2 million. Would you accept the invitation?

MODULE 2

INTERNAL SETUP OF PUBLIC ENTITIES WITH RESPECT TO PROCUREMENT

REFERENCE NOTES

2.1 Introduction

Before discussing the internal setup it is important to appreciate who are the PEs in accordance with PPA 2011. A PE is defined as a public body and any other body, or unit established and mandated by Government to carry out public functions. The definition of a public body or public authority refers to:

- Any Ministry, Department or Agency of the Government;
- Any body corporate or statutory body or authority established by the Government;
- Any company registered under the companies Act being a company in which the government or an agency of the government, is in the position to influence the policy of the company; or
- Any local government authority.

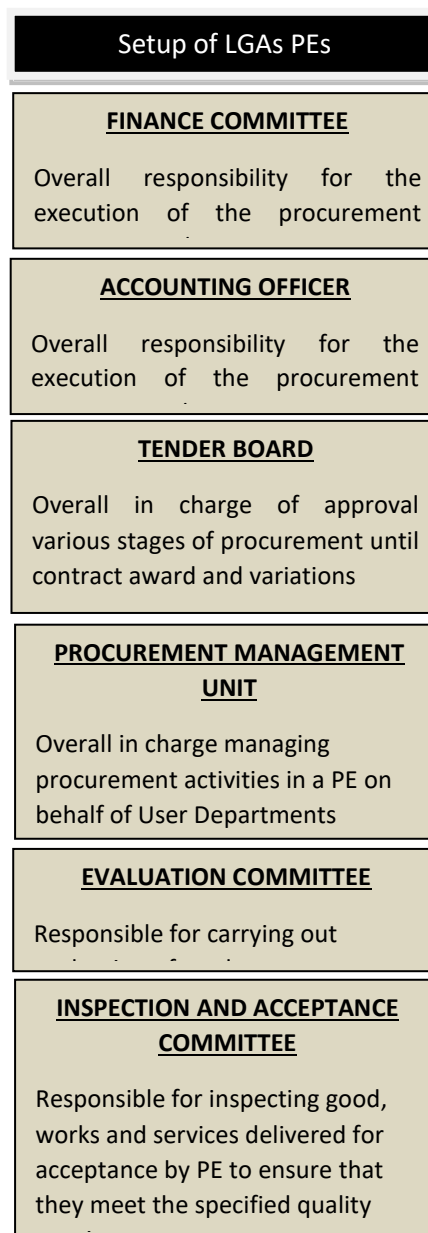
It is particularly important here to emphasize on public bodies falling under (iii) above. An LGA, just like some Parastatals, may decide to establish commercial units under Companies Act to carry out certain of its mandates. Companies formed in which the LGAs holds majority shareholding will be regarded a public body and therefore obligated to comply with the PPA 2011 and its Regulations.

2.2 Internal Set Up of Procuring Entities

2.2.1 General

The PPA 2011 provides the procedures on how procurement functions should be handled using the organs established within the PEs that are Accounting Officer (AO), Tender Board (TB), Procurement Management Unit (PMU), Evaluation Committee (EC), User Departments (UD) and Inspection and Acceptance Committee (IAC).

The AO has the responsibility of overseeing that procurement activities in his/her institution are done according to procedures in PPA 2011 and Its Regulations. PPA 2011-S.36 read together with section 13 of The Public Procurement (Amendment) Act, 2016 describes the duties and



responsibilities of the AO as shall be discussed in detail below. It gives the AO powers to establish the TB and PMU whose functions are discussed in detail in the coming sections.

Together with the AO, the PPA 2011 defines the responsibilities of key players in the procurement process for each and every PE implementing the Act.

2.2.2 Finance Committee

In addition to the function of the budget approving authority given in PPA 2011-S33 (2) & (3), they are required under GN. 330-R.17 to approve the names of the members of the TB and overseeing contract implementation through inspection of project works and goods received.

Refer to PPA 2011-S.33(2) & (3) and PPA 2011-S36 and GN. 330-R.17.

The function of overseeing contract implementation through inspection of project works and goods received need to be taken with caution to avoid unnecessary overlaps that may occur with the work of works supervisor of goods inspection and receiving committee. The day to day job of supervising the implementation of works and/or inspecting and receiving goods, and approving payments is vested with executive. The role of the Finance Committee is basically oversight to ensure that the expected procurement outcomes have been achieved.

2.2.3 Accounting Officer

According to PPA 2011-S.3, Accounting Officer means "a government officer appointed in accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention".

Within the context of LGAs, the AO means the Council Executive Director appointed under the provisions of Section 33 of the Local Government Finances Act of 1982.

In every PE, PPA 2011-S.48 (1) tasks the AO to ensure that the execution of the procurement process within the organization is smooth and within the requirements of the law and regulations, failure of which s/he shall be accountable [PPA 2011-S.48 (4)].

Refer to PPA 2011-S.48(1),(4)& (5) and PPA 2011-S.36 and GN. 330-R.22.

In addition to that responsibility of ensuring compliance with the procurement law, PPA 2011-S.36 sets out the functions and powers of the AO. In particular, the AO has been empowered before communicating the award decision, where necessary, to obtain a briefing of the recommendation of award of a particular tender from the chairman, any member of tender board or evaluation team or Procurement Management Unit. Where the Accounting Officer is not satisfied with the decision of the tender board he shall return the decision to the tender board for review giving written reasons for dissatisfaction and where not satisfied with the outcome of the review he shall refer the matter to PPA for advice – PPA 2011-S.36(3) & (4).

2.2.4 Tender Board

PPA 2011-S.31 (1) and (3) requires every LGA to establish a TB in accordance with the Regulations made pursuant to the provisions of the Local Government Finances Act of 1982. In

PPA 2011-S.31 (1) & (3) and GN. 330-R.7

fact this is the provision of the PPA 2011 which gives birth to GN. No. 330 of 2014.

GN. 330-R.7, requires the establishment of a TB in every Council whose members shall be appointed by the AO in accordance with the provisions of GN. 330-R.7 (2).

It is particularly important to note that:

- Council Legal Officer or his representative is a non-voting member (ex-office) of the TB;
- Council Treasurer shall not be appointed a member of TB;
- Names of appointed members of TB shall be submitted by the AO to the Finance Committee for ratification and approval.

The functions of the TB are given generally in PPA 2011-S.33 (1) and further elaborated in RGN. 330-R.18. It is important here to emphasize on the function of approving tendering and contract documents. TB deliberations for the approval of award of contract depend on the provisions of the tendering documents. Similarly, TB approval of variations, addenda or amendments to ongoing contracts depends on the provisions of the contract documents. Therefore if the TB does the job of approving the tendering and contract documents properly, there will be no controversy when deciding whom to award contract and/or when approving variations as required by the law.

PPA 2011-S.33 (1) and GN. 330-R.18

2.2.5 Procurement Management Unit

PPA 2011-S.37 requires PEs to establish PMUs in order to carry out and manage the procurement procedures. In the case of LGAs the requirement of the PPA 2011 to establish PMU is echoed in GN. 330-R.24. The functions of the Procurement Management Unit are given in PPA 2011-S.38 and, in the case of LGAs, they are further amplified in GN. 330-R.24. In summary PMUs are mandated to manage all procurement or disposal activities of the PE except adjudication and the award of contracts and to support the functioning of the TB. It is a unit that is responsible for handling all procurement matters on behalf of other departments within the organization.

Refer to **PPA 2011-S.37** and GN. 330-R.24 & R.25

The success and efficiency of procurement operations in the PE will depend on its PMU. Therefore a procurement unit is required to be properly staffed and provided with adequate working tools to enable it manage the procurement process efficiently. The size and level of staffing of the procurement unit is determined by the procurement and disposal workload of the PE taking into account the volume, value, complexity and type of procurement and disposal conducted.

The procurement unit must be staffed with procurement professionals and may include staff with relevant technical skills, where a PE has a significant volume of specialized procurement or procurement requiring significant technical input. PPA 2011-S.37 (3) requires that the head of PMU be a procurement professional registered by the Procurement and Supplies Professionals and Technicians Board (PSPTB).

2.2.6 User Department

The user departments are not created by PPA 2011 and its corresponding Regulations but are important structure of the PEs and are the consumers of the procured products and services, and therefore have been assigned specific responsibilities under PPA 2011-S.39 and GN. 330-R.25 in the case of LGAs.

Refer to **PPA 2011-S.39** and GN. 330-R.26

Experience shows that some problems of delays in the procurement process are as a result of lack of cooperation between user departments and the PMU. Procurement of certain assignments like consultancy services and works contract cannot be initiated until the PMU is provided with Terms of Reference and/or specifications from the user department who are the ones well versed with the subject matter of procurement.

Also it should be appreciated that user departments are sub vote holders and are therefore responsible in ensuring that funds are available before commencing procurement proceedings and payments are effected to service providers upon acceptance of the delivered services.

2.2.7 Evaluation Committee

PPA 2011-S.40 and Regulation GN. 330-R.27 requires PEs to establish evaluation committees for the purpose of carrying out the technical and financial evaluation of the tenders or proposals. The members of the evaluation committee are required to be at least three including the chairman and are appointed by the AO upon recommendation by the PMU. In recommending the names of persons to be appointed as members of the evaluation committee, the PMU shall consider the expertise and level of seniority required depending on the nature of procurement.

Refer to **PPA 2011-S.40** and GN. 330-R.27

The referred Section in PPA 2011 and Regulation in GN. No. 330 discusses in detail the membership requirements of evaluation committee and how they should conduct the evaluation exercise. It is important to realize that the quality of the decision reached by a tender committee will depend on how well were the tenders evaluated. Therefore, as a guide, an evaluation committee needs to comprise of members who have the following:

- Knowledge of the overall operations of PE;
- Knowledge of technical aspects of the procurement; and
- Knowledge of the accounting and financial principles to secure accurate financial evaluation.

It is important to note the contradiction of GN.330-R.26 and GN.330-R.27 (3) with regard to the participation of the members of the UD in the evaluation of Tenders. GN.330-R.27 (3) is against the Principal Law, the PPA 2011 in which one of the functions of the UD is to participate in tender evaluation [PPA 2011-S.39 (e)].

2.3 Delegation of Procurement Authority

Delegation involves assigning responsibility and authority to another person to carry out specific activities while the person delegating such authority and responsibility remains accountable for the

outcome of the delegated activities. It involves the shift of decision-making authority from one organizational level to a lower one. Delegation is generally aimed at saving resources (money and time) and helps build skills and motivate subordinates in the process. Cost effectiveness should be the basis for making a decision to either delegate or contract out procurement functions. The reasons for delegation or contracting out could be the work load, type of work or circumstances of the procurement which render it not to be cost effective to undertake the delegated/contracted out function.

PPA 2011-S.42 & S.43 allow the AO to delegate procurement authority as amplified in GN. 446-R.46 to R.50. Provisions of GN. No.446 of 2013 for delegation of procurement authority is shown in Figure 2.2.

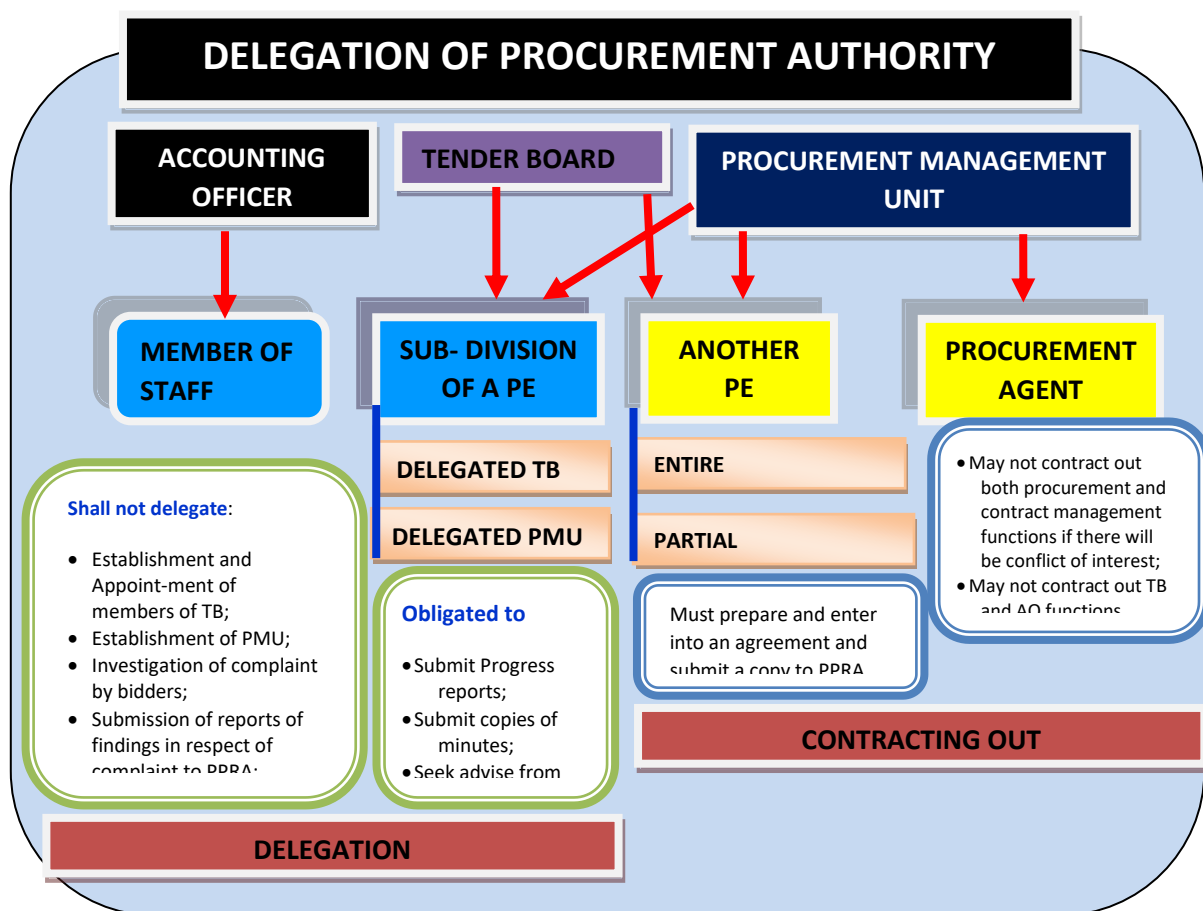


Figure 2.2: Summary of Delegation of Procurement Authority (GN. NO. 446 of 2013)

Table 2.1: Summary of Disagreements Handling Procedure as Provided in GN. NO. 446 of 2013.

S/n	Type of Disagreement	How to Handle the Disagreement	Reference
1.	Accounting Officer and Tender Board	AO to return decision for TB Review giving reasons for disagreement; Review by TB and issue a decision and re-submit to AO; AO if not satisfied with decision reached by TB after review, shall refer the matter to PPRA for independent review giving reasons for disagreement	PPA 2011-S.36(4) and GN.446-R.51
2.	Tender Board and PMU	TB to return recommendation to PMU giving reasons for disagreement; Review by PMU and re-submit to Tender Board; TB if not satisfied with re-submission, Chairman of TB to refer the matter to Accounting Officer for further review. TB if not satisfied with outcome of review by the AO, shall refer the matter to PPRA for directives.	GN.446-R.52 and R.57(3)
3.	PMU and User Department	PMU and UD shall jointly consult two members of TB for review of the matter; If further disagreement, the matter shall be submitted to the TB for its formal Decision.	GN.446-R.53
4.	PMU and Evaluation Committee	PMU to return evaluation report to EC for re-evaluation; If PMU disagrees with re-evaluation, shall refer the matter to the TB for Decision.	GN.446-R.54

2.4 Handling of Disagreements

Table 2.1 summarizes the provisions of GN. NO. 446 of 2013 on how to handle disagreements. These provisions are in accordance with PPA 2011-S.45. It is seen that in two cases, disagreements between the Accounting Officer and the Tender Board and between Tender Board and PMU may end up being referred to PPRA for directives. This was one of the reasons why PPRA was removed from complaints handling procedure to avoid potential conflict of interest that could arise since directives given by PPRA could be the subject of a complaint by a bidder.

Refer to **PPA 2011-S.36(4)** and GN.446-R.51 to R.54

2.6 Prohibitions and Probity in Procurement

In furthering transparency, accountability, openness and fairness in the procurement process, the PPA 2011 stipulates the need for officials of PEs and bidders involved in the procurement process to uphold probity while executing any stage of procurement. Probity and ethics requirement are set in GN. 446-R.7 and emphasized in GN. 330-R.6 which requires:

Refer to Section (insert). Refer to GN 446-R.7 and GN. 330-R.6

- PEs officers to be scrupulous and honest in their dealings with tenderers, members of the public and with the Procuring Entity itself
- PEs to conduct procurement and disposal with complete probity and in a manner that the Procuring Entity is respected and trusted as a client or customer while maintaining good reputation with tenderers.

To reject a tender of a tenderer who gives or agrees to give directly or indirectly to any public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value as an inducement with respect to an act or omission or decision of or procedure followed by the Procuring Entity in connection with that tender or proposal or any other tender or proposal.

PEs not to make procurement to a member of staff or a person who has direct influence on the decisions of the Procuring Entity acting in private capacity, either alone or as a partner in a partnership or as an officer of a company.

PEs not to include in any tender document any condition or specification such as to favour any tenderer.

Case Study 2.1

Procurement Practitioner: Should or shouldn't you accept gifts?

Traditionally, many people, including business people and procurement practitioners give and take gifts. In some culture it is even regarded to be uncouth to decline a gift. Why make a fuss over gifts in a procurement arena? After all, a gift or a present is the transfer of something without the expectation of receiving something in return. Although gift-giving might involve an expectation of reciprocity, a gift is meant to be free.

Receiving gifts by all Public Officials is prohibited under the Code of Ethics and Conduct of Public Service in Tanzania as quoted below:

“3. i) A Public Servant or any member of his/her family shall not receive presents in form of money, entertainments or any service from a person that may be regarded as geared towards compromising his/her integrity. ii) A Public Servant may accept or give nominal gifts such as pens, calendars and diaries in small amount. iii) A Public Servant will return to the donor any other gift or handle them over to the - government, in which case a receipt will be issued”.

Procurement is amongst the areas where possibility of using gifts to influence public officials is at the highest. It is for that reason that taking gifts is prohibited under the Tanzania Procurement Law. Section 84(1) of the Public Procurement Act of 2011, quoted below, prohibits giving and receiving of gifts:

84.-(1) No person shall, with intent to gaining an advantage or concession for himself or any other person -

“offer any member or an associate of a member of a tender board or its committee or any employee or an associate of an employee of a tender board or its committee or any consultant or an associate of any consultant or a person or an associate of any person providing services, a gift of money or other valuable thing”.

Also Section 84(2) prohibits public employees from receiving gratuities and anything of value to influence tender decision as quoted below.

“No Procuring Entity, any public officer or other Government authority shall accept a gratuity in any form, any offer of employment, service, any other thing of value, as an inducement with respect to

an act or decision of or procedure followed by the Procuring Entity in connection with any procurement proceedings or tender and a Procuring Entity shall promptly reject a tender of any tenderer who gives, agrees to give or offers, directly or indirectly, any such inducement”.

Similarly Regulations 6(3) and 8(3) emphasizes on the provisions of section 73(2) as follows

“A Procuring Entity shall reject the proposal of a consultant who gives or agrees to give, directly or indirectly, to any public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or omission or decision of, or procedure followed by, the Procuring Entity or the approving authority in connection with proposal or any other proposal”

Code of Ethics of Procurement and Supplies Professionals and Technicians also refuses taking of gifts as quoted from http://www.nbmm.or.tz/code_ethics.html

Not to accept any inducements or gift, other than items of intrinsic and small value such as business diaries, calendars or pen.

Always to declare the offer or acceptance of hospitality and never allow hospitality to influence a business decision.

To many public officials receiving gifts may appear not to be wrong. Take an example, you are the Head of Procurement Management Unit, and have a friend whom you were together in a college and he now runs a construction company and invites you for a business lunch. Two questions can be posed here. First would you accept? And second, if you accept, would that be construed to be an effort to influence you to favour him in future tenders with your organization?

In many countries, a gift does not include modest items of food, refreshments, greeting cards, items with little intrinsic value (i.e. plaques, certificates and trophies), and prizes in events open to the public. In the situation above a “Bona-Fide Personal Relationships exception” may be applied on whether you would accept the lunch or not. A key exception to the gift giving prohibitions is when a gift is based on family relationships and personal friendships. A key factor in determining whether this exception applies includes the history of the relationship. And the question to ask yourself is, would he have invited me to lunch if I was not in my current job? Has you invited you to lunch in the past when you were not in that position?

Let’s take the same situation further. Assume that you meet this friend, whom you have not seen for many years. You update each other of your current status in life and you learn that he is running a very successful construction company and he learns that you are the Head of Procurement Management Unit in your organization, which apparently is one of the largest Procuring Entity in the country. He then extends an invitation to you to visit him during your holidays and he will pay for your air ticket and meet all your costs for accommodation. You work out the costs for that holiday trip and you realize that it is likely to be Tsh 2 million. Would you accept the invitation? Would the Bona-Fide Personal Relationship exception apply here?

The above and many similar situations do face procurement officials every day and they have to make sure that they handle each situation accordingly.

Some jurisdiction in other countries have put some procedures with regard to gift. OECD for example in their code of conduct for procurement practitioners obtained from:

http://www.oecd.org/document/62/0,3343,en_21571361_44258691_44921662_1_1_1_1,00.html

has the following provisions with regard to gifts.

Every procurement practitioner is advised to consider each of the following points before accepting any gift, which must be minor, of low value, not regularly provided, and neutral.

Regardless of the nature of the gift received, procurement practitioners must:

report them immediately to their hierarchical superior in order to avoid any suspicion;

mention them in a specific document, including the origin, nature and destination of the good delivered in order to guarantee traceability in case of subsequent challenge or audit;

use them, to the extent possible, for the benefit of the entire office (for example, passing a box of chocolates, sharing calendars or distributing pens); and

Request their supervisor's advice in case of doubt, as to what is acceptable or not and on the steps to take.

Gifts or invitations that do not fall within the framework described above must also be recorded, with the name of the company concerned, and returned to the sender with a letter.

Invitations to receptions or promotional, cultural, sporting or charitable events are subject to the same rules. Being on holiday is no defence against the rules defined more broadly in this code. Procurement practitioners must in no case solicit such invitations from a supplier.

Any participation in an activity in the course of duty must be assessed in light of the context. In the case of participation at a professional seminar for one or more days, for example, the administration may pay the cost of registration and the officer will be placed on mission expenses.

Participation in visits or trips may only be justified on purely professional grounds. The costs of travel and accommodation must be covered by a mission order.

Similarly, gift policy of Queensland Government obtained from http://www.qgm.qld.gov.au/02_policy/spp_gift_policy.htm has the following principles:

Principles for acceptance of gifts or benefits

Being a public service employee involves a public trust. This means that duties must be carried out impartially and with integrity. Consequently, it is not appropriate for public service employees to be offered, to accept or to give gifts and benefits that affect, may be likely to affect or could reasonably be perceived to affect, the independent and impartial performance of their official duties.

Public service employees must at all times be mindful of their obligation to maintain and enhance public confidence in the integrity of public administration.

Public service employees must not ask for or encourage the giving of any form of gift or benefit in connection with the performance of official duties. This includes entering any discretionary

competitions which involve a prize.

Any gift or benefit accepted, regardless of monetary value, implies, or may imply, a relationship which may interfere with objectivity and independence.

In most situations, public service employees can decline offers of gifts or benefits courteously by explaining that acceptance would be against agency policy and consequently that they have no discretion in the area.

Gifts or benefits accepted by a public service employee remain the property of the agency unless the accountable officer for the agency determines it is appropriate for the recipient to retain the gift or benefit.

Gifts and benefits register

Gifts or benefits received or given with a retail value of more than \$150 must be recorded in the agency's gifts and benefits register. Agency registers must be in a form approved by the Public Service Commission Chief Executive. The register must be published under the *Right to Information Act 2009* as part of an agency's publication scheme. The register must be published online each quarter, within 10 calendar days of the end of the quarter.

Apart from the bona-fide personal relationship rule http://www.acquisitioninstitute.com/uploads/Contracting_and_Gift_Giving.pdf has further two exceptions with regard to gifts, the \$25/\$75 rule, and the widely-attended gathering rule which are explained in the box below:

The \$25/\$75 rule. This rule is the most widely used exception to the gift rules. Under the rule, government employees can accept gifts on any one occasion worth \$25 or less in value. However, the total value of gifts given to a government employee from any single source cannot exceed \$75 per calendar year. In addition, where the market value of a gift exceeds \$25, the official may not pay the excess value over \$25 in order to accept the gift. This means that if a professional tennis match tickets cost his \$100, offering it to your contracting officer for \$75 does not make the gift legal. And as a CO, you should have enough common sense not to accept the tickets anyway. Companies and organizations are considered a single source, thus gifts from company employees are aggregated. This gift exception does not apply to gifts of cash or of investment interest such as stock, bonds, or certificates of deposit, which are prohibited regardless of amount.

As for having holiday parties at one's home, well...In addition, the gift rules still apply when the government employee or the contractor invite each other to their respective homes for parties. The contractor may not bring a gift worth more than \$25 to the home of the host/government employee. Similarly if the contractor is the host, the host/contractor must ensure that the cost per attendee for that food and service should not exceed \$25. Common sense would tell you not to attend the party at all.

However, if the party is a "widely" attended gathering federal employees certainly may accept and attend invitations to widely attended gatherings, provided that other customers are invited free of charge. In addition, government employees may also attend a company's annual Christmas party.

However, each agency will need to determine whether its employees' attendance at the "widely attended gathering" is in the agency's interest. The term "widely attended" describes an event that is open to members from throughout a given industry or profession, or a diverse group that is interested in a given matter.

This article does not offer answers. It is only for your reflection. As a procurement official, next time you are given an invitation for lunch/dinner or you are given a gift for Eid-El-Fitr or Christmas do you take or decline it?

MODULE 3: INTRODUCTION TO BASIC PRINCIPLES OF PROCUREMENT PLANNING

PARTICIPANTS INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Learning Outcomes Module Content
Session 1:-Introducing Procurement Planning	60 Minutes	Procurement Planning and its relevance to the procurement process; Legal Requirements with respect to Procurement Planning Procurement Cycle and Its Relevance in Planning of Procurement
Session 2: Key information and Steps in Preparation of Procurement Plan	50 Minutes	Requirements Aggregation and Packaging; Determination of Procurement Methods and Selection;
Session 3: Preparation of a Procurement Plan	120 Minutes	Procurement scheduling; Presenting the Procurement Plan PPRA Procurement Plan Templates
Session 4: Exercise on the Preparation of an Annual Procurement Plan	100 Minutes	Hands on exposure to the preparation of Annual Procurement Plan
Session 5: Monitoring and Updating of the Procurement Plan	20 Minutes	Responsibility for Monitoring Updating the Plan

Introduction

Introducing the Module

Session Objectives

To enable participants to state module contents, learning outcome and proposed time allocation.

! In this session you will get to know the module contents and its objectives

Session 1: Introducing Procurement Planning

Session Objectives

To enable participants to describe the procurement planning,

To enable participants to identify the legal requirements regarding procurement planning, and

To enable participants to integrate procurement plan with budget preparation process

! In this session you will appreciate the importance of procurement planning as a tool for budget implementation. You will also be able to identify the provisions of the law with regard to procurement planning.

Training Materials

Section 3.2 and 3.3 of the Reference Manual.

PPA 2011-S.33, S.36, S.38, S.39 and S.49

GN. 446-R.68, R.70 and R.75

Discussion 3-1

Quote **“There’s only one thing worse than spending money you don’t have. And that’s buying wrong things with it. And doing so in the wrong way.”**

Hon. David Cameron MP, UK Prime Minister

In groups of two or three discuss, FOR FIVE MINUTES, the message displayed by the given quote taking into consideration of your own experience in your organisations

Session 2: Key information and Steps in Preparation of Procurement Plan

Session Objectives

To enable participants to identify important information required and key steps to be followed for the preparation an annual procurement plan.

! In this session you will be able to identify the information that you need to prepare an Annual Procurement Plan. You will also be able to identify step by step process for preparation of the plan.

Training Materials

Section 3.4 of the Reference Manual.

PPA 2011-S.49

GN. 446-R.42

Discussion 3-2 In groups of two or three, discuss, FOR FIVE MINUTES, the message displayed by the following cartoon taking into consideration of your own experience in your organizations.



Session 3: Preparation of a Procurement Plan

Session Objectives

To enable participants describe processes for the preparation of Annual Procurement Plan

!In this session you will be exposed to the process of preparation of annual procurement plan using PPRA's templates.

Training Materials

Section 3.5 of the Reference Manual.

PPA 2011-S.49

Discussion 3-3

In groups of two or three read and discuss, FOR FIVE MINUTES, case Study 3.1.

Session 4: Exercise on the Preparation of an Annual Procurement Plan

Session Objectives

To enable participants to prepare an Annual Procurement Plan.

! In this session you will be exposed on how to prepare Annual Procurement Plan

Group Exercise 3-1

You are a member of the PMU for your Council, and have received from various departments their requirements for the first six months of the financial year. The details of the requirements are given below. Before submission to the TB for approval to proceed with the tender process, the list needs to be divided into as few packages and lots as possible to encourage competition amongst potential suppliers.

1.	Digital Camera	Qty 2
2.	TV – 28 Inch Screen	Qty 2
3.	Electricity Generator - 300 KVA	Qty 1
4.	4WD Station Wagon	Qty 2
5.	Desktop Computer	Qty 10
6.	Laser Jet Printer	Qty 4
7.	125cc Motorcycle	Qty 6
8.	Rehabilitation of office blocks	Qty 4
9.	Toner for Laser Jet Printer	Qty 20
10.	Construction of Conference Hall	Qty 1
11.	Air Conditioners 18,000 BTU (window type)	Qty 10
12.	Rehabilitation of the drainage system	20 km
13.	Technical Assistance for market research	Qty1
14.	Steel filing cabinets 4 Drawer	Qty 10
15.	Double Cabin Pick-up	Qty 4

What packages and lots can be extracted from the above information? On the basis of prepared contract packages prepare a simple procurement Plan.

Session 5: Monitoring and Updating of the Procurement Plan

Session Objectives

To enable participants to appreciate the importance of monitoring and updating the Annual Procurement Plan and how it can be effected.

!In this session you will be able to identify procedures for monitoring the implementation and to updating the annual procurement plan.

Training Materials

Section 3.6 of the Reference Manual.

MODULE 3:

INTRODUCTION TO BASIC PRINCIPLES OF PROCUREMENT PLANNING

REFERENCE NOTES

3.1 Procurement Planning and its relevance to the Procurement Process

Procurement planning means the process by which the efforts of all personnel responsible for procurement are coordinated and integrated through a comprehensive plan for fulfilling the PEs' need in a timely manner and at a reasonable cost.

Procurement planning entails preparing a list of all known goods, works and services needed to achieve the set goals for the PE, evaluating the list and divide it into contract packages. It further aims at obtaining economy of scale and reduces procurement cost, through prescribing the appropriate method for effecting procurement subject to the necessary approval by the relevant authority in the PE.

Procurement planning is essential for the effective and timely solicitation of bids or proposals, award of contract and delivery of the goods and services required.

Procurement planning directly links the procurement function to the budget preparation and execution. Without an adequately prepared procurement plan, the budget execution will be hampered.

Adequate procurement planning and prioritization of needs by each PE is an essential prerequisite to effective procurement for the following reasons:

Funding for procurement is unlikely to be sufficient to meet all requirements, and scarce financial resources must be channelled to ensure that the priority services of a PE are adequately met before spending on less essential procurements.

Allows requirements to be aggregated into larger purchases at lower unit costs, rather than frequent sourcing of identical items using request for quotations or low value procurement method.

Publication of realistic annual procurement plans allows the private sector to respond more effectively to the requirements and specifications of Government, through investment in staff and equipment, manufacture and importing of goods, and financial planning.

3.2 Legal Requirements with Respect to Procurement Planning

Procurement planning by PEs derives its legal mandate from PPA 2011-S49 and Part II- Section (f) of GN. 446. GN.446–R.70 mandates a PE to prepare an annual procurement plan as part of the budget process and submit the plan to PPRA within fourteen days after the completion of the budget process.

PPA 2011-S.49(3) requires that an APP be approved by the appropriate budget approving authority and once approved the PE is obliged to implement it and if there is any unplanned procurement it shall get prior approval of the Accounting Officer – PPA 2011-S.49(3).

Other important provisions of PPA 2011 with regard to procurement planning are as follows:

- The mandate to prepare procurement plan is vested to Procurement Management Unit through PPA-S38 (e). And it is further required to prepare and submit to the management meeting quarterly reports on the implementation of the APP [PPA 2011-S38 (p)].
- User Department is required to prepare a schedule of requirements for procurements as part of the budget process and submit the same to PMU for compilation of APP – PPA 2011-S.39(2).
- The Accounting Officer is required to submit an APP of a Procuring Entity to PPRA- PPA 2011-S.36 (1) (j).
- Budget Approving Authority (Full Council) is required to review and approve an APP of a PE based on its budget and action plan – PPA 2011-S.33(2) and in addition they are required to review quarterly procurement report on the implementation of APP – PPA 2011-S.33(2)(b)
- Coordination between the PMU and end user department is very important for the efficiency and effective preparation of an APP. Experience shows that many times PMU fails to prepare a consolidated procurement plan as required by PPA2011-S.38(e) because of the failure to get assistance and co-operation of the user departments as required in PPA2011-S39(2) particularly failure to submit their requirements in a timely manner to the PMU to enable them consolidate and come up with organizational rather than departmental requirements of goods and services.

3.3 Procurement Cycle and Its Relevance in Planning of procurement

Figure 3.1 shows the procurement cycle. It starts with planning of individual procurements and ends with the storage, manage and supply of goods or services. It is particularly important to note that the procurement cycle shown in Figure 3.1 contains two important aspects which need elaboration here. First, before proceeding with the procurement of goods, one must check availability of the item in the stores. This is important to ensure that a PE does not procure something which it already has in stores thus causing unnecessary expenditure. Items in the stores must be consumed before new item are bought and this particular stage in the procurement cycle enables the PE to ensure that this is achieved. This provision is implied in GN. 446-R.68 (2) which states that planning of procurement of re-current items should be based on an adequate stock control system.

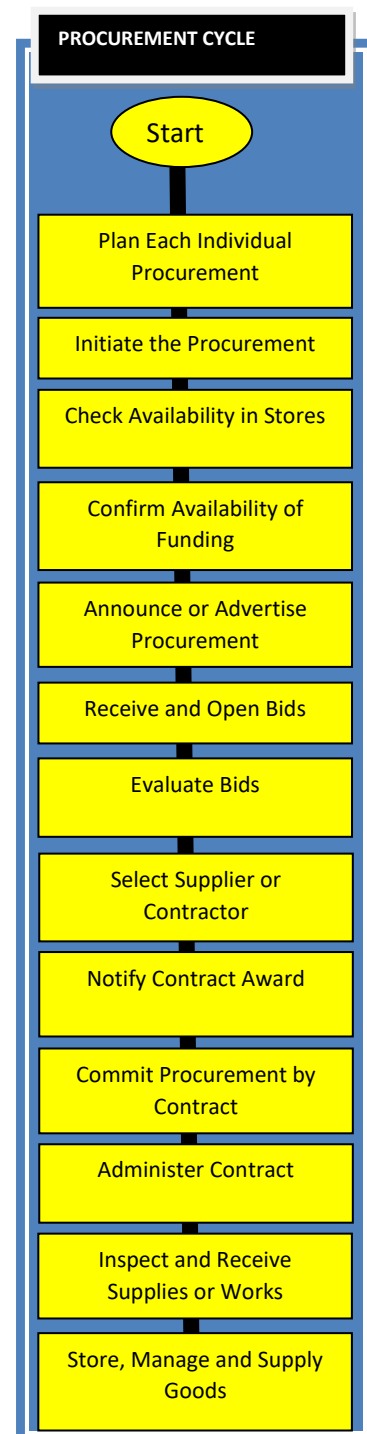


Figure 3.1: Procurement Cycle

Second, before proceeding with procurement a PE must ensure availability of funds. This is important to ensure that funds are available to pay the supplier, contractor or service provider once the goods or services have been delivered in accordance with the terms of contract. This is provided in GN.446-R.75 which requires PEs to ensure that funds are allocated or committed before commencing on procurement proceedings.

The APP should be formulated at the same time as the annual budget is being prepared. This is because the annual procurement activities of the User Departments depend on the funds that are made available for procurement. However, they can also be formulated / revised during the course of a financial year, whenever need arises.

3.4 Steps to be followed in the development of Procurement Plans

Regardless of the source of financing of the requirements that are being planned to be procured, the principal steps that are to be followed in the development of the plan are the same. Below are the steps that apply to the development of the Procurement Plans.

3.4.1 Requirements Aggregation and packaging

PPA2011-S.49 (1) (b) requires PEs to aggregate its requirements wherever possible both within the PE and between PEs to obtain value for money and reduce procurement costs. Aggregation refers to combining of items of similar nature so as to obtain a large tender which is likely to attract a wider competition. Allotment refers to segregation of large and complex procurement into smaller lots that are either bundles of similar supplies or lots to permit more competition or to allow the participation of local companies.

Contract packaging should consider the ability of local suppliers of goods, works and services to meet the PEs' requirements and/or at the same time the likely hood that foreign bidders will be interested in participating. Contract packaging will have a big influence in the choice of a procurement method to be used.

Factors to consider during aggregation of requirements include:

- The market structure for the items required;
- Items which are of a similar nature and which are likely to attract the same potential bidders;
- The optimum size and type of contract to attract the greatest and most responsive competition or the competitive prices;
- Items which will be ready for bidding at the same time;
- Items which will be subject to the same conditions of contract; and
- Potential savings in time or transaction costs.

There are four key issues emphasized with regarding to aggregation and packaging of procurement:

- Splitting of tender into lots should not be used to avoid competitive procurement method which is otherwise known as slicing in other procurement jurisdiction and is prohibited PPA2011-S.49(1)(c) unless if such splitting is for the purpose of capacity building of local firms as provided in the referred section and in GN.446-R.42.
- Where possible no single tenderer should be awarded more than one lot in a situation where a procurement requirement is divided into lots of equal packages with the purpose of ensuring greater competition and/or participation of SMEs;
- The value of the lots and not necessarily the value of all lots under a procurement may be used to determine the procurement method.

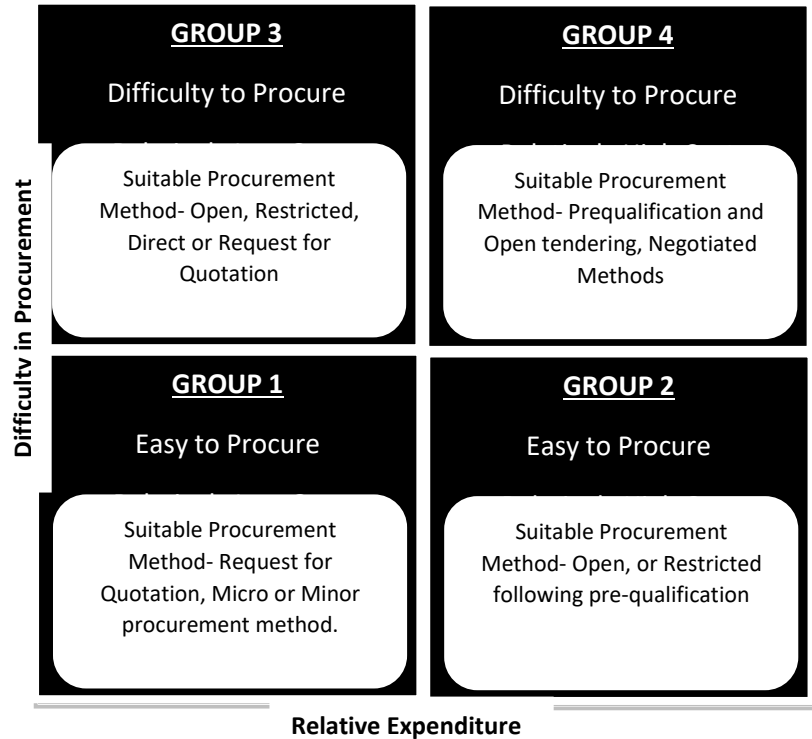


Figure 3.2: Grouping of Procurement

- Allow bidders to bid for a single lot, any combination of lots or all lots for a procurement requirement divided into lots but which could be procured as a single contract.

The concept of grouping and packaging of procurement is very important in determining the relevant procurement method which a PE may use. Figure 3.2 show groupings that influence selection of a procurement method relative to expenditure and difficulty in procurement. For example low cost items which are easy to procure justify the use of micro, minor value procurement method or request for quotations as shown in Figure 3.2.

3.4.2 Determination of Procurement and Selection Methods

Contract packaging and choice of procurement or selection methods are very much interlinked. At the same time, it should be noted that the procurement or selection method chosen will have a timeframe as expressed the Box 3.1. In the final analysis, the package, method and timing of the different procurement or selection steps in the process are closely interdependent.

The development of the Procurement Plan, therefore, requires the planner to balance the three aspects mentioned above (package, method and timing). One cannot develop contract packages without having in mind how the package will affect the choice of an appropriate procurement method and the time taken to fulfil the requirement consistent with the requirements of the GN. 446.

PPA 2011 and GN. 446 stipulate various procurement methods which were discussed in Sections 4.54 to 4.63 and are summarized in Module 6. The time required to be given to bidders for the various methods are also given in Box 3.1. It is important for PEs to appreciate the time consideration of each method and its impact on the procurement plan.

3.4.3 Procurement Scheduling

One of the considerations in choosing contract packaging is the timing when goods or services are needed. After preliminary packaging plans have been formulated and the method of procurement to be used for each has been determined by the nature and size of the packages, it is necessary to verify that these combinations will permit the goods or services to be delivered at the times they are needed by the PE. The best way to check this is to work backwards from the desired date of delivery to determine whether sufficient time is available to carry out the necessary procurement steps for each element to enable the goods or services to be obtained in a timely manner.

Sometimes it may be found that using the proposed procurement method and adherence to its minimum time requirements for invitation of tenders as required by PPA 2011 and its Regulation will result into delayed delivery of goods or services. Under such circumstances it may be necessary to modify certain contract packages and procurement methods and shorten the time needed until delivery in order to meet the desired date of delivery of goods or services, provided that the modified approach is consistent with the requirements of the law.

Box 3.1: Minimum Tender Processing Times for Goods, Works and Non-Consultancy Services

S/N o.	Method of procurement	Period (calendar days)
PREQUALIFICATION STAGE		
1	International competitive tendering	30
2	National competitive tendering	21
TENDERING STAGE		
3.	National competitive tendering	21
4.	International competitive tendering	30
5.	Restricted national competitive tendering	21
6.	National shopping	4
7.	International shopping	8
8.	Where large works are involved	90

Minimum Tender Processing Times for Consultancy Services

S/N	Activity	Time (Calendar days)	
		National Competitive Selection	International Competitive
1	(i) Inviting for expression of interest upto submission of the same by consultants; or	14	30
	(ii) Invitation of Application for Prequalification upto the submission of the same by Consultants	30	45
2	Preparation and submission of proposals by the consultants	30	45

3.5 Presenting the Plan

Procurement plan is normally presented in a Tabular form based on prepared templates by PPRA. The prepared templates for preparing APPs which must be used by all PES. The templates are in two formats in accordance with the Procurement Regulations:

- APP Template for Procurement of Goods, Works and Non-Consultancy Services;
- APP Template for Procurement of Consultancy Services;
- Under the two proposed formats three templates have been prepared depending on the kind of information which must be kept;
- APP for internal use in the PEs for Planning Purposes;
- APP for External Use- notifying potential bidders of procurement opportunities in the PEs; and
- APP for submission to PPRA- for notification and monitoring purposes.

PPRA has prepared guidelines to be used to prepare the APPs and can be obtained in soft copy from the PPRAs website (www.ppra.go.tz).

Details of APP for Goods, Works and Non-Consultancy Services:

The APP for Internal Use is normally very detailed to provide the PE with key dates for carrying out important actions related with a particular procurement. They contain:

- Detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Procurement Method;
- Date for posting out GPN
- In case of Prequalification: Dates for preparation of pre-qualification Document and its approval thereof; Date of inviting potential bidders for the Pre-qualification and the submission of application for Pre-qualification; Date of submission of Evaluation Report and its approval thereof; and Date of notifying bidders of the shortlist.
- Date when the Bidding Documents should be ready and their approval thereof;
- Date of inviting bids and submission thereof;
- Date when the evaluation report should be ready and its approval thereof;
- Expected date of contract award and contract signature

APP for External Use- is used to notify bidders of the procurement opportunities in the PE in the form of General Procurement Notice. It normally contains the following:

- Detail of the subject matter of each procurement including tender lots;
- Appropriate Procurement Method

- Estimated date of the approach to the market or the timeframe within which it will occur and expected date of contract – for both pre-qualification and the actual tender.

APP for submission to PPRA, this is aimed at assisting PPRA know all procurements planned in a given financial year and therefore enable it plan its monitoring activities. It normally consists of the following:

- Detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Procurement Method;
- Date of posting GPN;
- In case of Prequalification: Date of inviting potential bidders for the Pre-qualification and the submission of application for Pre-qualification; and Date of notifying bidders of the shortlist;
- Date of inviting bids and submission thereof;
- Expected date of contract award and contract signature; and
- Details of APP for Consultancy Services

APP for Internal Use shall contain the following information

- Detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Contract type and Procurement Method;
- Date for posting out GPN;
- In case of Expression of Interest (EOI): Date of advertising invitation for EOI; Date of Submission of application for EOI; Date of submission of Evaluation Report; Date of Approval of Shortlist by TB; and Date of notifying consultants of the shortlist;
- Date when the RFP Documents should be ready and their approval thereof;
- Date of inviting Proposal and submission thereof;
- Date when the technical evaluation report should be ready and its approval thereof;
- Date of opening financial proposal
- Date when combined technical and financial evaluation report should be ready and its approval thereof; and
- Expected date of contract award and contract signature.

APP for External Use to the Consultants in the form of GPN shall contain the following information:

- Detail of the subject matter of each procurement including tender lots;
- Appropriate Contract Type and Procurement Method; and

- Estimated date of the approach to the market or the timeframe within which it will occur and expected date of contract – for both EOI and Invitation of RFP.

APP for submission to PPRA shall contain the following information;

- Detail of the subject matter of each procurement including tender lots and their estimated value;
- Appropriate Contract type and Procurement Method;
- Date for posting out GPN;
- In case of Expression of Interest (EOI): Date of advertising invitation for EOI; Date of Submission of application for EOI; and Date of notifying consultants of the shortlist;
- Date of inviting Proposal and submission thereof; and
- Expected date of contract award and contract signature.

3.6 Monitoring and Updating of the Procurement Plan

One aspect that need to be emphasized is the non-static nature of a procurement plan and the need to revise and update the plan following the approval of the budget to take into account of the actual approved amounts and during the actual implementation of the plan to take into account of any delays that may have been encountered during the process.

The necessity of review of APP may arise because of:

- Shortage of funds;
- Late release of funds;
- Unexpected availability of supplementary funds;
- Delays in obtaining necessary approvals from senior management; and
- Failure of contractors to supply as contracted, necessitating re-bidding.

Therefore, in the course of executing the APP for a particular fiscal year, the original procurement plan shall be regularly monitored and updated as the case may be. The objective of monitoring the APP is to check the “Plan” versus “Actual” status and gauge the performance and possibly re-align with the introduction of changes if necessary without breaking the requirements as contained in the law. PMU staff should constantly review procurement performance to see if there is slippage in any of the awards or execution of contracts that may require updating the APP to reflect the changes.

The APP monitoring is essential in enabling the PMU in particular and the PE in general to gain a better understanding on the performance of the procurement function and build upon the best practices or take corrective measures where there are delays or changes in the plan so as maintain efficiency in the procurement process, and also improve forecasting and planning for other similar procurement activities.

Case Study 3.1

Purported Agency of a Tender before a PE is ready to Go Out for Tender

Procurement Entity A had a complex construction project which according to them it was very urgent and needed to be completed very quickly. They therefore requested the Central Tender Board to invite Pre-qualification applications for 17 days instead of 45 days which was provided under the Public Procurement No. 3 of 2001.

The Executive Secretary of the Central Tender Board proceeded to advertise the invitation to pre-qualify for 45 days as provided in the law. That same day after the advert was out, the Minister responsible for that PE called the ES of CTB asking why did he provide 45 days instead of 17 days which the PE had requested, and directed him to reduce the number of days to comply with the directive. The ES of CTB responded that he was following the provisions of the law and that as he had already advertised the tender it was impossible to reduce the number of days as the law prohibited reducing the numbers of days once advertised, however the date of submission can be extended if need be.

The Minister communicated with the Minister of Finance so that he can direct the ES of CTB to reduce the time as advertised to 17 days. The Minister of Finance on receiving the communication from his colleague directed the same to the Paymaster General so that he can direct the ES of CTB to reduce the time. The PMG on reading the memo, realised that directing the ES of CTB to reduce the time, although directed by the Minister, was in contradiction to Procurement Regulation and that amounted to changing the regulations. The PMG, instead of directing the ES of CTB to reduce the time, put an indirect question "Is the Minister of Finance allowed to amend what is contained in the Regulations?" The ES of CTB responded- "Yes, but it must be Gazetted" – which meant that such an amendment would in this case not save this particular tender of reducing the tender period.

Sensing the danger of changing words with the Ministers, the ES of CTB provided a solution as follows "Since this is an urgent tender for the PE, he advised that they cancel the Pre-qualification process and instead proceed with open tendering which would, by then reduce the 45 days to about only 5 days (by this time the tender was in its 3rd day since the appearance of the first advert)."

The PE agreed with the proposal and asked the ES of CTB to proceed to cancel the pre-qualification process. However instead of proceeding with the cancellation, the ES requested the PE to submit the tender documents to be issued to bidders under the open tendering- so that the same cancellation notice be used to invite the bidders to collect the tender documents.

To cut the long story short – the 45 days of the pre-qualification elapse, followed by 30 days of evaluation and approval of shortlist by CTB, and 90 further days before the tender documents could be submitted to CTB.

Discussion:

How could a PE avoid a situation revealed in the above case study?

MODULE 4: PROCUREMENT METHODS

PARTICIPANTS INSTRUCTIONS

Module Outline:

Session	Duration	Components
Introducing the Module	10 Minutes	Learning Outcomes Module Content
Session 1:-Introducing Procurement Methods	20 Minutes	General Provisions of the Law with regard to procurement methods The Importance of Competition in fostering value for money in procurement
Session 2: Procurement Methods for Goods, Works and Non-Consultancy Services	120 Minutes	Open Procurement Methods Procurement Methods Involving Negotiations; Procurement Methods not Involving Negotiations Other Procurement Methods
Session 3: Procurement Methods for Consultancy Services	60 Minutes	Open Selection Methods Restricted Selection Methods Selection Based on Consultants Qualifications Individual Consultancies
Session 4: Emergency Procurement	30 Minutes	What is Emergency Procurement How to Handle Emergency Procurement

Introduction

Introducing the Module

Session Objectives

To enable participants to state module contents, learning outcome and proposed time allocation.

! In this session you will be able to state module contents, learning outcome and proposed time allocation.

Session 1: Introducing Procurement Methods

Session Objectives

To enable participants to appreciate the availability of various procurement methods and how they suit into different types of procurement.

! In this session you will appreciate range of methods available to carry out procurement and the importance of balancing competition and other factors when selecting a procurement method.

Training Materials

Section 4.1 of the Reference Manual.

PPA 2011-S.64

GN. 446 Part V and Part IX

Session 2: Procurement Methods for Goods, Works and Non-Consultancy Services

Session Objectives

Enable participants to describe procurement methods available for goods, works and non-consultancy services and their circumstances for use.

! In this session you will be able to describe procurement methods available at your disposal and the circumstances under which they can be used for procurement of goods, works and non-consultancy services

Training Materials

Section 4.2 to 4.5 of the Reference Manual.

GN.446-R.153 to 172

Exercise 4-1

Table below shows various planned procurement for goods, works and non-consultancy services by your Entity. Discuss in groups of two, suitable procurement methods and give reasons for your selection.

S/n	Subject of Procurement	Suitable Procurement Method	Reasons for Selection of Method
1.	Designing HRM inventory software		
2.	Conference facility for 15 people		
3.	Acquisition of spare parts of an existing brand of an equipment		
4.	Rehabilitation of classrooms of a Primary School by a contractor previously awarded some rooms due to shortage of funds		
5.	Purchase of a mobile phone for a newly recruited staff		
6.	A Study to Establish New Sources of Revenue		
7.	Procurement of a sensitive equipment where by a PE need to be assured of its quality and technical performance		
8.	Procurement of ICT consumables and stationeries		
9.	Survey and sitting of deep boreholes		
10.	Maintenance and servicing of medical equipment		

Session 3: Procurement Methods for Consultancy Services

Session Objectives

Enable participants to explain methods available for procurement of consultancy services

! In this session you will be exposed to various methods that can be used for procurement of consultancy services and the circumstances under which they are applicable.

Training Materials

Section 4.7 of the Reference Manual.

GN. 446-R.253 to 318

Exercise 4-2

Table below shows various planned procurement for consultancy services by your Entity. Discuss in groups of two, suitable methods of selection and give reasons for your selection.

S/n	Subject of Procurement	Suitable Procurement Method	Reasons for Selection of Method
1.	Selection of an External Auditor to audit LGAs financial statements		
2.	Selection of a Consultant to carry out the design and Supervision of District Maternity Hospital		
3.	Selection of a Transaction advisor for feasibility study and assist in procurement process for a third party for a PPP Project		
4.	Consultancy services for Preparation of Feasibility Study, Business Plan, Environmental & Social Impact Assessment, Master Plan, Detail Design and Supervision of the Proposed Regional Referral Hospital.		
5.	Selection of a Consultant to carry out the design and Supervision of collapse box culvert due flooding.		

Session 4: Emergency Procurement

Session Objectives

Enable participants to define emergency procurement,

Enable participants to use appropriate procedure of emergency procurement of its PEs

! In this session you will get to know how to manage procurement for goods, works or services required under emergency situations.

Training Materials

Section 4.6 of the Reference Manual.

PPA 2011-S.65

GN. 446- R.63

Discussion 4.3

The Executive Directors of your LGA has received a telephone call on Saturday night that the Council's office is on fire. Unfortunately, for some weeks now, the Council's fire brigade unit has been without its fire tender equipment and therefore cannot provide the required services to put off the fire. However there are several private companies operating within the Council that can provide such services.

The Executive Director calls you as soon as hear the news and asks you to call one of the private companies to provide the firefighting services.

Discuss in groups of two or three how you would proceed to acquire the firefighting services from the vendor selected by the Executive Director.

MODULE 4

PROCUREMENT METHODS

REFERENCE NOTES

4.1 Maximization of Procurement through Competition

Amongst the objectives of PPA 2011 is the need to promote competition and ensure that competitors are treated fairly. Selection of appropriate procurement method is one way of ensuring that this objective is achieved.

GN. No. 446 of 2013 provides for different procurement methods ranging from the most competitive ones to those where there is no competition at all. The Regulations emphasize that open tendering, which is the most competitive method and which accords opportunity to any bidder with qualifications to participate, to be a default procurement method. No conditions are attached to use open tendering, however due regard need to be observed with respect to the level of competition required vis-a-vis the cost of the item to be procured. Thus, the desire to attract maximum competition must be balanced with the costs likely to be incurred compared to the cost of the item or service being purchased.

4.2 Open Procurement Methods

Part V of GN. No. 446 of 2013 covers methods of procurement and their conditions for use. According to GN.446-R149 and as discussed in Section 6.1, default Method shall be OPEN TENDERING – NATIONAL AND INTERNATIONAL. Other methods may be used as an exception subject to the approval of Tender Board if: Competitive tendering is not considered to be the most economic and efficient method of procurement; and the nature and estimated value of goods, works or services permit. Open tendering procedures including International Competitive Tendering, National Competitive tendering and Restricted Tendering are discussed in details in Table 4.1

4.3 Procurement methods involving Negotiations

Apart from open tendering procedures discussed in Section 6.2, GN. No. 446 of 2013 has separated other methods of procurement into two categories, those involving negotiations and those without negotiations. Procurement methods with negotiations include:

- Two stage tendering –GN.446-R.154;
- Request of Proposal with simultaneous negotiations – negotiations held with all bidders – GN.446-R.155 to 156 (deleted) read with R.58, GN. 333 of 2016;
- Request for Proposal with Consecutive Negotiations –GN.446-R.157;
- Request for Proposals with competitive negotiations –GN.446-R.158 (deleted) read with R.59, GN. 333 of 2016;
- Single source procurement method for goods or non-consultancy services –GN.446-R.159-160 read with R.60, GN. 333 of 2016; and
- Single source procurement method for works – GN.446-R.161.

GN.446-R.153 gives conditions for use of two stage tendering and request for proposal with simultaneous negotiations, consecutive negotiations and competitive negotiations and they are summarized in Table 4.1. All methods have one purpose in common to ensure clarity of the PEs requirements before obtaining the final price quotation. In addition, two stage tendering, request for proposals with simultaneous negotiations as well as with consecutive negotiations are applicable in re-tendering where the original tenders were rejected.

For more details with regard to two stage tendering, Request of Proposal with simultaneous negotiations, Request for Proposal with Consecutive Negotiations, and Request for Proposals with competitive negotiations one may wish to visit Unicitral Modal Law on Procurement 2011, Articles 30, 48, 49, 50 and 52.

4.4 Procurement Methods not involving negotiations

Procurement methods falling under this category include:

- Request for proposals without negotiations – GN.446-R162
- Shopping – GN.446-R163 to 164;
- Minor value procurement – GN.446-R165;
- Micro Value Procurement –GN.446- R166;

These methods are also discussed in detail in Table 4.1.

Table 4.1: Methods of Procurement for Goods, Works and Non-Consultancy Services

Method of tendering		Circumstances for Use	Goods	Works	Non-Consultancy Services	Disposal of Public Assets by Tender
OPEN PROCUREMENT METHODS	International competitive tendering GN. 446-R150	The need to attract maximum competition where capacity within the country is not available or goods and services are not available in the country. Margin of preference in favour of local firms	No limit Procedure of Procurement is covered in GN. 446-Part VII			
	National competitive tendering GN. 446-R151	The need to attract maximum competition where local capacity is available, the need to restrict payments to Tsh only, the need to minimize procurement transaction costs. Does not limit participation of foreign firms, however a margin of preference shall be applied in favour of local firms	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000
	Restricted tendering(GN. 446-R152)	Tenderers already prequalified, Few specialized tenderers, Emergency circumstances, Need to achieve certain social objectives by involving the community, Set aside contracts for purpose of capacity building of local firms.	No limit but must be justified <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirement relating to international and national competitive tendering apply.			
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Two Stage Tendering GN. 446-R.153 (1) &GN. 446-R154	Need to refine aspects of the description of subject matter of procurement and to formulate them with the detail required to meet its requirements; A repeat tender process following no submission of tenders in previously invited tender	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> Obtain tenders in two stages- First stage proposal without price on: technical, quality or performance characteristics of the subject of procurement; Contractual terms and conditions of supply; and professional and technical competence of the tenders May Engage in discussion with those who are responsive. Opportunity to be extended to all. Revise set of terms and conditions of procurement in response to the tenderer submission and discussions held. Observe GN. 446-R154(7)			

Method of tendering	Circumstances for Use	Goods	Works	Non-Consultancy Services	Disposal of Public Assets by Tender
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Request for Proposals with Simultaneous Negotiations GN. 446-153(2) & GN. 446-R155 to 156	PE unable to formulate a detailed description of subject matter and therefore a need to involve tenderers through negotiation to obtain the most satisfactory solution to its procurement needs; Tender for research, experiment or study of which quantities to be procured have no commercial viability to recover the costs; Procurement for national defence or national security; A repeat tender process following no submission of tenders in previously invited tender or rejection of all tenders; and Technical nature of goods, works and services dictate the need to negotiate with tenderers	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection – the need to have a clear rating criteria to arrive to a required number; Observe GN. 446-R155 (2) with regard to invitation to participate; GN. 446-R155 (9) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R155(10) with regard to the contents of the Request of Proposals; Simultaneous negotiations shall be conducted with tenderers that presented responsive proposals. The number of tenderers should be at least three to ensure competition. Conducted concurrently be the same representative of a PE. Not allowed to modify the subject matter of procurement; any qualification or evaluations criterion; or minimum requirements with regard to qualifications of tenderers; Invite tenderers remaining in the proceedings to present their best and final offer with respect to all aspects of their proposals.		
	Request for Proposals with Consecutive Negotiations GN. 446-R.153 (3) & GN. 446-R.157	The need to consider separately the quality and technical aspects, and financial aspects of the proposal; The need to establish acceptability of the financial terms and conditions of procurement contract by PE	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> Obtain proposals in the same way as Request for Proposals without Negotiations. Observe GN. 446-R162 (2) with regard to invitation to participate; GN. 446-R162 (4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R162(5) with regard to the contents of the Request of Proposals; Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; Invite the tenderer with the best ranking proposal for negotiations on financial aspects of its proposal; Proceed to the next ranked if not possible to result into a procurement contract. Not allowed to modify the subject matter of procurement; any qualification or evaluations criterion; or minimum requirements with regard to qualifications of tenderers		
	Request for Proposals with Competitive Negotiations GN. 446-153(4) & GN. 446- R158	emergency circumstances making it impractical to use open tendering proceedings; Procurement for national defence or national security;	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> Bidders are invited to submit proposals which are evaluated and each invited separately to negotiate its proposals before they are invited to submit their Best and Final Offer (BAFO) which shall not be negotiated		

Method of tendering		Circumstances for Use	Goods	Works	Non-Consultancy Services	Disposal of Public Assets by Tender
PROCUREMENT METHODS INVOLVING NEGOTIATIONS	Single source procurement for goods and services (GN. 446-R159)	Only one supplier of service provider available, emergency circumstances, additional supplies required in a contract awarded through open tendering, research, experiment or development basis where there is commercial viability, national defence or national security, continuity of functioning of existing equipment or Services; Compatibility with existing equipment; Standardization of Spare Parts.	No limit, but must be justified. <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirement relating to international and national competitive tendering in terms of documentation apply.			Not applicable
	Request for Proposals Without Negotiations - GN. 446 –R.162	Need to consider financial aspects of proposals separately and only after completion of examination of quality and technical aspects of the proposals.	NO LIMIT IS GIVEN ON ITS APPLICATION???? <u>Procedure:</u> More less the same as Quality Based selection for Consultancy Services Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection; Observe GN. 446-R162 (2) with regard to invitation to participate; GN. 446-R162 (4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and GN. 446-R162(5) with regard to the contents of the Request of Proposals; Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; Open financial proposals of those successful in their technical proposal; Best proposal shall be one with best combined evaluation in terms of the price and the criteria for technical, quality and performance characteristics specified in the RFP;			
PROCUREMENT METHODS NOT INVOLVING NEGOTIATIONS	Competitive quotations (Shopping)	For diversified goods offering no commercial interest for any single supplier to tender for them	Up to Tsh 120,000,000	Up to Tsh 200,000,000	Up to Tsh 100,000,000	Not applicable
	GN. 446–R163&164	For off the shelf or standard commodity specifications	<u>Procedure</u> Obtain quotations from at least three suppliers; Observe minimum time given to bidders as shown in Eighth Schedule; and Observe procedure given in GN. 446-R164			

Method of tendering		Circumstances for Use	Goods	Works	Non-Consultancy Services	Disposal of Public Assets by Tender
Minor value procurement GN. 446-R165	Basically a single source method for low value standard items for which prices from the selected sources are standard and there is no benefit to seek several quotations	Up to 10,000,000	Up to 20,000,000	Up to 10,000,000	Not applicable	
Micro value procurement GN. 446-R166	Mainly a cash based procurement method aimed at assisting PEs to obtain supplies easily from established supermarkets, shops or drug stores.	5,000,000	Not applicable	Not applicable	Not applicable	

4.5 Other Procurement Methods

Force account procurement means a process where works are carried out by public or semi-public agencies or departments by using its personnel and equipment or in collaboration with any other public or private entity - GN.446-R.167 read together with GN. 333 of 2016. One of the pre-requisites for the use of this method is the availability of qualified personnel within PE to carry out and/or supervise the required works.

Provisions with regard to community participation in procurement and procurement of commodities have remained the same as was contained in GN. No. 97 of 2005 (GN.446-R.169) save for procurement of the same using framework agreements if included in the list of common use items.

Other provisions are contained with regard to procurement of food stuffs for schools, training institutions, hospitals and prisons in which GPSA shall play a major role for procurement of such items having obtained standards for such goods from the relevant Ministries and estimated quantities from responsible institutions (GN.446-R.170)

4.6 Emergency procurement

The provision for handling of emergency procurement is covered under PPA 2011-S.65 as well PPR- R63 to 67. Emergency procurement provided for in the Act shall meet one of the criteria shown in Box 4.1.

Where the procurements meets the requirements of S.65 (1) of PPA, 2011, the law gives a waiver with regard to procurement limits, methods, tender processing periods and advertisement, implying that a PE will not be compelled to comply with the provisions of the PPA 2011 and PPR 2013 as provided, however the tenders must be evaluated and award must be approved by the Tender Board – PPA 2011-S.65 of the PPA, 2011 read together with S.23 Public Procurement (Amendment) Act, 2016.

Box 4.1: Criteria for Emergency Procurement

- Compelling emergency that creates threat to life, health, welfare or safety of the public by reason of major natural disaster, epidemic, riot, war, fire or such other reasons of similar nature; and
- situation whereby, without the emergency procurement, the continued functioning of the Government or organization would suffer irreparable loss, the preservation or protection of irreplaceable public property, or the health or safety of public will be threatened.

Under emergency procurement the provisions that required the PE to seek a prior approval from the Government Procurement Services Agency (GPSA) has been repealed. Currently, the Accounting Officer can proceed to procure the goods, works or services using the selected method where requirements for emergency procurement are met and submit an application for retrospective approval to the Pay Master General within seven (7) working days from the date of the award R. 22 (2) and (3), GN. 333 of 2016.

PPRA is required to issue a format which shall be used to prepare a report on emergency procurement GN.446-R.64 (2) which is required to be submitted within 14 days to the Paymaster General, Controller and Auditor General, Internal Auditor General, PPRA and GPSA.

Emergency procurement shall not apply for common use items and services GN.446-R.66 (1) and where a procurement was not included in the procurement plan, but is reasonable and justified, the Accounting Officer may approve re-allocation within his authority in order to carry out such procurement within the limits of minor and micro procurement values shown in 6th and 10th Schedule of GN. 446.

Accounting Officer shall be held accountable where the so called emergency procurement is proved to be unnecessary and extravagant and was undertaken by lack of sight and timely action. A contract entered under such circumstances, even if not approved retrospectively, shall be valid and the Accounting Officer shall be responsible for the payment of the price involved GN.446-R.67. This provision is to safeguard a service provider who may not have the knowledge that a particular procurement in which he was awarded a contract did not follow procedures required under the law.

MODULE 5: PROCUREMENT PROCESS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

PARTICIPANTS INSTRUCTIONS

Module Outline:

Session	Duration	Components
Introducing the Module	10 Minutes	Learning Outcomes Module Content
Session 1:-Introducing the Procurement Process for Goods, Works and Non-Consultancy Services	20 Minutes	Basic Principles and Steps in the Procurement of Goods, Works and non-Consultancy Services
Session 2: The Procurement Process of Goods, Works and Non-Consultancy services Part 1	90 Minutes	Preparation of Tendering Documents; Establishing of a Cost Estimate for Procurement Deciding on the appropriate Procurement Method. Invitation of Bidders Issue and Sale of Tender Documents
Session 3: Exercise on the Preparation of a Tender Document for Goods/ Works/Non-Consultancy Services	120 Minutes	Hands on Exposure to the Preparation of a Tender Documents
Session 4: The Procurement Process of Goods, Works and Non-Consultancy services Part 2	120 Minutes	Preparation and Submission of Tenders; Receipt and storage of Tenders Evaluation of Tenders
Session 5: Exercise on Evaluation of Tenders for Goods/ Works/Non-Consultancy Services	120 Minutes	Hands on Exposure to the evaluation of tenders

Introduction: Introducing the Module

Session Objectives

To enable participants to state module contents, learning outcome and proposed time allocation.

!In this session you will be able to state module contents, learning outcome and proposed time allocation.

Session 1: Introducing the Procurement Process for Goods, Works and Non-Consultancy Services

Session Objectives

To enable participants to demonstrate step by step approach to the procurement of goods, works and non-consultancy services

!In this session you will appreciate the procedures to be followed in the procurement of goods, works and non-consultancy services.

Training Materials

Section 5.1 and 5.2 of the Reference Manual.

Session 2: The Procurement Process of Goods, Works and Non-Consultancy services Part 1

Session Objectives

To enable participants to prepare and document required documents prior to inviting bidders to participate in the tender process.

!In this session you will able to prepare required complete documents before invitation to tender and possible approaches that can be used to invite bidders to participate in the tender process.

Training Materials

Section 5.3 to 5.7 of the Reference Manual.

PPA 2011-S.38

GN. 446- Part III

Standard Tender Documents for Goods, Works and Non-Consultancy Services

Group Discussion 5-1

Briefly Read Case Study 5.2 and discuss in Groups of Two or Three why it is important to use neutral specifications in the tender process. What action can be taken by a PE if it is unable to write neutral specifications for a product they wish to procure?

Group Discussion 5-2

Briefly Read Case Study 5.1 and discuss in Groups of Two or three why it is important to include very clear criteria for evaluation of tenders in the Tender Document and the involvement of various parties in making sure that it is done so.

Session 3: Exercise on the Preparation of a Tender Document for Goods/ Works/Non-Consultancy Services

Session Objectives

To enable participants to prepare typical tender document for a selected tender.

! In this session you will get to know how to prepare a tender document.

Training Materials

Same as for Session 2

Exercise 5-1

Participants are required to visit PPRA's website www.ppra.go.tz and obtain a Standard Tender Document for Goods or Works and customize it to meet the following requirements:

Information about the Tender Process:

1.	Client	Ubora Regional Secretariat, P.O BOX 42, Madhubuti,
2.	Project	Proposed Upgrading of Madhubuti Ring Roads Bitumen Standard
3.	Completion date	October, 2017
4.	Financed by	Roads Fund Board
5.	Procuring Entity	Ubora Regional Secretariat
6.	Financial Year	2015/2016
7.	Description of the Works	Construction of Tarmac Roads with drainage works and other Roads Furniture
8.	The loan/ credit number	Not applicable
9.	Allowed number of JV, consortium or association	3
10.	Contractors' Category	Civil Engineering
11.	Class of Registration by CRB	Class 4 and above
12.	Place of pre-tender meeting	The Secretary of Tender Board, Ubora Regional Secretariat, P.O BOX 42, Madhubuti,

		Imara Street, Ujenzi Building Second floor, PMU Conference Room
13.	Date of pre-tender meeting	Friday, 18 March, 2016
14.	Time of pre-tender meeting	14.00hours local time
15.	Number of copies of tenders	4
16.	Address to seek clarifications	The Secretary of Tender Board, Ubora Regional Secretariat, P.O BOX 42, Madhubuti, Imara Street, Ujenzi Building Second floor, PMU Conference Room
17.	Language to be used	English
18.	Other information or materials	Other information or materials required to be completed and submitted by Bidders :
19	Nature of prices	Fixed
20.	Currency to be used	Tanzania Shillings
21.	Source of exchange rate	Bank of Tanzania.
22.	Tender validity period	120 days
23.	Tender Security amount	Not applicable
24.	Currency of the Tender Security	Not applicable
25.	Bid Securing Declaration	YES
26.	Form of Tender Security	Bank Guarantee
27.	Alternative Tenders	Not allowed
28.	Alternative time for completion	Not applicable
29.	Document to confirm authorization	Power of Attorney
30.	Address to submit tenders	The Secretary of Tender Board, Ubora Regional Secretariat, P.O BOX 42, Madhubuti, Imara Street, Ujenzi Building Second floor, PMU Conference Room
31.		Project name..... Tender number..... Time and date for submission.....
32.	Deadline for Tender submission	Friday, 15 April, 2016; 1400hours
33.	Request for extension of submission of tender	Not later than <i>7days</i> before the expiry of the original deadline.
34.	Tender opening place	The Tender opening shall take place at: The Secretary of Tender Board,

		Ubora Regional Secretariat, P.O BOX 42, Madhubuti, Tanzania Imara Street, Ujenzi Building Second floor, PMU Conference Room
35.	Currency for tender evaluation	Tanzania Shillings
36.	Source of exchange rate	Bank of Tanzania
37.	Date for the exchange rate	Date of tender opening
38.	Domestic preference	Applicable
39.	Percentage for quantities variation	15 percent
40.	Performance Security	10 percent
41.	Form of Performance Security	Performance Bond
42.	Advance payment amount	15 percent
43.	Adjudicator	National Construction Council (NCC)
44.	Remuneration of adjudicator	TZS. 100,000 per hour
45.	The address to submit copies of complaints	Chief Executive Officer, Public Procurement Regulatory Authority (PPRA) PPF Tower 8th Floor, P.O. Box 49, DAR ES SALAAM. Tel: 2133466, 2121236/7 Fax: 2121238 email: ceo@ppra.go.tz Website: www.ppra.go.tz
46.	The address for Appeal to PPAA	The Secretary, Public Procurement Appeals Authority, Sukari House 1 st Floor, P.O. Box 9310, DAR ES SALAAM. Tel: 2120451

Information about the Contract Implementation

1.	Employer	Regional Administrative Secretary, Ubora Region, P.O BOX 42, Madhubuti, Imara Street,
2.	Adjudicator	National Construction Council (NCC)
3.	Defects Liability Period	180days.
4.	Project Manager	Regional Secretariat Engineer
5.	The name and identification number of the Contract	Proposed Upgrading of Madhubuti Ring Roads Bitumen Standard,

6.	The Works consist of	Construction of Tarmac Roads with drainage works and other Roads Furniture	
7.	Start Date	June, 2016	
8.	Completion Date	October, 2017	
9.	Other documents to the contract	Drawings Bill of Quantities Specifications	
10.	Location of site		
11.	Sectional completion	Specified	
12.	Language of the Contract documents	English	
13.	Law that applies to the Contract	Tanzanian Law	
14.	Schedule of Other Contractors	Not applicable	
15.	Schedule of Key Personnel		
15.	The minimum insurance covers shall be:	(a) loss of or damage to the Works, Plant, and Materials	TZS. 10,000,000
		(b) loss of or damage to Equipment	TZS. 10,000,000
		(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract	TZS. 10,000,000
		(d) Personal injury or death	TZS. 10,000,000
16.	Site Investigation Reports available	Geotechnical Report Rainfall Report Economic situation report	
17.	The other measures include:	Minimizing the number of migrant workers employed on the project and household in the site camp Providing access to voluntary counselling and testing (VCT) Providing psychological support and health care including prevention and treatment of opportunistic infections for workers infected and affected, as well as their families Providing condoms (male and female) to workers	
18.	The Site Possession Date	June, 2016	
19.	Fees payable to the Adjudicator	Tsh. 100,000 per Hour.	
20.	Types of reimbursable expenses to be paid to the Adjudicator	Transport Stationeries	
21.	Arbitration will take place at		
22.	Arbitration rules and regulations Publisher		

23.	Arbitration Rules and regulations	
24.	Appointing Authority for the Adjudicator	
25.	Programme for the Works be submitted within	7 days of delivery of the Letter of Acceptance.
26.	The period between Programme updates	30 days.
27.	The amount to be withheld by the Project Manager in the case contractor does not submit an updated programme	Tsh. 2,000,000
28.	The Defects Liability Period	180 days.
29.	The interest rate	Shall be 2% above prevailing interest rate for commercial borrowing from the contractors bank
30.	Minimum Amount of Interim Payment Certificate	15% of contract sum
31.	Price adjustment	Not applicable
32.	The amount of retention	5% of value of works of Interim Payment Certificate.
33.	Limit of retention	5% of contract price.
34.	The amount of liquidated damages	0.1% of contract price per day
35.	Maximum amount of liquidated damages	The maximum amount of liquidated damages must be equivalent to the amount of the performance security [<i>state the amount</i>].
36.	The bonus for early completion	0.1% of contract price per day
37.	The amount of advance payment	15% per cent of the contract sum
38.	Date of advance payment	14 days after receipt of Advance Payment Guarantee
39.	Monthly Recovery of Advance Payment	5% of amount of Interim Payment Certificate.
40.	The Performance Security	10% of the contract sum
41.	As built drawings shall be supplied by the contractor	30 days after Practical Completion
42.	Operating manual shall be supplied by the contractor	Not applicable
43.	The amount to be withheld by the Project Manager in the case the contractor does not submit as built drawings	20% of retention money

44.	The amount to be withheld by the Project Manager in the case the contractor does not submit operating manual	Not applicable
45.	Number of days for which the maximum amount of liquidated damages can be paid	
46.	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works	25%

Session 4: The Procurement Process of Goods, Works and Non-Consultancy services - Part 2

Session Objectives

To enable participants to handle procurement process after the invitation has been sent out to the bidders

! In this session you will be exposed to important actions to be taken by a PE after the Invitation of Bidders until the award of contract.

Training Materials

Section 5.6 to 5.12 and Figure 5.2 of the Reference Manual.

GN. 446- Part III

Standard Tender Documents for Goods, Works and Non-Consultancy Services

Group Discussion 5-3

Briefly Read Case Studies 5.6 and 5.7 and discuss in Groups of Two or Three how you will handle cases of lost bids and how to make modifications to the submitted tender documents.

Group Discussion 5-4

Briefly Read Case Study 5.4 and discuss in Groups of Two or Three on what is the practical way to handle bids which are submitted late.

Group Discussion 5-5

Briefly Read Case Study 7.5 and discuss in Groups of Two or Three on how to determine a substantially responsive tender.

Group Discussion 5-6

Briefly Read Case Study 5.3 and discuss in Groups of Two or Three on what is the best way to handle arithmetic corrections? What should be done to adopt the procedure proposed in the case study?

Session 5: Exercise on the Evaluation of Tender for Goods/ Works/Non-Consultancy Services

Session Objectives

To enable participants to evaluate tenders for goods works, and non-consultancy services.

! In this session you will be exposed on how to carry out evaluation of tender for either Goods, Works or Non-Consultancy Service

Training Materials

Same as for Session 4

Exercise 5-2

The Evaluation Exercise will be formulated by the Trainer before the training session for Goods, Works and Consultancy Services based on Tenders brought by the participants for the training purposes.

There will be three groups working on evaluation of Works, Goods and Non-Consultancy Services Tender – later the groups will share their work with the rest of the class.

MODULE 5

PROCUREMENT PROCESS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

REFERENCE NOTES

5.1 Introduction

A bulk of procurement carried by many PEs consist of goods, works and services which are required to enable them to run their operations.

In the context of this manual the following are the definitions of work, goods and services:

- Goods are the raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;
- Works are all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield; Any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing;
- Services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations.
- Contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the services covered by the contract.
- Services referred here are service of a skilled or non-skilled nature, which is not a consultancy service and includes, but is not limited to, cleaning, security, maintenance, and repair services.

5.2 Key Stages in the Procurement of Works, Goods and Services

Figure 5.1 shows a flow chart of procurement process for works, goods and services which is discussed in detail in this part. Key steps which shall be discussed include the following:

- Preparation of tendering documents and establish the approximate value of procurement;
- Decide on the method of tendering to be used;
- Invite eligible bidders;
- Preparation and submission of tenders;
- Receipt and Opening of Tenders;
- Evaluation of tenders; and
- Awarding of contract.

5.2.1 Preparation of Tendering Documents and Establishing Approximate Value

After preparation and approval of the Procurement plan, the next important issue to consider is the preparation of tender documents for the procurement in question. A PE wishing to commence competitive tendering is required by the PPA 2011 to provide all eligible prospective bidders with timely and adequate notification of the PEs requirements and an equal opportunity. This is achieved through well prepared tender documents.

According to PPA 2011-S.38 (h), the PMU is responsible for the preparation and issue of tendering Documents in consultation with the user department. The PE must use the appropriate Standard Tender Document (STD) issued by the PPRA, as this is a mandatory requirement for contracts to be funded by the Government of Tanzania. The purpose of the STD is to provide PEs with one common standard draft document containing basic contractual provisions and safeguards which are required by the Government of Tanzania the execution of public procurement and the use of public funds.

So far, the PPRA has issued the following Standard Tender Documents relevant for procurement of works, goods and services:

- Standard Tendering Documents for Procurement of Non-Consultancy Services;
- Standard Tendering Documents for Procurement of Goods- National and International Competition;
- Standard Tendering Documents for Procurement of Medium and Large Works National and International Competitive Tendering;
- Standard Tendering Documents for Procurement of smaller Large Works- National Competitive Tendering;
- Standard Invitation for Quotation for Procurement of Non-Consultancy Services;
- Standard Invitation for Quotation for Procurement of minor works;
- Standard Invitation for Quotation for Procurement of goods.

The above documents have been issued as a trial version following the release of Gazetting of Public Procurement Regulations.

5.2.2 Decide on the Method of Tendering

*In **Module 4** different methods of tendering were discussed. The selection of the method of tendering will depend on the value and complexity of the assignment and the level of competition desired.*

Since there are thresholds attached to different methods, the estimate of the works, goods or services to be procured as established will assist in the selection of the appropriate method. Therefore the PE, as part of preparation of the tender documents- particularly the specifications, PE will need to establish the estimated value for the procurement in question and this shall be used as a basis of selecting an appropriate procurement method.

The estimate of the value of the contract shall also enable the PE to decide on the amount of bid security required, in case where they to include it as a fixed amount in the tender document so that it is between 1.5 to 2.5 percent as recommended.

5.5 Invitation of Bidders

PEs may invite tenders through open tendering following the manner prescribed in GN.446-R181. This can be very costly to administer because if a large number of tenders are submitted they will all require the same level of review and scrutiny so as to ensure fairness and equality of bidders. To avoid the burden of evaluating many tenders, a PE may decide to engage in a two stage tendering procedure- in which the first stage is used, through a pre-qualification process, to shortlist bidders with capacity and capability to participate in the tendering proceedings. In the second stage those who were shortlisted are issued with tender documents and invited to submit their tenders. This enables a PE to reduce the number of bids to be evaluated without reducing the level of competition as the prequalification stage is open to all competitors but simply seeks to evaluate the technical and financial capabilities of competitors before engaging them in the process of pricing and submitting a bid.

The invitation of tenders may be done in two ways:

- Invitation through the publication of an announcement of tendering proceedings in the case of open tendering, where no pre-qualification has been conducted; or
- Invitation from the list of pre-qualified bidders established where a pre-qualification stage has been conducted.

GN.446-**R182** discusses important information to be included in the advertisement to tender. The content of the invitation to tender notice should be sufficient to inform all the bidders on the procurement requirements key specifications and conditions of execution so as to allow the bidders making an informed decision in order to be responsive and competitive.

5.6 Prequalification

GN.446-R.119 to R.125 gives the procedure to be adopted for pre-qualification of contractors, suppliers or service providers. Prequalification is aimed at ensuring that only bidders who have the required capacity and capability are invited to tender for Public contracts. Capability is judged in accordance with the experience, technical and financial resources that an applicant possesses.

By deciding to Prequalify, the PE screens potential bidders and the process has the following benefits to the PE:

- All bidders include overhead costs in their pricing. Through prequalification, potential bidders save the cost of preparing their bids hence reducing their overhead costs which may lead to their quoting lower bid prices in the long run, to the benefit of the PE;
- Leading contractors and suppliers, particularly the international ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the PE;
- Prequalification measures the scale of interest by potential bidders. If the interest is low, for example, this will mean that the PE has to revisit the bidding conditions or scope of work to encourage healthy competition among bidders; and

- Prequalification leads to ultimate evaluation of bids from qualified bidders only and consequently results in cost and time saving for the PE as all unqualified bidders are not invited to tender.

On the other hand, prequalification has some potential disadvantages which include but not limited to:

- Risk of having a longer procurement lead time due to undergoing two processes (Prequalification and later Bidding). To avoid such delays and shorten the time to complete the procurement process, the PE can adopt good and efficient procurement scheduling methods such as prequalifying bidders while the Procurement Management Unit prepares the bidding documents and obtains the necessary approvals for their issuance immediately after the prequalification process ends; and
- Prequalification increases the chances for collusion and price fixing by those prequalified as their names are known in advance of bid submission.

The process of pre-qualification of tenders including the opening and evaluation is the same as that of an open tender discussed in this manual. A duration of 21 and 14 days is required for the potential bidders to submit their pre-qualification applications in the case of international and national competitive tendering respectively as provided for in 8th Schedule of GN.446 read together with GN. 333 of 2016.

5.7 Issue and Sale of Tender Documents

Any bidder interested to participate in the procurement proceeding by responding to the PE advert or accepting the invitation to participate through shortlisting shall be issued with a bidding document. The procedure on how to issue tendering documents is given in GN.446-R183 to R185. It is important to ensure that the bidding document and subsequent amendment of the same are issued to all bidders at the same time. GN.446-R183 allows for sale of tender documents to recover costs of printing and copying and distribution. No element of profit is allowed. Prior inspection of documents is allowed in order to make a decision to buy or not buy the documents.

Check-

list for setting the period for bid preparation:

- Is it national or international? Delays in mailing?
- Does it involve preparing a methodology, schedules, maps or other specialised professional diligences?
- Does it include options and the possibility of an alternative bid?
- Does it include very specific requirements for pricing that necessitates specific calculations, obtained quotes from other supplier or service providers?
- Is there a complex or unusual specification? For example the reference to an existing standard and the need for an equivalence.
- Is the level of sub-contracting expected to be important?
- Special restrictions and requirements?

5.8 Preparation and Submission of Tenders

After the tender documents have been issued to bidders, most the work is done by bidders to prepare their tenders for submission. However, within PE, those relevant with procurement process particularly the PMU and user department should be organised to respond to queries for clarification from bidders and to organise site visit and pre-bid conference particularly in the case of procurement of works.

Clarifications and information to bidders

The PE may organise: a pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or a site visit, to enable bidders to gain access to the site for delivery of any proposed works, goods or services. Where a pre-bid conference is planned, it may be used to issue clarifications on issues sought by bidders prior to the date of conference. *GN. 446-R189* gives procedures for pre-bid conference and on how to handle clarification and information from bidders. Any clarification or amendment to bidding documents through an addendum must be issued to all bidders at the same time.

Tendering period

Eighth Schedule of GN. 446 read together with GN. 333 of 2016 provides for a minimum tender period allowed under the law for different procurement methods. The period provided is in calendar days. PEs are therefore expected to fix a realistic period depending on the size and complexity of procurement- they should make a realistic estimate of time required for bidders to prepare and submit a competitive bid.

Through request of clarifications by bidders it may be necessary for the PE to increase the bid period to enable bidders to take into account any clarifications issued into the preparation and submission of their bids.

Tender Securities

Tender Securities or tender securing declaration are part of the tendering documentation to protect the PE from suffering loss of time and resources in case a tenderer does not fulfil certain requirements of the Bidding documents. In simple terms, a Tender or Bid Security is a promise by the bidder to do or not to do something. In the legal world, such promises have penalties attached in case of the non-performance of the promise.

If the tender documents indicate that a PE requires the tender to be accompanied by a tender security, then the requirement shall apply to all who respond to the invitation with no exceptions.

The PE shall specify in the tender documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Circumstances that may warrant forfeiture of the tender security include:

Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stipulated in the solicitation documents;

- Disagreement to arithmetical correction made to the tender prices;
- Failure to sign the procurement or disposal contract if required by the PE to do so;
- Failure to provide a required performance security after the tender has been accepted or
- Failure to comply with any other condition precedent to signing the procurement or disposal contract specified in the solicitation documents.

PEs should always remember to request for an extension of bid security when the bid validity period is extended

According to GN. 446-R.24 the tender security or tender securing declaration shall remain valid for a period of not less than twenty eight days beyond the validity period of the tender, in order to provide the PE time to act if the security is called for.

Tender securities of unsuccessful tenderers have to be released not later than thirty (30) days after the expiry of the original or extended tender validity period, or upon the award of contract, whichever is earlier. The discharge of the tender security of the successful tenderer is only done when the tenderer has signed the contract and furnished the required performance security to the satisfaction of the PE.

Upon the occurrence of the following circumstances, the PE has no claim to the tender security submitted by the tenderer whatsoever:

- The expiry of the tender security (original or extended);
- The entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the solicitation documents;
- The rejection by the PE of all tenders as allowed by the law; and
- The withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

It should be noted that the amount of bid security should be high enough to discourage frivolous bids, but not so high as to discourage competition. Factors to be taken into account by the PE in fixing the amount are: cost to bidders of obtaining the security, the estimated value of the contract and the risk of bidders failing to fulfil the conditions of their bids. No clear guide is given in the Regulations but it is supposed to be in the range of 1.5 to 2.5 percent.

5.9 Tender Submissions

The PE shall fix the place for and a specific date and time as the deadline for the submission of tenders. The time for the tender opening shall be the same as the deadline for the receipt of tenders or promptly thereafter, and shall be announced, together with the place of the tender opening, in the invitation to tender.

Tenders in writing, signed and sealed in an envelope shall be delivered, by mail or by hand, to the address, within the time limit, and in the form and manner indicated in the invitation to tender and stipulated in the tender documents as issued by the PE. However, a tender may alternatively be submitted in any other form specified in the tender documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality.

Where requirements for tender security or other securities have been stated in the tender documents, these shall be delivered not later than the closing date and time for the deposit or submission of the tenders in the amounts and in the form and manner stipulated.

Tenders received after the deadline for the submission of tenders stipulated in the tender documents shall not be opened or considered and shall be returned to the tenderer who submitted it.

Period of effectiveness of tender, modification and withdrawal of tenders

GN. 446-R191 requires that a PE has to ensure that it indicates the validity period for tenders that is sufficient enough to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalize a contract with the successful tenderer. However, note has to be taken that the validity period does not exceed one hundred and twenty (120) days from the final date fixed for the submission of tenders though this may vary depending on the nature and complexity of the contract.

Sometimes, before the expiry of the original period of effectiveness of tenders, the PE may request (in writing) tenderers to extend the validity period for an additional specified period of time. Tenderers who refuse the request for the extension will have their tender securities valid up to the time that they indicate to be valid. Refusal by a tenderer to accept the request (for the extension) will not lead to forfeiture of the tender security and the same has to be returned to the tenderer after its expiration date. Such tenderer will no longer be considered as a bidder in that particular tender after the initial expiry date has been reached (because of the refusal to extend the validity).

Tenderers that agree to an extension of the tender validity period shall extend or procure an extension of validity of their tender securities they had provided or provide new tender securities to cover the extended validity period of their tenders.

The successful tenderer shall remain bound by his tender for a further period of thirty days following the receipt of communication notifying him of his selection. Unless otherwise stipulated in the solicitation documents, a tenderer may modify or withdraw the tender prior to the deadline for the submission of tenders without forfeiting its tender security.

5.10 Tender Receipt and Opening

The tender opening stage in the procurement process is one of the measures that can be an indicator of transparency in the administration of the process and upholding one of the key basic principles of good and proficient public procurement.

The PMU shall ensure that all tenders (including packages containing any tenders which cannot be placed in a locked tender box) are kept unopened in a secure place until the deadline time for opening the tender(s). All tenders received shall be registered as they arrive by hand or post and the registration number, date and time of arrival shall be recorded on the envelope. Tenders that are directly dropped in the tender box shall be registered during the opening ceremony.

Tender Opening Committee constituted in accordance with GN. 446-R.56 shall convene a tender opening meeting of the tenders submitted in time as indicated in the tender documents or promptly thereafter.

All tenders submitted before the deadline time and date shall be opened in public, in the presence of the tenderers or their representatives and other parties who choose to attend. The names, addresses and contacts of the attendees shall be recorded by the secretary of the TB and be made part of the tender opening minutes (records).

During the public tender opening, the following information is read out and recorded;

- The tenderers' names,

- The tender prices and the total amount of each tender,
- Written notifications of tender modifications and withdrawals,
- Any alternative tenders (if they have been requested or permitted);
- Any discounts;
- The presence of the requisite tender security; and
- Such other details as the tender board may consider appropriate shall, if any, be announced to those persons present at the opening of tenders.

Normally the information to be read out at the tender opening is specified in the Tender Data Sheet (TDS). For example Clause 18 of TDS for Large and Medium Works Standard Tender Document issued by PPRA (Feb 2014) requires that the list the appropriate details required to be announced at the Tender opening meeting be given as required in the Instruction to Tenderers (ITT) Clause 24.3. It is important to note any information which can be used to reject a tender should be read out during the opening. It is for that reason that, for example Clause 24.5 of ITT of the referred document, makes it necessary, as shown in Box for the tenderer to send in a representative with knowledge of the tender to confirm the information read out during the opening.

The recorded tender opening information may also be communicated on request to tenderers that have submitted tenders, but were unable to attend the opening ceremony or could not send in their representatives.

If a “two envelope” system of tendering has been adopted, it shall be announced that no price envelope has been opened.

Tenders received after the time stipulated, as well as those not opened and not read out at the tender opening, shall not be considered, and they shall be returned unopened.

Any discount which is not read out at the formal tender opening ceremony shall not be taken into account in the evaluation and comparison of tenders. It is therefore important for the person reading the tenders to ensure that no omission has been done while reading out the submitted tender documents during the opening ceremony as this may lead to disputes later.

In order to uphold the integrity of the procurement process, all information relating to the examination, tabulation, clarification, evaluation and comparison of tenders and recommendations concerning the award of the contract shall not be disclosed or communicated to tenderers or any person or persons not officially concerned with such process before the award of the tender. Any attempt by a tenderer to influence the PE in the process and in decisions concerning the award of the contract, shall result in the rejection of his tender.

ITT Clause 24.4 of Large and Medium Works Standard Tender Document issued by PPRA (Feb 2014)

Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the PE against any claim or failure to read out the correct information contained in the Tenderers' Tender.

After tenders have been opened, no tenderer shall be permitted to alter his tender except for clarifications that do not change the substance and price of the tender which may be requested for by the PE. The request for clarification and the tenderers' responses must all be in writing.

5.11 Tender Evaluation

5.11.1 Evaluation Committee

The Accounting Officer is responsible for establishing a tender Evaluation Committee (EC) comprising of a not less than three and not more than five members. The tender evaluation committee members shall be recommended by the PMU and approved in writing by the Accounting Officer of the PE.

The tender evaluation committee shall evaluate on a common basis all tenders opened using the criteria explicitly stated in the tender documents. Tenders shall be comparable among themselves in order to determine the lowest evaluated cost for procurement of goods, works or services or the highest evaluated price for disposal of asset by tender.

5.11.2 Steps in the tender evaluation process

Figure 5.2 Summarises the tender evaluation process for goods, works and services. The various steps are discussed herein.

Step 1: Record of tender opening

An official record of bid opening, identifying all the bids received, the bid prices and bid Security amounts/declaration (or alternative bids in case of sale of assets by tender) announced at the public opening of bids, should be formally prepared. This should be passed over to the evaluation committee.

Step 2: Preliminary Examination of Bids

This step involves the examination of all tenders received, for substantive technical and commercial responsiveness in accordance with the invitation to tender/bidding documents. This exercise aims at eliminating bids which are not responsive to technical specifications and important commercial requirements, to the extent that they are entirely unacceptable and merit no further consideration.

Aspects to consider in examination of bids:

- Are bids complete and signed?
- Have all documents asked for in the tendering document been submitted?

GN. 446-R204(2) Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following:

- a) Failure to sign the bid form and price schedule by the authorized person or persons;
- b) failure to satisfy eligibility requirements;
- c) failure to submit a tender security as specified in the tendering documents;
- d) failure to satisfy the tender validity period;
- e) inability to meet the critical delivery schedule or work schedule clearly specified in the tendering documents, where such schedule is a crucial condition with which tenderers must comply;
- f) failure to comply with minimum experience criteria as specified in the tendering documents;
- g) conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;
- h) inability to accept the price adjustment formulae of the tendering documents;
- i) stipulating price adjustment when fixed price tenders were invited;
- j) subcontracting in a substantially different amount or manner than that permitted;
- k) failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender.

- Have all documents been duly initialled and signed?
- Has tender security/bond/declaration been furnished?
- Is the bidder responsive to eligibility conditions?
- Are the goods responsive to eligibility criteria?
- Any major deviations from commercial tender conditions?

GN.446-R204 (2) gives what constitute material deviation as shown in the attached Box.

For tenders to be considered responsive there should be:-

- No major exceptions / Deviations to the commercial tender conditions
- Compliance with technical specifications: tenders must meet the letter and intent of the specifications.

Bids meeting the above mentioned conditions are declared to be substantially responsive.

Step 3: Detailed Technical Evaluation

This step involves a comparison of each bid to the technical requirements of the description of goods, works or services on a pass or fail basis, to determine whether the bids are technically responsive.

The Evaluation Committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the description of goods, works or services in the bidding document so as to determine the responsiveness of bids.

The technical evaluation shall determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document. The factors taken into account shall be those indicated in the bidding document only and may include:

- Conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
- Satisfactory understanding of an assignment, as demonstrated by any methodology or design; or

GN. 446-R205 (2) All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a tender includes the following:

- a) Failure to tender for the required scope of work as instructed in the tendering documents and where failure to do so has been indicated as unacceptable;
- b) Failure to quote for a major item in the package;
- c) Failure to meet major technical requirements, such as offering completely different types of equipment or materials from the type specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;
- d) Presentation of absolutely unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.

- Suitable staffing, equipment and machinery capacity or arrangements for supervision or management of an assignment;
- Any other criteria that has a direct relationship with the performance of the contract and the delivery of the procurement within a specified time frame.

The evaluation shall not take into account any requirements which were not included in the bidding documents. Any material deviations should result in rejection of the bid and such bids should not be subject to financial evaluation and comparison. Non - material deviations may be allowed and corrected.

Step 4: Financial Evaluation

After the technical evaluation, financial evaluation is conducted to determine the evaluated price of each bid and to determine the lowest evaluated bid, which is substantially responsive to the requirements of the bidding document. The evaluated price for each bid shall be determined by:

- Taking the bid price, as read out at the bid opening;
- Correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- Applying any non-conditional discounts offered in the bid;
- Making adjustments for any non-material non-conformity, error or omission;
- Applying any additional evaluation criteria, through an increase or decrease to the bid price in accordance with the weighting system established in the bidding documents;
- Converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- Applying any margin of preference indicated in the bidding document.

Bids must be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price. Where the bidding documents included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee has to conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

5.12 Award of contracts

The Tender Board shall review the evaluation and recommendation made and may either:

- Approve the recommendation and authorize the PE to accept the tender and award a contract in the form specified in the tender documents; or
- Refuse to authorize acceptance of any of the tenders and refer the evaluation back to the PMU with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.

The award shall be made to the selected tenderer within the period of tender validity following successful negotiations and absence of bid challenge during the cool off period.

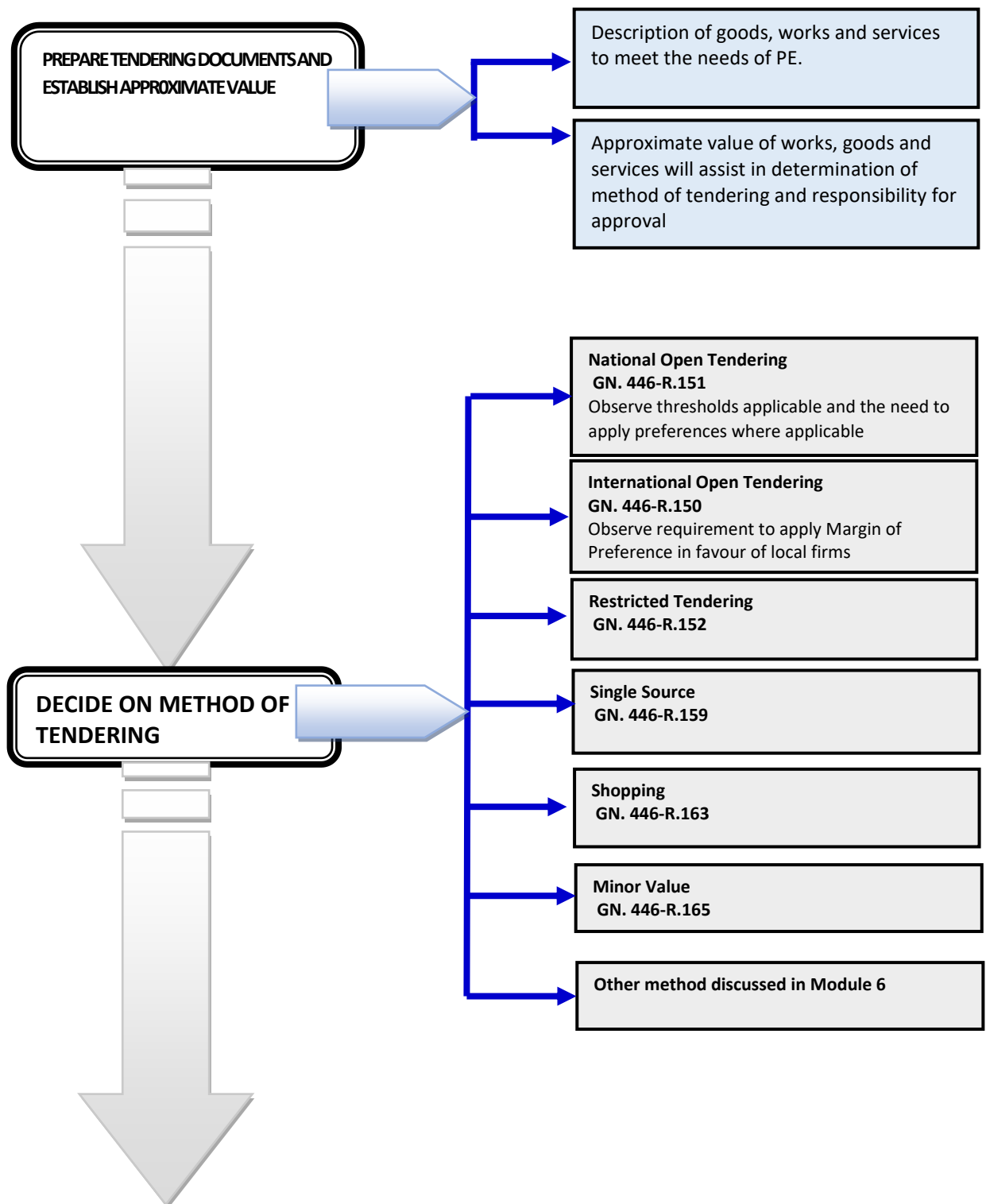


Figure 5.1 Flow Chart of Procurement Process for Goods, Works and Services

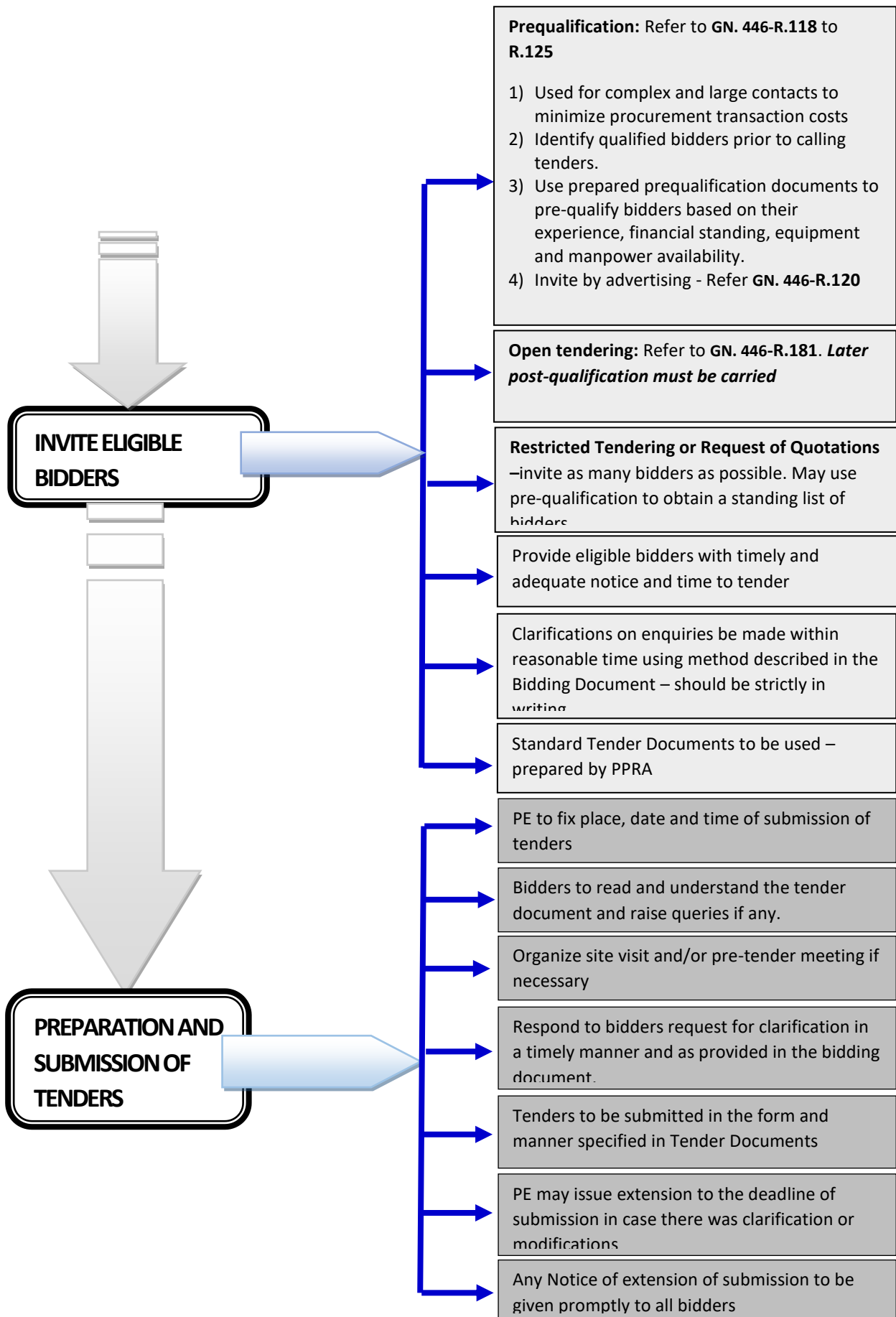


Figure 5.1 Flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

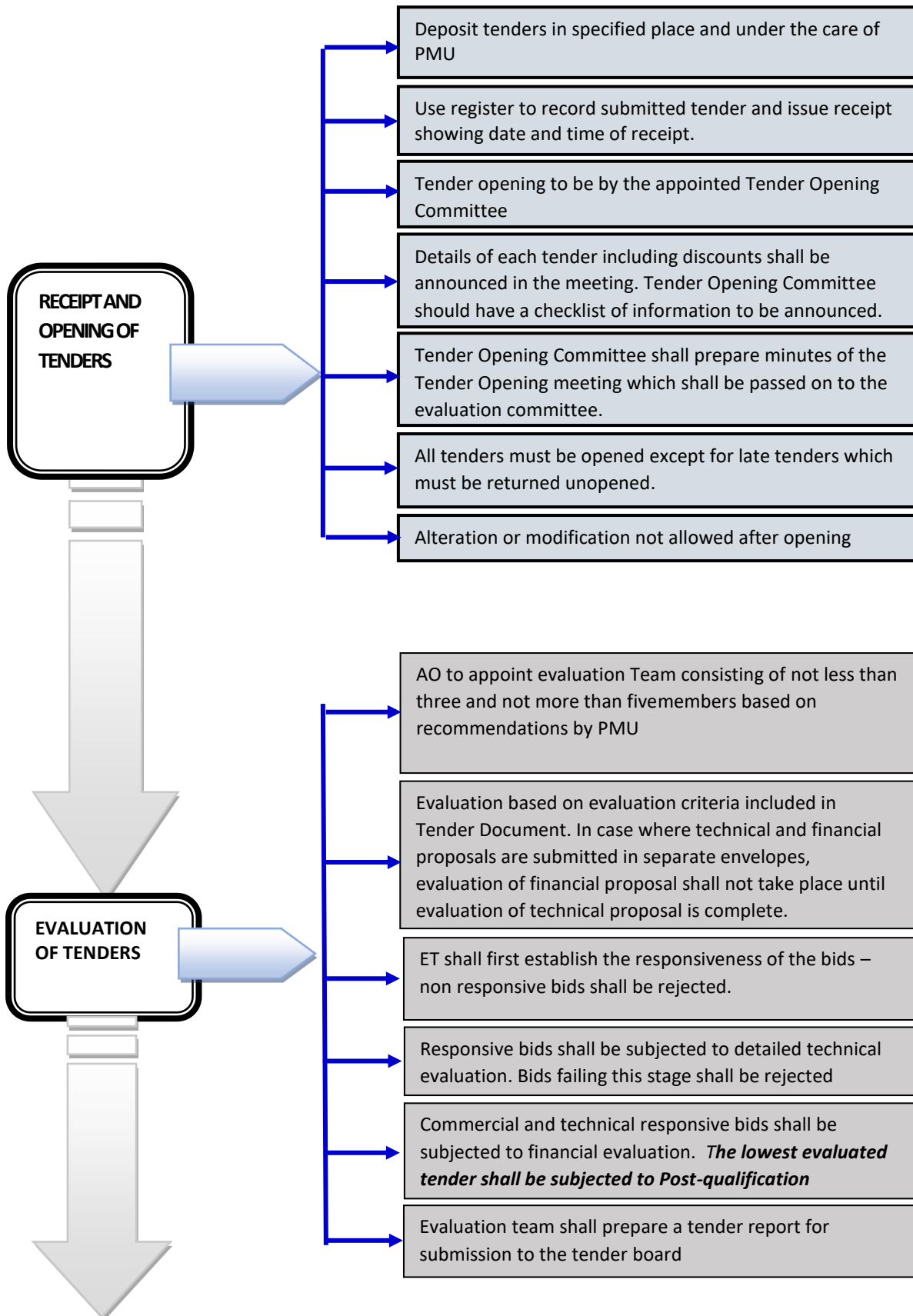


Figure 5.1 Flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

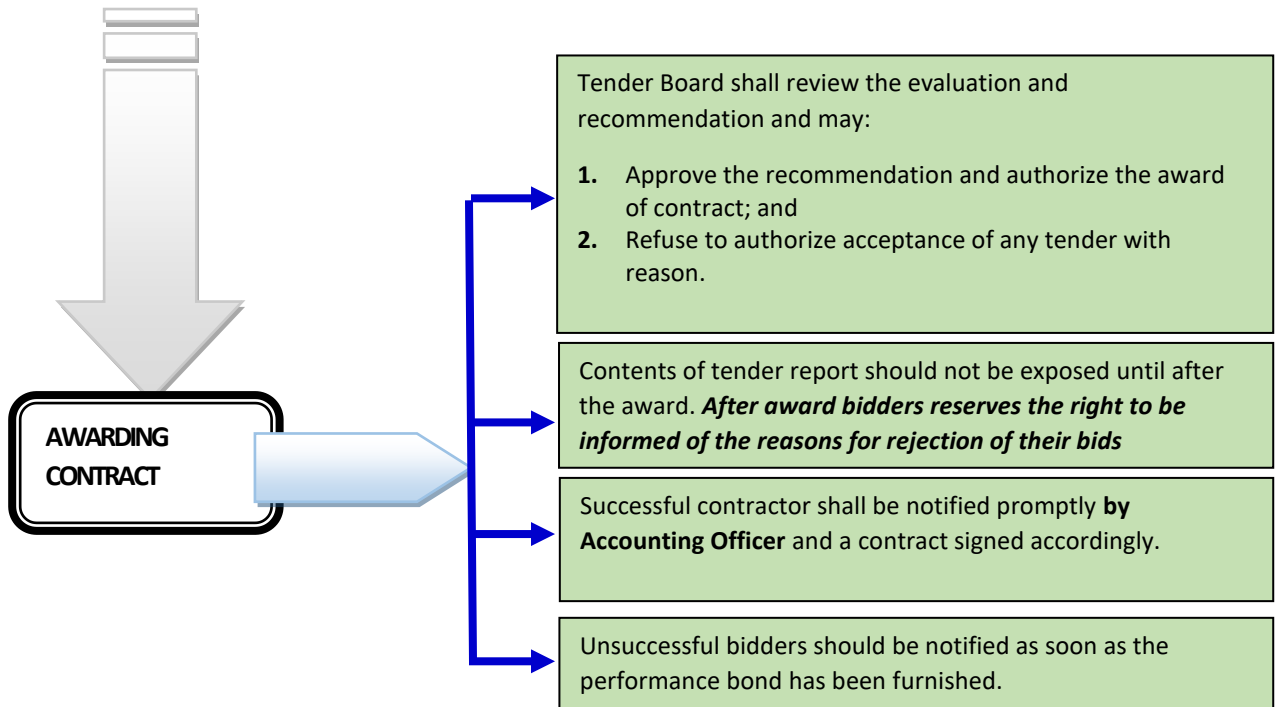


Figure 5.1 Flow Chart of Procurement Process for Goods, Works and Services (Cont'd)

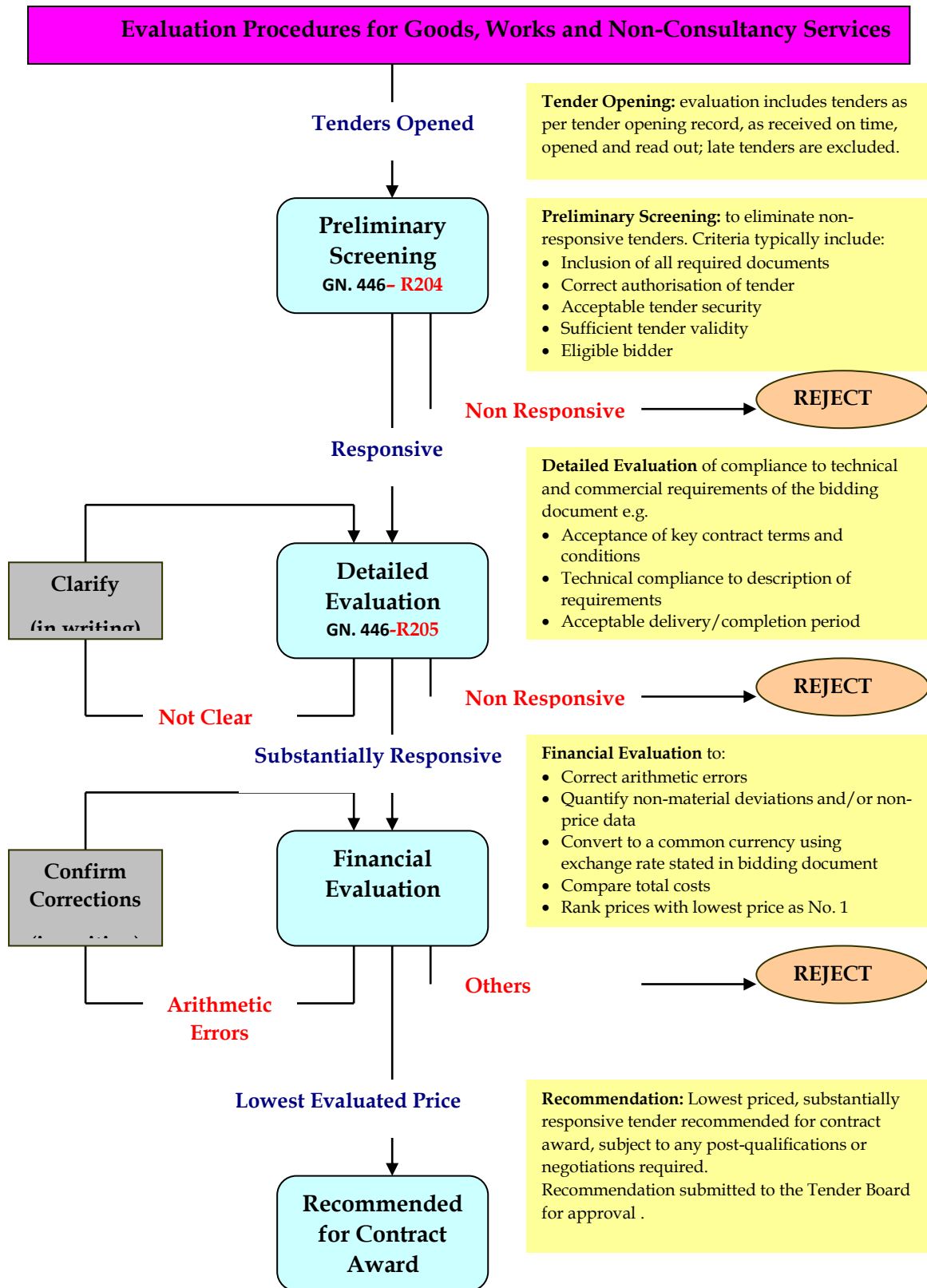


Figure 5.2 Evaluation Procedures for Goods, Works and Services

Case Study 5.1

On Evaluation of Tenders

The results for Ordinary Level (Form IV) National Examination for 2012 were received with shock by students, parents and every person with interest in the Tanzania Education System. “The reason stated was that the grading that led to harvesting 65% failures was a result of changing the grading from previous system used up to 2011 and instituting another, which then led to mass failures.¹”

It is not my intention in this article to dwell on the failure of candidates in their 2012 Form Four National Exams. I however wish to pick the above underlined words to explain a very important aspect in evaluation of tenders. Before proceeding with the theme of my article an important aspect to note from the underlined words is that –if you change the grading system abruptly you may end up getting unexpected results and this is why the government was forced to carry out a re-grading exercise which led to reduction of failure rate by 10 percent².

To me evaluation of tender is synonymous to marking of examination and grading of results so that in the end you pick a person who scored the highest. Using procurement jargon, through the marking and grading exercise, you are interested to come up with the lowest evaluated tender in case you are buying goods or services or highest evaluated tender in case you are selling goods or services. Since evaluation of tenders is a marking and grading exercise it is imperative that those participating should know clearly from the onset how the tenders they are going to submit will be marked and graded. Therefore many procurement jurisdictions emphasize that procuring entities should clearly stipulate the tender evaluation criteria in the tender documents and to use only those stipulated criteria in the evaluation process.

Section 65 of the Public Procurement Act 2004 (Now Section 72 of PPA, 2011) as reproduced below puts it very clear that the basis for evaluation of tender i.e. the marking scheme in the context of examinations, must be clearly specified in the instruction to tenderers.

Evaluation criteria 65.-(1) The basis for tender evaluation and selection of the lowest evaluated tender shall be clearly specified in the instructions to tenderers or in the specifications to the required goods or works.

(2) The tender documents shall specify and factor, in addition to price, which may be taken into account in evaluating a tender and how such factors may be quantified or otherwise evaluated.

(3) Notwithstanding the provisions of subsection (2), where tenders based on alternative materials, alternative completion schedules or alternative payment terms are permitted, conditions for their acceptability and the method of the evaluation shall be expressly stated in the tender documents.

Now one may wonder why I have picked up this subject of evaluation of tenders and compared it with the National Form IV Examinations of 2011/12?

There are many cases where Procuring Entities change the rule of the game mid-way. You find that while the tender document issued to bidders stated certain evaluation criteria, the evaluation

¹ Anni Jozen 5th May 2013 downloaded from www.ippmedia.com/frontend/?l=54331

² www.thecitizen.co.tz/News/Failure-rate-down-10pc-in-new-Form-4-results/-/1840392/1867822/-/m9tc8wz/-/index.html

committee uses different criteria and the tender board goes ahead and awards a tender using the defective criteria that was used. It is important to underscore here that the job of the evaluation committee is to evaluate tenders in accordance with the evaluation criteria contained in the tender document and not to impose other criteria of their own. One my ask – what if during the evaluation process the evaluation committee finds that some proposed criteria for evaluation are not practical or they are unreasonable? As an evaluation committee they will be required to evaluate on the basis of the criteria stipulated in the tender document and raise in their report the difficulties they faced in applying certain evaluation criteria to the Tender Board’s attention who will then decide on the way forward – which may include revision of the evaluation criteria and re-invite tenders again.

Because of the importance attached in the pre-determined evaluation criteria which are supposed to be included in the tender documents issued to potential tenderers, the Public Procurement Act 2004 makes the Procurement Management Unit responsible for preparation of tender documents³ and Tender Board responsible for approving tendering and contract documents.⁴ It is therefore the role of Procurement Management Unit to ensure, in consultation with the use department, that they critically prepare and consider evaluation criteria that will be used in a particular tender and submit the same for the approval by the Tender Board as part of the tender documents. This is essentially the same as in the case of examinations- setting of the examination paper and marking scheme by the Procurement Management Unit, which are then passed to the Tender Board for moderation and/or approval. The approved marking scheme, is the one then that will be used by the evaluation committee to mark (evaluate) and grade submissions from various tenderers. The evaluation committee will face no difficulties in evaluating tenders if the prepared evaluation criteria are clear and precise. Similarly the PMU will face no difficulties in assessing the evaluation report prepared by the evaluation committee and eventually submitting the same to the tender board. And finally the job of the tender board in making an award of contract will be easy and free from controversy if from the start they had approved clear and precise evaluation criteria.

Let us end this this by giving advice to the following:

- Tender Board Members- Next time you are in a tender board meeting approving a tender document ask the PMU to clearly explain the proposed evaluation criteria for you to understand and ask relevant questions before you approve them. Spending time to ask questions about the evaluation criteria during the tender award adjudication meeting, although not prohibited, only raises serious doubt on the ability and credibility of the Tender Board.
- Evaluation Committee- as said above your role is to evaluate tenders in accordance with the evaluation criteria contained in the tender document. Therefore, before commencing with evaluation of any submitted tender you will need to go through the tender document issued to bidders to familiarize yourself with the evaluation criteria. The actual evaluation process should start only when everybody in the evaluation team has understood the evaluation criteria.

³ Section 35(i) of Public Procurement Act 2004.

⁴ Section 30(c) of Public Procurement Act 2004.

- Potential bidders – as explained above the evaluation of your submitted tender will be in accordance with the evaluation criteria which appears in the tender document issued to you by the PE. In order to ensure that you submit a responsive and competitive bid you should ensure that you go through and understand the evaluation criteria. It is only when you have prepared and submitted a tender which is in accordance with the tender document that you will have legitimate reasons to complain if your tender is not selected.

The rules of any game is to set rules before the start of the game, to make sure that they are known to the players before the start of the game, and to ensure that they are strictly applied during the game.

Case Study 5.2

Having Difficulties with Neutral Specifications?

During the meeting of the Tanzania Public Procurement Forum⁵ one member had just posed a question on “What is the importance of specifications”. A response shown in Box was given to by another Forum Member.

Box 1.

Dear,

Welcome to the forum. I was able to pick this information about specifications⁶

A specification can be defined as a description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied. In essence a specification is a statement of the attributes of a product, process or service a user wishes to purchase, and consequently, which the supplier is expected to supply. As far as practicable, it is desirable that the requirements be expressed numerically in terms of appropriate units together with their limits.

Specifications have two basic functions:

Communicate: When prepared by the purchaser, specifications inform the supplier what is required. When prepared by the supplier they provide a prospective purchaser with a description of the attributes of a product.

Compare: Specifications also provide criteria against which the products and services supplied or available can be compared.

There are basically 3 types of specifications:

1. Functional Specifications: A functional specification is a clear indication of the purpose, function, application and performance expected of the supplied material or service, whereby the supplier is allowed or encouraged to provide an appropriate product. These specifications describe the capabilities that the article where applicable, performance specifications are to be selected as they

⁵ <http://ppra.forumotious.net/>

⁶ http://www2.ul.ie/web/WWW/Services/Finance/Procurement_and_Supply_Chain_Office/UL_Procurement/Policies_&_Procedures/Guidelines_on_Writing_Specifications

allow wider competition and enable suppliers to suggest new or improved ways of meeting the requirement. Tests or criteria are developed to measure a product's ability to perform and to last, as required.

2. Technical / Design Specifications: This specification details the characteristics of the product to be purchased, it is so detailed that it describes how the product is to be manufactured, detailing the physical dimensions of the product and materials to be used etc. (Most often used for building contracting and roads)

3. Combination: These specifications include both design and functional features. Characteristics of both are used as prerequisites and as limiting factors in developing the specification.

A specification should be sufficiently detailed so that the product or service will fit the user's requirements. It should not be so explicit that it prevents negotiation or discourages buyers or suppliers from using their expertise to propose alternative solutions that may offer better value for money.

Preparation of a specification should involve close communication between the user and the Procurement and Supply Chain Manager and, if required, assistance from technical experts. Involvement of potential suppliers may also be helpful in developing a specification. If supplier input is required it must not result in adoption of a specification that favours one particular supplier.

It is not normally permitted to use brand names, sources of supply, trademarks, patent types, origins or other means of production when writing product specifications. The exception is when the goods and services cannot otherwise be described by reference to technical specifications, which are sufficiently precise and intelligible to all suppliers. In these cases, the brand names etc. must be accompanied by the words "or equivalent".

There are, however, instances where it is permissible to derogate from the prescribed hierarchy of specifications. Again, like other exceptions, these are clearly defined. For example, where there exists a statutory duty in relation to, say, health and safety; technical reasons of conformance; incompatibility or disproportionate technical differences or disproportionate costs; or innovative reasons.

The response shown in Box 1 technically defines very well what is meant by specifications, its purpose and types. However, more needs to be discussed why many procurement jurisdictions emphasize on the use of neutral specifications when buying products.

The issue of using neutral specifications has been a difficult one to be understood by many individuals in procuring entities. Many would ask, "Why shouldn't I buy a particular brand that I know, works better for me?"

The above may seem to be a logical and genuine argument, but a follow-up question would be, "Can you tell exactly what you like about that particular brand?" And that is indeed the essence of neutral specifications- describe general characteristics of the product that you need to buy and let the industry offer products that fit the general characteristics that you have put forward.

To simplify the subject of neutral specifications, asked the next question: "If you are married, can you explain what drove you to tie knots with your wife or husband?" If you can write down in a minute details of all the characteristics of your spouse, and go out searching for one, you may find

that there are several individuals that fit that description. Those who are not married yet could actually be challenged to use this approach in selecting their spouses. There is one problem though – you may end up with hundreds of persons fitting your description – which one would you pick then?

One may say that my husband or wife is very special and there isn't any one who compares with him or her. Indeed, that may be the case, and this is why rules of writing specifications allow for exception as shown in Box 1

When the goods and services cannot otherwise be described by reference to technical specifications, which are sufficiently precise and intelligible to all suppliers, the brand name and other descriptions must be accompanied by the phrase "or equivalent".

In the recently ended Smart Partnership Dialogue that was held in Dar-es-Salaam, a presentation was made on “Enhancing Demand for Technology through public procurement” and one of the issues that were seen to stifle technology innovation was: (1) Preparing specifications based on existing products thus discouraging new innovations and (2) Not allowing experimentation of new products with no proven track record thus discouraging research and development. Exclusionary specifications narrow the field of alternative suppliers and constitute artificial restriction to competition which can seriously stifle technology innovation. By focusing on the functional specifications of the product that we want to buy and not its brand name, we allow the industry to come up with appropriate products that meet our requirements.

To summarize, the aim of giving neutral specifications is not to make a Procuring Entity get poor quality product, but rather allow it get several alternatives from which to select a product that best suits its intended purpose.

Case Study 5.3

Which is the Tender Figure?

On is encouraged to assess the Tanzania Public Procurement Forum at <http://ppra.forumotions.net>. One of the interesting discussion topics is one titled “Which is the Tender Figure” which can be viewed on <http://ppra.forumotions.net/t62-which-is-the-tender-figure> and which is further introduced below.

This discussion puts forward a very important question – which tender figure should be taken by a Procuring Entity, the one appearing at the Form of Tender or the one obtained after the correction of arithmetic errors?

To avoid confusing readers, let's put records straight. According to the Standard Tender Documents prepared by PPRA the contract figure is the one that is obtained after making corrections of arithmetic errors. So this article aims at stimulating discussions and not changing how correction of errors is currently treated unless those responsible finds merits in changing the rules of the game.

Box 1: Read Out Tender Figures	
Tenderer	Read Out Amount
A	150,000,000
B	145,000,000
C	140,000,000

In the forum some members support the idea that the tender figure which appears in the form of tender should be taken as a tender figure. They argue that if this is adopted, efforts being made by some bidders to change pages of their bids through dubious means so as to create arithmetic errors would be eliminated. For example let us consider three tenderers A, B, and C whose tenders were read out as shown in Box 1 during the tender opening. Tenderer A sensing a stiff competition from C, could through paying members of the evaluation team to temper with his tender so as to have corrections which will enable him be below Tsh. 140,000,000 so as to beat C. So if we stick to the figure which was read out, then A will have no incentive to bribe anybody so as to create errors in his tender.

Indeed the Inform Practice Note issued by the Construction Industry Development Board of South Africa⁷ and Alternative 1 of Correction of Errors of JCT Tendering Practice Note 12⁸ support this position. Their position is reproduced in Box 2.

Box 2:
Procurement Jurisdictions which do not allow Tenderers to change their Tender Figures through Arithmetic Corrections
Position of Construction Industry Board of South Africa With Regard to Correction of Errors
<p>Clause F.3.9 of the CIDB Standard Conditions of Tender contained in Annex F of the CIDB Standard for Uniformity deals with the handling of arithmetic errors during the evaluation of tenders and sets out how the employer is to make such corrections when establishing the competitive position of tenders. It</p> <p>Requires that the price submitted (i.e. the offer), which is made known to interested parties at the opening of tenders, be used as the basis for establishing the competitive position of tenderers in the interests of transparency;</p> <p>Streamlines the evaluation process as each and every tender submitted does not have to be checked for arithmetic correctness;</p> <p>Removes the responsibility placed on the employer to manage the process of arithmetic scrutiny of tendered amounts, based on the rates, without compromising the integrity of the process;</p> <p>Enables employers to request that tenderers only submit the tendered sum with their tender submissions and complete bills of quantities only if called upon to do so prior to the award of the contract; and</p> <p>Requires tenderers to take full responsibility for correctly calculating their tender sums.</p> <p>Allowing the competitive position of the tenders to be determined on the basis of the correction of rates has the potential to undermine transparency in the procurement process.</p>
Position of JCT Tendering Practice Note 2012 With Regard to Correction of Errors
<p>Correction of Errors: Generally</p> <p>JCT Tendering Practice Note 2012 recommends two alternative straight forward procedures. Under alternative 1 correction of tender price is not permitted and under Alternative 2 correction of the</p>

⁷<http://www.cidb.org.za/toolkit06/toolkitpages/module5/20SupplementaryInformation/5S19%20PN2of2006-arithmetic-errors.pdf>

⁸<http://www2.westsussex.gov.uk/yourcouncil/finances/propertieservices/bcds/BCD9.pdf>

tender price is permitted.

The choice between alternative 1 and 2 must be made before contractors are invited to tender and tenders informed which Alternative is to apply at the Preliminary Tender Enquiry Stage.

Correction of Errors: Alternative 1:

Where Errors are found in the priced Tender documents to be dealt with in accordance with Alternative 1 of JCT tendering Practice Note 2012, the tenderer should be given details of the errors and afforded an opportunity of confirming or withdrawing his tender.

If the tenders elects to stand by his tender and confirmation has been received from him, the total amount of the error should be expressed as a percentage of the correct total of the Bills of Quantities/schedule of works/Specifications/Employers Requirements (excluding preliminary items, contingencies and Provisional Sums). An endorsement should then be added to the Bills of Quantities/schedule of works/Specifications/Employers Requirements indicating that the tenderer's rates are deemed to be considered reduced or increased as appropriate by this percentage (see (e) below). This endorsement should then be signed by both parties to the contract.

When preparing the final account it will be necessary to apply the percentage increase/ decrease to the total of both additions and omissions on the variation account where related to the original priced documents, with the exception of preliminaries and provisional sum accounts.

In cases where the percentage error is insignificant it may be possible to agree with the contractor that the percentage adjustment can be ignored and adjusted within the Preliminaries where the remainder of the priced document is unaffected. This should be established in writing before the contract is signed.

Where the corrected total exceeds the tender sum, the rates will be considered as reduced. Where the corrected total is below the tender sum, the rates will be considered as increased.

It is useful to insert corrected figures (without obliterating the tenderer's figures) into the working copy of the Bills of Quantities/schedule of works/Specifications/Employers Requirements. Although the tendered figures are the contractual amounts, having the corrected figures to hand may avoid pitfalls in the administration of the contract, particularly on valuations.

The members of the forum discusses very well this concept of whether or not take the read out tender figure or the corrected one. The forum discussion is reproduced for your reading.

RSM on Fri May 28, 2010 7:56 am

Forum members;

I am putting up this new topic deliberately as it may enable us to reflect the current provisions in the bidding documents with regard to the correction of arithmetic errors.

Let me put my question. Which figure should be taken to be the tender figure- the one appearing in the Form of Tender or the one obtained after correction of arithmetic errors?

Gadiel CM on Mon May 31, 2010 11:31 am

RSM,

When you talk about tender, real, you are talking about the offer of the bidder. So at the bid

opening the figure appears in the form of bid is the tender figure which read out during tender opening.

But the tender figure after evaluation is the one which is corrected by evaluation committee and is the one which is to be in the contract with the bidder after all necessary approval and where possible after negotiation.

Thus, that why the acceptance letter in the bidding document, say, "*.....as corrected and modified in accordance with the Instructions to Bidders is here by accepted by us.*" And this acceptance letter is the part of contract, so the contract amount is finally tender figure.

I submit

RSM on Mon May 31, 2010 12:55 pm

RJM,

I concur, that is the current procedure where we take the corrected tender Figure. But using this practice there is a possibility for one "using dubious means" to change his pages of the submitted BOQ so that eventual corrections puts him in an advantageous position.

RJM on Mon May 31, 2010 1:55 pm

RSM,

Regarding the "using dubious mean" to change pages of the submitted BOQ so that eventual corrections put him in an advantageous position. At what stage could this be possible?

In addition to what Gadiel CM put forward, the corrected figure is normal taking as tender figure because this is what PE is going to pay once the contract is executed based on quantities and unit rate quoted the bidder. If we examine the Standard Bidding Documents particularly Clause relating to Correction of Errors, there is penalty attached in case bidder does not accept the corrected amount including forfeiture of bid security or execute bid securing declaration. Accordingly, R90 (11) (a) require PEs to promptly notify the bidder in case of any arithmetic errors. In this case bidder is obliged to accept or decline. The consequence of decline is what provided in the referred correction of errors. Accepting means that bidder is reviving his offer [in the form of tender] to the corrected figure which ultimately will be paid by the PE otherwise corrected figure can be construed as counter-offer.

RSM, I have the experience whereby PE relied on the tender figure in form of tender which was 122,000,000 but they end up paying 188,900,000 after final account. This was disputed by PE that they are supposed to pay what was in the form of tender and in the letter of acceptance. What is the lesson here???

On the other hand, there is tendency of the PE not notifying bidders of arithmetic errors until during negotiation stage and bidder refuse to accept, can this be cause construed as counter-offer? Under this circumstance, can PE forfeit bid security or execute bid securing declaration??What is the right time to notify the bidders????

RSM on Mon May 31, 2010 2:53 pm

RJM.

Normally dubious means are used to change pages during the evaluation stage whereby some unethical members of evaluation team can allow a bidder to substitute pages of his submission.

In the old school, corrections would normally be done and the bidder will be given only one chance to stand by his tender figure which appears in the form of tender. If he refuses, he forfeits his bid security. If he agrees, all his rates in the BOQ are then adjusted by the percentage of the difference and they become binding during contract implementation.

MC on Tue Jun 01, 2010 9:05 am

RSM,

The scenario of unethical Evaluation team members making dubious business is quite possible. However, it is the responsibility of PMU to enhance some controls by way checks and balances. This can be achieved by giving the evaluation team only copies. The origin bids should be kept in safe custody by PMU. During Bid opening ceremony, members of the committee MUST sign in all pages with price schedules. This is a tedious job but experience has shown that the exercise is quite vital.

PMU during review must counter check all the corrections using the Origin Bid document. In case there is any discrepancy in copies as compared to the origin, then the origin prevails. The problem is when the ET and PMU join forces by colluding.

The old school rule seems to instil some sense of responsibility to bidders. Bidders are very tricky and sometimes errors may be a result of some deliberate manipulations with the aim of winning the tender or a buying into the job strategy after which numerous variation are loaded.

RSM on Tue Jun 01, 2010 12:36 pm

Chilongani,

Three issues come from your recent posting:

1. You are sounding as if PMU is made of Angels - the change in pages is a collaborative effort between PMU staff and Evaluation Team Members. Everything actually depends on the integrity of the people - and this is why it is emphasized that the Head of PE to appoint Evaluation Committee members and ensure that they possess not only technical expertise but also the necessary integrity.
2. You say you can sign all pages with price schedules - you seem to be underestimating some tenders - particularly those of works - where you can have hundreds of pages of the Bills of Quantities. The usual practice is to sign those pages where they show element totals. It would be impossible to sign each page of the BOQ. The pages which are changed are those that have not been signed.
3. Indeed the old school puts a responsibility to the bidder to ensure correctness of his/her bid. I have participated in the bidding process myself. The figure we transfer to the form of tender is not a result of multiplication and addition in the BOQ alone. It is a figure that I am comfortable that I can execute the project and most contractors have that sense of how much it is likely to cost before they even start to price the items.

I will give an example- Suppose the best estimate of the project is Tsh 5.6 billion- and I make errors in the multiplication and additions and get the total to be Tsh. 4.6 billion, which is 1 billion less, will I go and transfer that figure to the Form of Tender?

RJM on Tue Jun 01, 2010 1:52 pm

In the old school, corrections would normally be done and the bidder will be given only one chance to stand by his tender figure which appears in the form of tender. If he refuses, he forfeits his bid security. If he agrees, all his rates in the BOQ are then adjusted by the percentage of the difference and they become binding during contract implementation.

RSM and Chilongani, I think the old school rule will be advantageous to the Client if the errors is +Ve errors which would have been corrected by reducing [-Ve adjustment] from the tender figure [-Ve adjust by the percentage of the difference]. What would have been consequences if the errors is -Ve errors whereby the adjustment by the percentage of the difference would have done by adding from the tender figure? OR Assumption was that always the arithmetic errors will +Ve erros.

How about New School???

Gadiel CM on Wed Jun 02, 2010 9:44 am

In the Forum,

We have to talk and reinforce the Integrity school in tender proceeding so as to avoid all unethical practices between bidders against Evaluation team and against PMU.

RSM on Wed Jun 02, 2010 1:59 pm

RJM,

I think the issue of positive or negative is immaterial because even under the current system the corrections can increase or decrease the tender figure - On one hand, when there is an increase the tender figure as a result of corrections Client will not be happy especially if the tender ends up in being awarded to this particular bidder. On the other hand, the Client seems to be on an advantageous side if there is reduction in tender figure as a result of corrections. A neutral position is therefore to stand by the Figure appearing in the Form of tender regardless of whether there is positive or negative correction.

RJM on Wed Jun 02, 2010 3:17 pm

A neutral position is therefore to stand by the Figure appearing in the Form of tender regardless of whether there is positive or negative correction.

RSM, suppose there is arithmetic errors in the tender and Employer stand by the figure appearing in the Form of Tender, which final figure will the Employer pay at the end of contract execution? The one in the Form of Tender or result from the certificates or invoices?

RSM on Wed Jun 02, 2010 4:21 pm

RJM,

May be you did not pick up what I explained earlier. Let me be more elaborate:

1. You first check for arithmetic errors.

2. If there are any errors, you communicate to the bidder pointing out the errors but asking for a confirmation, that despite the error, they are willing to stand by the tender figure appearing in the form of tender. Of course if they choose not to stand by the figure in the form of tender they forfeit their bid security.

3. Once acceptance to stand by the figure in the form of tender is granted, during signing of the contract all the rates in the BOQ are adjusted by the percentage deviation. For example if the correction shows a 10% negative deviation from the figure in the form of tender, then every rate in the BOQ will be reduced by 10%. In case of positive variation addition will be done to the rates appearing in the BOQ.

Tumaini on Thu Jul 22, 2010 10:33 am

The cup is half full not half empty though the quantity is the same!

PMU [or evaluation committees or negotiation team and for that matter tender board] is not composed of angels and so is the populace. We must have a belief in systems we constitute - that is the moral of governance. Yet, whenever we choose to for whatever circumstances, let us improve the systems in place [laws, procedures, circulars etc] to address weaknesses we know or suspect. Corrected price and any other additions or deductions resulting from negotiations constitute BID PRICE.

RJM on Thu Jul 22, 2010 12:26 pm

Tumaini, you are most welcome.

Tumaini wrote.

Corrected price and any other additions or deductions resulting from negotiations constitute BID PRICE.

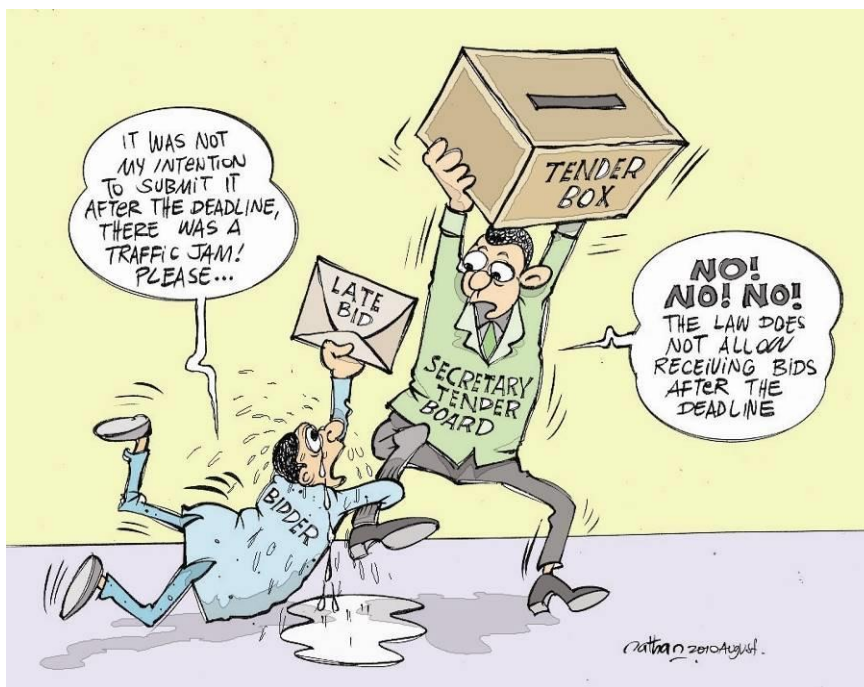
Under current legislation, not all cases corrected and any +/- resulting from negotiation constitute Tender Figure as not all cases we are allowed to negotiate prices [R95(2) (c)/97/2005 unless otherwise is as a result of R95(1)(b)/97/2005.

What is your take on this?

Case Study 5.4

Rejection of Late Bids- Are we being too strict?

This is a common statement contained in, almost all, tender documents. "Bids not received by the time and date specified for receipt of bids shall be returned unopened." And it has such a big impact, particularly when a tender is submitted by a junior employee or an agent of a company. One particular case during the era of the Central Tender Board (CTB), one junior employee was sent by his company to submit a tender and he was late by five minutes. The CTB staff, as stipulated in the tender document, refused to receive the tender. The poor employee started crying and begged to have the parcel received and kept in the custody of CTB for he could not take it back to his employee and report that he was late – it was better if the employer heard it from CTB and not from him.



Here is a discussion obtained from PPRA's online discussion forum - Tanzania Procurement Forum- available at <http://ppra.forumotions.com/> on this important topic. Another discussion has been included, showing conditions under which late bids may be accepted according to the Federal Acquisition Regulations of the USA. Join the forum and let us have your views.

Submission of Late Bids

RSM on Wed Sep 16, 2009 7:18 am

This is one of the queries we received from one of the Consultants submitting a proposal requesting his late submitted proposal to be accepted:

We have received feedback from the courier company that their delivery to you was refused. I fully understand the cut-off time and rules regarding these proposals. However, given that fact that we are far away and rely on service providers, and also that this is the third attempt on your behalf to get sufficient response to this RFP, I ask that you consider acceptance of this proposal. You can see from the waybill below that the package was sent from us in good time and we were clearly let down by the service provider, despite instruction, and acceptance on their side, of the time constraints. It seems a shame to me to therefore refuse what could be a very valuable proposal to you, because of a logistical let down.

I look forward to your response

Our Response:

We were very sorry to learn that your proposal was submitted after the deadline for submission. As was indicated in the RFP, the deadline for submission of the proposals was set at 10.00 hours local time on Monday, 7th September, 2009. Also as was indicated in the RFP, the opening was scheduled to take place immediately thereafter. Your proposal was

submitted more than two hours after the deadline for submission. The Tanzania procurement law as well as the clause 2.13 of the rules and procedures for the use to consultants issued by the African Development Bank Group guideline (who the financier for this project) prohibits accepting late submission. This requirement was expressly indicated in the RFP.

Due to that fact we are unable to accept your proposals because doing so is to contradict the Procurement Act and the rules of the financier.

We have very much interest to have a wider competition by including your proposal in the evaluation but unfortunately it was not possible because it was submitted late. I believe next time when such an opportunity is available, you will participate by submitting your proposals on or before the deadline for submission.

ANY COMMENTS ON THIS TOPIC?

RJM on Wed Sep 23, 2009 4:06 pm

RSM,

I believe goes without say that the current legislations we have PPA, Cap 410 and its Regulations are based on the principle of "LATE-IS-LATE" as have quoted in your submission. This underpins importance for the bidder/consultant to deliver the bid/proposal or offer at the appointed place, on time and that late bids or offers must be rejected and returned unopened by the Procuring Entity. Therefore, it is the responsibility of the bidders/consultants to submit their bids/proposals; on or before the date and time specified on the bidding documents, to the proper address indicated on the invitation for bids and to mark their envelopes with the correct bid number & name and closing date.

In the effort of getting best practices we found that in USA [Federal Acquisition Regulation - FAR] there are exceptions granted in cases where bidder is able to demonstrate government mishandling. However, most bids which are late are ultimately rejected in view of the difficulty in proving government mishandling. (See FAR 52.214-7). The FAR rule allows an offer to be accepted if the late receipt was due primarily to Government mishandling after receipt at the Government installation. The rule recognizes the use of hand-carried offers (including delivery by a commercial carrier) as common business practice and provides flexibility in determining when an offer was received. The rule also adds exception which allows consideration of a bid/proposal that was mis-directed or mis-delivered to an office other than that designated for receipts of offers in the solicitation. This implies that, a late bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its own responsibility to submit its bid in a timely manner.

In line with above, the challenge and question to ask in our current legislations is; what happen when PE indicate the wrong address for submission in both invitation for bids/proposal and bidding documents and bids/proposals submitted in the wrong office or building? Is this an error attributed by the PE?

Deadlines to Submit Bids on Federal Government Contracts

By ***John Lockard***

In the current struggling financial climate, contractors cannot afford to lose work because of procedural defects in their bids or proposals for government work. The failure to submit a bid by the deadline established by the government agency will almost certainly result in a rejection of the bid, even if the bid was delivered only one minute after the deadline.

The Federal Acquisition Regulation (FAR) only allows the acceptance of late bids or proposals under limited circumstances. The government can accept a late bid if the bid was sent via electronic means (if allowed by the bidding documents) and received at the "initial point of entry to the government infrastructure" by 5:00 p.m. one working day before the bids were due. The FAR also allows the acceptance of late bids if there is "acceptable evidence" that the bid was received at the "government installation" and was under government control prior to the deadline. Finally, the agency may accept a late proposal for work procured through competitive negotiation if it was the only proposal received. In any event, the bid or proposal must actually be received before award of the contract and the contracting officer must determine that accepting the late bid would not unduly delay the acquisition.

The Government Accountability Office (GAO) had also allowed contracting officers to accept late proposals for work procured through competitive negotiation in order to "enhance competition." In essence, the GAO decided that the contracting officer had the authority to amend the due date for acceptance of proposals to cure a late delivery, but the decision is within the discretion of the contracting officer. More recently, however, the U.S. Court of Federal Claims has issued a ruling that would appear to invalidate the exception created by the GAO.

Contractors should not wait until the last minute to assemble subcontractor quotes and to finalize bids. A contractor should not expect any relief if the bid is delayed by traffic or technical problems, even if the problems are beyond the contractor's control. Contractors should take equal care to make sure their bids for Virginia government projects are delivered on time.

Source:

<http://www.lexisnexis.com/Community/realestatelaw/blogs/realestatelawblog/archive/2010/08/23/deadlines-to-submit-bids-on-federal-government-contracts.aspx>

Air Force tanker bid thrown out for arriving 5 minutes late

August 05, 2010 | By Larry Shaughnessy, CNN Pentagon Producer

What may be the most contentious Pentagon contract is the focus of yet another fight, with this round centred on whether a bid for a \$35 billion contract should be thrown out because it arrived five minutes late.

For about a decade the Air Force has been trying to replace its fleet of KC-135 air refuelling tankers, the big jets that act as flying gas stations for warplanes. In the latest attempt, three companies wanted to submit bids to build the KC-X, the next generation of tankers; Boeing, EADS and US Aerospace.

Each company's bid was required to be submitted to an office at Wright-Patterson Air Force Base in Dayton, Ohio, by 2 p.m. July 9.

Boeing and EADS got their bids into the office with time to spare. US Aerospace said its bid arrived at Wright-Patterson half an hour before the deadline. The Defence Department said it was five minutes late.

US Aerospace is a new company that is in partnership with Antonov, a state-owned Ukrainian aircraft manufacturer that used to build planes for the Soviet Union's military and now specializes in building very large aircraft.

Because of the late arrival of the bid, the Defence Department will not consider US Aerospace's proposal, according to Pentagon chief spokesman Geoff Morrell.

"We are not allowed by law to even review their proposal. It did not arrive in time. So we cannot consider it. We cannot review it," Morrell said.

A spokesman for US Aerospace, Chuck Arnold, said the Defence Department "still feel[s] the cold war is on" and doesn't want US Aerospace to succeed in the bid.

Morrell said the rules are clear.

"This is a \$30 billion to \$40 billion contract. That is not a high school homework assignment, OK? These deadlines count, and any professional contractor understands that," he said.

Chuck Arnold, a spokesman for US Aerospace, said the bid proposal was on time.

"We have documented evidence that the messenger [who was carrying the bid] was there at 1:30." But Wright-Patterson is a huge facility and the company said the messenger was held up at the gate, then got lost driving to the building where the bid needed to be. When the messenger and the bid proposal finally arrived at the proper location, the bid was marked as having arrived at 2:05.

The company was told the bid would not be considered.

US Aerospace is fighting that decision and asking that its bid proposal, which it said will save U.S. taxpayers millions of dollars and produce a better tanker plane, be considered.

WHAT IS YOUR OPINION?

Source: http://articles.cnn.com/2010-08-05/politics/air.force.tanker.bid.fight_1_bid-eads-pentagon?_s=PM:POLITICS

Case Study 5.5

Evaluation process!

Gadiel CM on Wed Aug 26, 2009 4:02 pm

During evaluation process, we basically refers to Reg 203 to 204 of PPR 2013, for procurement of goods, works, non-consultant services and disposal of public asset. Evaluation process guided by sequential series for evaluating any tender regarding to Reg. 204 and 205 of PPR 2013 and that it should be a preliminary evaluation to determine the responsive and non-responsive bidders to qualify for detailed evaluation and if any for post evaluation as Reg. 224 of PPR 2013.

My concern is;

- What are the different and when do we use the Evaluation criteria, qualification criteria-Reg 116(1) (a), and that of post qualification criteria Reg 224 through all stages of evaluation to reach the lowest evaluated bidder?
- What are the key issues in preliminary evaluation make non-responsive bidder and which can affect the Reg 204?

I have raised this issue because "A substantially responsive tender is the one which conforms to all terms, conditions and specifications of the tender document (s) without material deviation or reservation". Material deviation is explained in Reg 204 and 205, then:

(i) What if bidder M/S Majimarefu Company Limited found missing the required power of attorney, manufacturer authorization, tender security, not signed all pages or signed the tender, no bid form signed, delivery period not stated, validity period not stated, but it seemed to be the lowest submitted bidder and hence may probably conforms the specifications to the bid.

Can we disqualify this bidder to detailed evaluation? and proceed with other bidders responded for all mentioned (i), or should we consider these factors as not a material deviation and take the M/S Majimarefu Company to detailed evaluation and then to post evaluation?

(ii) If all factors mentioned above not a material deviation and make the bidder M/S Majimarefu Company Ltd responsive to detailed evaluation from the preliminary stage, what is the essence of preliminary stage?

RJM on Thu Aug 27, 2009 5:08 pm

Gadiel CM, I will try to respond your concerns as follows:-

1. As point of information, in the evaluation process, we are required to consider all issues stipulated in the Reg 203 to 205 [Examination, Evaluation and Comparison of Tenders], Reg 221 [Evaluation with Margin Preference for Goods], Reg 222 [Goods Forming Part a Contract Package], Reg 223 [Evaluation with Preference for Work or Non-consultancy Service Contract] and Reg 224 [Post-qualification and Denial of Award in Case of Limited of Resources]. However, this will depend on how you have tailored your bidding documents.

2. Basically criteria in Reg 224 are elaborating further the qualification criteria given under Reg 116 which the suppliers/contractors/service providers or asset buyers must meet in order to participate in procurement proceedings. In the evaluation process these qualifications are assessed in the POST-QUALIFICATION STAGE which intends to determine whether the lowest evaluated tender has the capability and resources to perform the contract.

3. By virtue of Reg 202(5), Substantially Responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviations or reservations. In line with this definition, Non-responsive bid is the opposite of the substantially responsive bid.

In view of Reg 202(5) non-responsive bid, is the bid which has material deviations or reservations and if accepted will affect the SCOPE, QUALITY or PERFORMANCE of contract, limits the PE's right or BIDDER's OBLIGATIONS under the contract and will affect UNFAIRLY the COMPETITION position of

the bidders presenting responsive bids. Therefore, in the evaluation process evaluators should observe these factors while judging whether the bid is responsive or non-responsive.

4. Regarding key issues in the Preliminary Assessment which will render the bid to be non-responsive, some of the them could be; failure to satisfy eligibility criteria, failure to submit tender security or tender securing declaration where one was requested, failure to meet major technical specifications, bid not properly signed (Form of Tender/Bid), failure to submit all documents asked for in the tendering documents, failure to duly initial and signed all documents, failure to submit joint venture agreement or letter of Intent to form JV in case of JV AND other deviations or reservations which will affect the factors discussed in para 3 above which to great extent will depend on criteria set forth in the bidding documents.

5. For scenario of M/s Majimarefu Company Limited, if his/her bid found missing those items you have mentioned, this will be automatically declared as non-responsive bid and will be precluded in the further evaluation. No way those missing items could amount to MINOR deviation (refer para 3 above).

6. In simple words, the essence of PRELIMINARY STAGE is to screen and eliminate bids do not comply with the basic requirement of bidding documents, instructions to bidders and bidders who do not meet mandatory qualification requirements.

Gadiel CM on Fri Aug 28, 2009 8:18 am

RJM, are those parameters mentioned in paragraph 4 from your response can affect the scope, quality and the performance of the contract? If and only if the bidder can be asked to furnish before award of contract, regarding his/her bid is in reasonable price.

Suppose the M/S Majimarefu did not submit the power of attorney and not signed all pages of his/her bid. Could you disqualify in preliminary to be considered in detailed evaluation simply of missing these conditions by consideration that the bidder seemed to be the lowest submitted bid by half price of the next lowest submitted bid.

Why can't we proceed with the bidder and before the award of contract/notify the bidder to furnish the power of attorney and other in consideration that he/she met the specifications of the requirements in detailed evaluation?

Also, I hastate that in preliminary evaluation we consider the technical specifications rather than in detailed evaluation as you mentioned.

RJM on Mon Aug 31, 2009 4:49 pm

Gadiel CM, regarding to your concern whether the parameters highlighted in the paragraph 4 in my previous submission affect the scope, quality and the performance of the contract?

Kindly be informed that there are those which affect scope, quality and performance and those which affect limits the PE's right or BIDDER's OBLIGATIONS under the contract and will affect UNFAIRLY the COMPETITION position of the bidders presenting responsive bids. For example; failure to meet major technical specifications this will affect SCOPE AND QUALITY; failure to submit Power of Attorney this will bidder's obligations under the contract and performance of contract. Therefore,

it is responsibility of the Evaluation Committee to examine the bids submit and eliminate the bids which do not conform to the terms and conditions of the bidding documents by assessing whether the deviations, omission or reservations in the bid will affect the scope, quality and performance of contract, will limits PE's right or bidder's obligations under the contact and will affect unfairly competition position of the bidders presenting responsive bids.

Question No. 1: *“Suppose the M/S Majimarefu did not submit the power of attorney and not signed all pages of his/her bid. Could you disqualify this bid in the preliminary stage and preclude the bid for the detailed evaluation of these deviations or reservations take into consideration that the bidder seemed to be the lowest submitted bid by half price of the next lowest submitted bid”.*

Gadiel CM, the answer is YES. For the benefit of others please follow the analysis below;

What is Power of Attorney?

According to Wikipedia, the free encyclopaedia, a power of attorney in common law systems or mandate in civil law systems is an authorization to act on someone else's behalf in a legal or business matter. The person authorizing the other to act is the principal, granter or donor (of the power), and the one authorized to act is the agent, the attorney-in-fact, or in many Common Law jurisdictions, simply the attorney. For some purposes such as authentication, the law requires a power of attorney to be in writing.

Generally, Based on the definition above, a power of attorney is necessary in the tendering process and contract execution stage as bidding companies cannot move themselves so they must be represented especially for Limit Liability Company. According to the Companies Act, Cap 212, Limited Liability Company (Tanzania) must have the Board of Directors responsible for managing business of the company; therefore, for this case company must submit the Power of Attorney indicating name of the authorized person appoint by the board to act on behalf the company. For the Sole Proprietor Companies (which are not Limited Liability) the tender can be signed by the owner under his capacity. [A sole proprietorship essentially refers to a natural person (individual) doing business in his or her own name and in which there is only one owner. A sole proprietorship is not a corporation; it does not pay corporate taxes, but rather the person who organized the business pays personal income taxes on the profits made, making accounting much simpler. A sole proprietorship does not have to be concerned with double, as a corporate entity would have to.]

In procurement terms, a well drafted Standard Bidding Document must have a Form of Tender or sometimes referred as Offer Submission Form which contained instructions attached by the Client (PE) (i.e. agreeing with tender validity period, client not bound to accept to accept the lowest or any bid etc) to bidders regarding the bid in question as standard format for submitting their offer.

There are two main elements of contract formation under the contract laws; offer and acceptance. For this case, the bidders are obliged to submit their offers using Form of Tender/Offer Submission Form which legally binding the client and bidder and sometimes referred as Contract A. This is considered to be the basis of forming main contract (Contract B) once the client communicates the notification of award (acceptance) to the successful bidders. A well-drafted Form of Tender/Offer Submission Form must contain phrase such as “This bid and your written acceptance of it shall constitute a binding contract between us’ or any other phrase meaning the same. This sum up the important of bid to be signed by a person(s) duly authorized to sign on behalf of bidder, since the

offer and acceptance constitute the contract (Contract B). Therefore, the Power of Attorney gives the authorized person capacity to commit the company into the contract based on the offer (from the bidder) and acceptance (from the client). In line with PPA, Cap 410 the acceptance must communicate by the Accounting Officers, the persons giving capacity to commit the institutions and accountable for the performance of contract.

In view of above, bid should be signed with the person with the Power of Attorney in order to authenticate the offer submitted by the bidder. Therefore, the bid which has not been signed with the person with the Power of Attorney should be disqualified in the preliminary stage. This implies that failure to submit the Power of Attorney is a material deviation as it limits the bidder's obligations under the contract as the company may deny to have authorized the one who signed the documents to act on behalf of the company which in this case the offer will be invalid. However, absence of power of attorney cannot affect the scope or quality but can affect performance of contract and limits the Procuring Entity's right or bidder's rights obligations under the contract.

Question No2: Why can't we proceed with the bidder and before the award of contract/notify the bidder to furnish the power of attorney and other in consideration that he/she met the specifications of the requirements in detailed evaluation?

Gadiel CM, the principle applied in this scenario is "late is late". The Power of Attorney should be submitted alongside with the bid to authenticate the offer from the bidder. One of the information should be read out during tenders opening is the presence of the Power of Attorney [See the Tender Opening Checklist attached as Annex1 in the Evaluation Guidelines for Goods, Works and Non-consultancy Services–Is documentary authority for signing enclosed?].

Pursuant to Reg 207, PE may ask suppliers, contractors, service providers or asset buyers for clarification of their tenders in order to assist in the examination, evaluation and comparison of tenders but NO ADVANTAGE SHALL BE SOUGHT, OFFERED OR PERMITTED TO CHANGE ANY MATTER OF SUBSTANCE IN THE TENDER, INCLUDING CHANGES IN PRICE AND CHANGES AIMED AT MAKING AN UNRESPONSIVE TENDER RESPONSIVE. Therefore, any action of submitting the Power of Attorney before awarding will constitute material deviation as this will affect will affect UNFAIRLY the COMPETITION position of the bidders presenting responsive bids [those who submitted Power Attorneys together with their bids].

Question No. 3: "Your hesitation on whether in the preliminary evaluation we consider the technical specifications rather than in the detailed evaluation".

You don't have to hesitate on that, normally in the preliminary stage PEs are required to check whether the bids are Technical Responsive [Technical Specifications] especially in the procurement of goods. If you visit Standard Bidding Document for Procurement of Goods issued by PPRA, ITB Clause 29 [Examination of Terms and Conditions; Technical Evaluation], ITB Sub-Clause 29.2 states that *"The Procuring Entity shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 12, to confirm that all requirements specified in Section VI – Schedule of Requirements of the Bidding documents and Section VII – Technical Specifications have been met without material deviation or reservation"*. Moreover, ITB Sub-Clause 29.3 states that *"If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Bid is not substantially responsive in accordance with ITB Clause 28, it shall reject*

the Bid". Therefore, this ITB Clause underpin that technical specifications should be assessed in the preliminary stage.

In line with this, Evaluation Guidelines for Goods, Works and Non-consultancy Services issued by PPRa there are tables which summarize the preliminary assessment i.e. Table 5A – Preliminary Examination [Commercial Responsiveness] and Table 5B – Preliminary Examination [Technical Responsiveness]. This implies that guidelines recognize that the technical specifications part and parcel of preliminary assessment. I hope you will be contented with these explanations.

Gadiel CM on Tue Sep 01, 2009 8:31 am

Like other Tanzanians, and it is our culture to appreciate wherever someone tried to make an effort for something which is fruitful to others. It is better to appreciate like now am doing to RJM for his/her contributions. Big up for your spare time for a good clarification, and I wish if these dialogue could be in one of the TPJ, it could be enough knowledge to one who engaging in procurement proceedings.

However, in line with your good elaborations, how do we consider the Reg 207(2b and c) in such case during evaluation, regarding your points above?

RJM on Fri Sep 04, 2009 3:38 pm

Gadiel CM, you have raised very cross-cutting issue as far as evaluation process is concern especially in the detail evaluation stage.

The main subject here is how to treat minor deviations in the detailed evaluation. Since we have discussed MAJOR DEVIATIONS in details in the previous submissions lets now discuss MINOR DEVIATIONS which is the basis on the R90/11(b) & (c)/97/2005. As indicated in the referred regulation PE may waive minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents which can be corrected without touching on the substance of the bid by quantifying to the extent possible and taken into account in the evaluation and comparison of tenders.

Prior to discuss in detail how to treat minor deviation in the evaluation process, examples should be highlighted of what deviations may be considered as minor deviations as it has been observed that some practitioners treat minor deviations to be major deviations while do not affect the factors which have been discussed above in the previous submissions [Scope, quality and so on]:-

- i) If the bidding documents stipulate that each page of the bid should be signed or initialled and a bidder failed to initial one or more pages of supporting information, this should be treated as minor deviations;
- ii) Furnishing one more or one less than the required number of bid copies, or not using the form supplied in the bid document, but providing bid prices on a similar form on the bidder's own letterhead would also be minor deviations. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interests of other bidders and need not be causes for rejection. However, if bidder did not submit original copy should rejected;

- iii) Bidder failure to attach receipt for purchasing bidding documents while there is a record that the firm purchased;
- iv) Any other deviations which can be expressed in monetary terms.

The discussions below will centre in discussing (iv) above;

Basically, Reg 207(2) (b) & (c) allows the deviations which be assigned a monetary value that would be added as a penalty during the detailed evaluation process and if such deviations would be acceptable in the eventual contract. The most common deviations in bids are proposals for different commercial terms; i.e., for amounts of advance payments, changes in payment schedules, etc. and for changes in the schedule of delivery of goods or completed works.

However, note that another form of bid deviation is to offer a higher capacity or standard of performance than is required by the bidding document: a larger engine size, greater carrying capacity, etc. No additional bonus or advantage should be given to such offers unless the bid document specifically provides for this and sets out how the differences will be evaluated.

For more detail on how to treat these deviations visit the Evaluation Guideline for Goods, Works and Consultancy issued by PPRA in which ADDITIONS, ADJUSTMENTS AND PRICED DEVIATIONS are discussed in detail.

One example on these deviations, suppose bidder request 25% advance payment while bid document states maximum of 15%. This is a minor deviation and can be quantified. Using prevailing bank interest you can quantify how much it will cost PE and load it in his/her bid.

We hope somehow obstacles have been unlocked.

Case Study 7.6

BID SUBMITTED BEFORE DEAD LINE BUT HAS BEEN LOST BY PE

Uwezo on Wed Oct 24, 2012 12:26 am

Dear Forum members,

Please, read this hot sue for me. One bidder submitted his bid before deadline date & time for bid submission. During bid submission the Bidder was registered in a register book of bid submitted. The same bidder attended opening ceremony and all bids were read out except his bid.

He raised up his hand and asked, " why I have not heard my bid being read out while it was submitted by me before deadline? Secretary to the TB replied that, all bids have been read out here. Some check-ups were made by Secretary of the TB but all efforts didn't bear fruits to get that lost bid. To this minute I'm explaining this issue, the bidder whose bid was lost has already lodged in to AO complaint. What to do?

freddy.mbeyella on Tue Nov 13, 2012 4:28 pm

Dear Uwezo,

Very sorry for what happened. The fact that you acknowledged the receipt and registered the bid in your register you are liable for eventuality. However, at the moment there is nothing you can do until the Accounting Officer has responded to the complaint and aggrieved party reacted. Pray to God the bidder accepts apology for mishap that occurred otherwise it may amount to cancellation of bidding process

Rutaihwa on Mon Nov 26, 2012 3:41 pm

UWEZO

u are in Trouble, u need to produce a loss report, As you are the Secretary of Tender Board you were supposed to counter check the total registered and the actual envelopes before entering the Opening Room, It may happen the missing one has been forgotten in the Custodian room.

RSM

RSM on Wed Jul 17, 2013 11:09 am

id2013,

For MR. Uwezo, forum members have already judged that he is in trouble for losing a submitted bid by a bidder. He could only be in trouble if there was evidence that indeed the tender was submitted and this need to be verified by checking the tender receiving register, and/or the dispatch from the bidder. All that information is lacking. Even in the case of the use of a tender box where submitted tenders are not registered, still he may not be in trouble until the bidder proves that he indeed submitted the bid.

To avoid such controversy, this is why good tender process allows for submission of tenders physically and acknowledging receipt of the same. And once you have a tender register, as a secretary to the tender board, you should not move into the tender opening room without ascertaining that there is a match between the number of tenders appearing in the tender register and the actual tenders that you are going to open.

UWEZO LET US KNOW IF YOU ISSUED RECEIPT TO ACKNOWLEDGE SUBMISSION OF A TENDER FROM A COMPLAINING BIDDER.

Case Study 7.7

Substitution, Withdrawal and Modification of Tenders

Mr. Zubeir on Tue Jul 16, 2013 10:40 pm

MIMI NIKIWA KAMA SECRETARY OF TB, SUPPLIER KAJA NA BID ZAKE KAMILI BEFORE DEAD LINE OF TENDER SUBMISSION, KWA BAHATI MBAYA KUFIKA SIKU MBILI KABLA YA DEAD LINE HAIJAFIKA KANIPIGIA SIMU NA KUNIOMBA KUWA KATIKA VIAMBATANISHI ALIVYOTAKIWA KUAMBATANISHA VINGINE KASAHAU KUVIAMBATANISH,KWA HIYO ANAOMBA AJE KUFUNGUA NA AINGIZE

VIAMBATANISHI VYAKE KUKAMILISHA. JE! NINI MIMI SECRETARY NATAKIWA KUFANYA NINI JUU YAKE? NIMRUHUSU AJE KUFANYA HIVYO ANAVYOTAKA AU VIPI?

NAOMBA MAELEKEZO YENU

id2013 on Wed Jul 17, 2013 8:50 am

Zuberi,

Nakushauri usome hiyo bidding document uliyowapatia hao bidders kama ni standard document kutoka PPRA ulitumia ile ya GOODS, Basi swali lako litajibiwa na ITB Clause 24.1 under Modification, Substitution or Withdrawal of Bids, which states that " A Bidder may modify, substitute or withdraw its Bid after it has been submitted, provided that written notice of the modification, substitution or withdrawal notice of the Bid, is received by the Procuring Entity prior to the deadline for submission of Bids.". Pamoja na kipengele hiki pia soma vipengele vyote ndani ya ITB Clause 24 hasa kuanzia Clause 24.2-24.5) kwa ufahamu zaidi kutokana na Clause hiyo ya 24.1.

I submit

RSM on Wed Jul 17, 2013 11:09 am

id2013

Umemjibu Zuberi Vizuri kwa kumueleza kuwa Standard Document zinasemaje - ila hukumweleza kuwa hairuhusiwi yule bidder ambaye ameshaleta zabuni yake kuichukua tena na kuifungua na kuingiza hizo document alizozisahau. Anachotakiwa ni kuwa anatakiwa alete bahasha nyingine - kama anatakakubadilisha zabuni yake au kuleta nyaraka za ziada bahasha hiyo iandikwe MODIFICATIONS na kama mfano anataka kuondoa ile ya kwanza na kuleta nyingine basi bahasha yake ya hiyo zabuni mpya iandikwe SUBSTITUTION na kama anataka kujitoa kwenye mchakato alete bahasha ya kuonyesha nia hiyo ikiwa imeandikwa WITHDRAWAL. Cha msingi kumkumbusha Zuberi ni kuwa bahasha za mabadiliko hayo zinatakiwa ziletwe kabla ya muda wa mwisho wa kurejesha zabuni.

MODULE 6: PROCUREMENT PROCESS FOR CONSULTANCY SERVICES

PARTICIPANTS INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Learning Outcomes Module Content
Session 1: Introducing the Procurement Process for Consultancy Services	20 Minutes	Basic Principles and Steps in the Procurement of Consultancy Services
Session 2: The Procurement Process of Consultancy services Part 1	90 Minutes	Preparation of Request for Proposal Documents; Establishing of a Cost Estimate for Procurement Deciding on the appropriate Procurement Method. Invitation of Bidders Issue and Sale of Tender Documents
Session 3: Exercise on the Preparation of a Proposal Document for Consultancy Services	120 Minutes	Hands on Exposure to the Preparation of a Proposal Documents
Session 4: The Procurement Process of Consultancy services Part 2	120 Minutes	Preparation and Submission of Tenders; Receipt and storage of Tenders Evaluation of Tenders
Session 5: Exercise on Evaluation of Tenders for Consultancy Services	120 Minutes	Hands on Exposure to the evaluation of tenders

Introduction

Introducing the Module

Session Objectives

To enable participants get a clear picture of module contents, learning outcome and proposed time allocation.

! In this session you will able to state module contents, learning outcome and and proposed time allocation.

Session 1: Introducing the Procurement Process for Consultancy Services

Session Objectives

To enable participants to demonstrate step by step approach to the procurement of consultancy services

!In this session you will appreciate the procedures to be followed in the procurement of consultancy services.

Training Materials

Section 6.2 of the Reference Manual.

GN.446 – Part IX

Session 2: The Procurement Process of Consultancy services Part-1

Session Objectives

To enable participants to prepare and document required documents prior to inviting consultants to participate in the tender

!In this session you will be able to prepare required complete documents before invitation to tender and possible approaches that can be used to consultants to participate in the proposal process.

Training Materials

Section 6.3 of the Reference Manual.

GN.446 – Part IX

Session 3: Exercise on the Preparation of a Tender Document for Consultancy Services

Session Objectives

To enable participants to prepare typical proposal document for a selected tender.

!In this session you will get to know how to prepare a tender document for consultancy services.

Training Materials

Section 6.3 of the Reference Manual.

GN.446 – Part IX

Group Exercise 6-1

Participants are required to visit PPRA’s website www.ppra.go.tz and obtain a Standard Request for Proposal Document and customize it to meet the following requirements:

Information about the Consultancy Tender process (PDS)

1.	The Procuring Entity	Ubora Regional Secretariat
2.	The identification of the Request for Proposal	RAS.070/2015/2016/C/100
3.	The objectives and brief description of the Services	Provision of Consultancy services for Preparation of Feasibility Study, Business Plan, Environmental & Social Impact Assessment, Master Plan, Detail Design and Supervision of the Proposed upgrading of Madhubuti Ring Roads to Bitumen Standard
4.	Financial Proposal to be submitted together with Technical Proposal	Yes
5.	The Method of Selection	Quality and Cost Based Selection (QCBS)
6.	The assignment is phased as follows	Phase One - Feasibility Study Stage One: Preparation of Feasibility Study, Business Plan, Environmental & Social Impact Assessment and Master Plan Stage Two: Preliminary Design. Phase Two – Detail Design Stage One: Preparation of Detailed Design; Stage Two: Preparation of Bidding Documents; Stage Three: Tendering Phase Three - Supervision Stage One: Progress report Stage Two: Final account
7.	The assignment is to be completed within	Twenty Six (26) months for Preparation of Feasibility Study, Business Plan, Environmental & Social Impact Assessment, Preliminary Design, Detail Design of
8.	The source of fund	The Government of the United Republic of Tanzania
9.	The development partner	NOT APPLICABLE
10.	Materials, equipment and supplies used by the Consultant are not permitted if they have originated in xxxxxxxx	NOT APPLICABLE

11.	Client 's address	The Regional Administrative Secretary, Ubora Region, P.O Box 42, Madhubuti. Tel: +255 (030)-xxxxxxx Facsimile: +255 (030)-xxxxxxx E-mail: ras.ubora@pmoralg.go.tz Attention: Regional Secretariat Engineer
12.		The Client will respond in writing to any request for clarification received no later than 14 days prior to the deadline for submission of proposals.
13.	Place Pre-proposal Meeting	Place: Conference Room, Ubora Regional Office, Imara Street, MADHUBUTI.
14.	Date :	13 th July, 2015
15.	Time:	14.00hrs
16.	Minutes of the Pre-proposal Meeting will be transmitted to all short-listed Consultants within	Seven (7) days after the date of the meeting.
17	Language	English
18	Other documents required to be submitted with the Proposal are:	Certificates of Registration of the firm issued by relevant Registration Bodies in Tanzania; VAT Registration Certificate; TIN Registration Certificate; Valid Business Licence; Signed CVs of key personnel; Firm's Profile including Past experience in similar assignments and Written proof of engagement in the previous assignments; Power of Attorney; Anti-Bribery Statement.
19.	Number of professional staff-months	116.5
20.		The minimum required qualifications and experience of professional staff are: as detailed in 34.2 (iii) of PDS and terms of reference
21.	In the case of Fixed Budget Selection, the Financial Proposal shall not exceed the available budget	Not Applicable
22.	Whether Training component included	YES
23.	The Reimbursable expenses shall cover	Transport Communication stationeries
24.	The estimated number of professional staff-months required for the assignment is	Phase I – Detailed feasibility study, Environmental and Social Impact Assessment, Business and Master Plans Staff Man - Months Project Architect (Team leader) 2.0 Environmentalist 2.0 Sociologist 0.5

		Town Planner/Valuer 1.0 Land Surveyor 1.0 Soil/Material Engineer 1.0 Economist 1.0 Public Health Specialist <u>2.0</u> Sub Total for Phase I 10.5 Phase II– Detailed Engineering Design & Preparation of Tender Documents Staff Man - Months Project Architect (Team leader) 4.0 Structural/Civil Engineer 3.5 Quantity Surveyor 3.5 Geotechnical Engineer 1.0 Land Surveyor 1.0 Electrical/ Mechanical Engineer 4.0 Biomedical Engineer (Med Equipment expert) 4.0 Land scape Architect 4.0 Interior Designer <u>4.0</u> Sub Total for Phase II 29.0 Phase III – Supervision Project Architect (Team Leader) 2.0 Structural/Civil Engineer 2.0 Quantity Surveyor 18.0 Electrical/ Mechanical Engineer 1.0 Clerk of Works (Civil) 18.0 Clack of works (MEP) 18.0 Resident Engineer <u>18.0</u> Sub Total for Phase III 77.0 Total (Subtotal 1+2+3) 116.5
25.	The minimum required qualifications and experience of professional staff are	As indicated in Section 6 of the Terms of Reference (TOR).
26.	The Procuring Entity will provide the following inputs and facilities	Assist in facilitating clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependants and assist for the necessary entry and exit visas, residence permits, and any other documents required for their stay in Tanzania as per prevailing rules and procedures; Assist in obtaining work permits and such other documents as shall be necessary to enable Consultants, Sub-consultants or Personnel to perform the Services, Assist in obtaining from Government officials, departments, public officials and agents, all data and information as may be necessary or appropriate for the effective implementation of the services Information prior to the date of the appointment whether any third party will acquire or is likely to acquire an interest in the whole or any part of the project.

		<p>Any information about the plot on which the project is sited. Access to all information required for the completion of design. An up to date schedule of accommodation where required. Any other required information that will be available to assist the Consultant to accomplish the assignment Assign a Coordinator (technical personnel) who shall be responsible for managing and overseeing all technical and management matters on behalf of the client on daily basis, and advise the Procuring Entity Management accordingly.</p>	
27.	Tax obligations	YES	
28.	Alternative Proposals	Not be permitted.	
29.	Proposals validity period	120 days	
30.	Number of copies for both Technical & Financial Proposal	5	
31.	The Proposal submission address is	The Secretary, Ubora Regional Secretariat Tender Board, Regional Commissioners Office, Imara Street, Madhubuti - Ubora.	
32.	Date of submission	24 th August, 2015	
33.	Time of submission	10.00 hours local time	
34.	The name of the Proposal	Provision of Consultancy services for Preparation of Feasibility Study, Business Plan, Environmental & Social Impact Assessment, Master Plan, Detail Design and Supervision of the Proposed upgrading of Madhubuti Ring Roads to Bitumen Standard	
35.		The number of points to be given under each of the evaluation criteria are:	
36.		Criteria, sub-criteria	Points (%)
37.		(i) Understanding of Terms of Reference Understanding the assignment and comments on the Terms of Reference.	10.0 10.0
38.		(ii) Overall Quality of the offer, quality of the work plan and methodology Quality of the work plan and timing. Methodology and organization.	25.0 10.0 15.0
39.		(iii) Qualification of experts and experience in the field of assignment <u>Team Leader /Project Architect</u> The Team Leader/ Project Architect must be a Registered Architect with a degree in Architecture, or an equivalent qualification. Postgraduate qualifications in Architect/Civil Engineering are an added advantage. He/she must have at least 15	60.0 12.0

		<p>years of cumulative experience related to building studies and designs. He/she must have served in a similar capacity on at least five (5) projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience at least of 5 years in sub-Sahara Africa. Fluency in written and spoken English is mandatory.</p> <p><u>Structural/ Civil Engineer</u> He/she must be a registered Structural/Civil Engineer with Engineers Registration Board with a degree in Structural/Civil Engineering or an equivalent qualification. Postgraduate qualification in Building/Structural Engineering is an added advantage. He/she must have a minimum of ten (10) years' experience in studies and detailed design of building/structures. He/she must have served as a Building/Structural Engineer on at least five (5) building projects of similar magnitude and complexity involving design of buildings, buildings and bridge within the last 10 years. In addition, he/she must have a working experience of at least 5 years in Sub-Sahara Africa. Fluency in written and spoken English is mandatory.</p> <p><u>Quantity Surveyor</u> He/she must be a registered by the board of Quantity surveyor and Architect with an advance diploma/ degree in Quantity surveyor/Building Economics or equivalent qualification. A postgraduate qualification in Quantity surveyor is an added advantage. He/she must have a minimum of ten (10) years of specific experience in quantity surveying duties. He/she must have served as Quantity surveyor on at least five (5) building projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience of at least 5 years in Sub-Sahara Africa. Fluency in written and spoken English is mandatory.</p> <p><u>Land/Topographical Surveyor</u> The Topographical Surveyor shall be a holder of a degree in land surveying or equivalent. Post graduate qualifications in surveying is an added advantage He/she must have at least six (6) years of cumulative experience related to Land surveying activities. He/she must have served as a Topographical Surveyor on at least two (2) projects of similar magnitude and complexity within the last 10 years. In addition, He/she must have at least 3</p>	<p>8.0</p> <p>7.0</p> <p>6.0</p>
--	--	---	----------------------------------

	<p>years working experience in Sub Sahara Africa. Fluency in written and spoken English is mandatory.</p> <p><u>Clerk of Works</u> He/she must be a registered Structural/Civil Engineer with Engineers Registration Board with a degree in Structural/Civil Engineering or an equivalent qualification. Postgraduate qualification in Building/Structural Engineering is an added advantage. He/she must have a minimum of six (8) years' experience in studies and detailed design of building/structures. He/she must have served as a Building/Structural Engineer on at least three (3) projects of similar magnitude and complexity involving design of buildings, buildings and bridges within the last 5 years. In addition, he/she must have a working experience of at least 3 years in Sub-Saharan Africa. Fluency in written and spoken English is mandatory.</p> <p><u>Electrical/Mechanical Engineer</u> The Electrical/Mechanical Engineer shall be a holder of a degree in Electrical/Mechanical or an equivalent qualification. Post-graduate qualification in Electrical/Mechanical Engineering is an added advantage. He/she must have at least six (6) years working experience related to Electrical/Mechanical works. He/she should have served as an Electrical/Mechanical Engineer on at least two (2) Building projects of similar magnitude and complexity within the last 10 years. In addition, He/she must have at least 3 years working experience in Sub Sahara Africa. Fluency in written and spoken English is mandatory.</p> <p><u>CAD Expert</u> The AutoCAD Expert shall be a Civil/Mechanical Engineer with a degree in Civil/Mechanical Engineering or equivalent qualification. He/she must have not less than 5 years of cumulative experience related to design of building and drainage structures. He/she must have served as a Structural Engineer on at least five (5) structural projects of similar magnitude and complexity within the last ten years. Fluency in both written and spoken English is essential.</p> <p><u>Environmentalist</u> The environmentalist shall have a degree in environmental management or related discipline. He/she shall have at least 5 years of cumulative</p>	<p>5.0</p> <p>4.0</p> <p>3.0</p> <p>2.0</p>
--	---	---

	<p>years working experience related to Environmental Impact Assessment in building development projects. He /She must have served on a similar position in at least two (2) projects of similar nature. Experience in environmental management in sub-Saharan Africa and fluency in both written and spoken English is essential.</p> <p><u>Sociologist</u> The sociologist shall be a holder of a degree in Social Sciences or equivalent. He/she must have at least ten (10) years working experience related to Social Impact Assessment with sound knowledge of social issues, initiatives, and managing mitigation measures. He/she must have served in similar position on at least two (2) hospital projects and town related development. Fluency in both written and spoken English is essential. Previous experience in sub Saharan Africa and Knowledge in Swahili language is essential.</p> <p><u>Economist</u> Degree in economics with 10 years or more experience in similar projects. He/she must have served in similar capacity for at least 10 years.</p> <p><u>Town Planner</u> Must have a Degree in Town Planning with eight (8) years or more experience in similar projects. He/she must have served in similar capacity for at least 5 years.</p> <p><u>Biomedical Engineer (Medical Equipment Specialist)</u> Must have a Degree in Biomedical Engineering with five (5) years or more experience in similar projects. He/she must have served in similar capacity for at least 5 years.</p> <p><u>Public Health Specialist</u> Must have a Degree in medicine (Medical officer) with Masters Degree in Public Health specializing in tropical disease with five (5) years or more experience in similar projects. He/she must have served in similar capacity for at least 5 years. The number of points to be given under each evaluation sub criteria for qualifications of staff are;</p> <p><i>General qualifications</i> 30 <i>Adequacy for the project</i> 60 <i>Experience in region and language;</i> 10 <i>Total Points:</i> 100</p>	<p></p> <p>2.0</p> <p>2.0</p> <p>2.0</p> <p>4.0</p> <p>3.0</p>
--	---	--

		(iv) Inclusion of National Experts Firms proposing qualified nationals among the key staff will score as follows: 3 or more key personnel 2 key personnel 1 key personnel	5.0 5.0 3.0 2.0
		Total Points :	100
		very good (gives added value and shows high quality on the whole), 100%; good (adequate and well suited to the purpose), 90%; satisfactory (sufficient but lacks substantial advantages or has uneven quality), 70%; not entirely satisfactory (sufficient in some aspects but not as a whole), 40%; poor (not addressed or not sufficient), 0%; as an example: "understanding of terms of reference", with an achievable maximum of 10 points and a score of "good" would receive $10 \times 0.9 = 9$ points. The minimum Technical Score S_t required to pass is: 80 Points.	
40.	The single currency for price conversions is	Tanzania Shillings	
41.	The source of official selling rate	Bank of Tanzania	
42.	The date of exchange rates	Date of proposal submission	
43.	The formula for determining the financial scores is the following	$S_f = 100 \times F_m / F$, In which S_f is the financial score, F_m is the lowest price and F the price of the proposal under consideration.	
44.	The weights given to the Technical and Financial Proposals are	80:20	
45.	The address for contract negotiations	The Regional Administrative Secretary, Regional Commissioner's Office, Imara Street, P.O. Box 235, Madhubuti - Ubora.	
46.	The address to submit complaints	Chief Executive Officer, Public Procurement Regulatory Authority (PPRA) PPF Tower 8th Floor, P.O. Box 49, DAR ES SALAAM. Tel: 2133466, 2121236/7 Fax: 2121238 email: ceo@ppra.go.tz Website: www.ppra.go.tz	
47.	The address for Appeal to PPAA	The Secretary, Public Procurement Appeals Authority, Sukari House 1st Floor, P.O. Box 9310, DAR ES SALAAM. Tel: 2120451	

Information Contract implementation (SCC)

1.	The Client	Ubora Regional Secretariat, P.O BOX 42, Madhubuti
2.	The Consultant	
3.	The Intended Completion Date	Thirty Six (36) months
4.	<i>The assignment is to be completed in the following phases</i>	<i>Phase I – Preparation of Feasibility study and preliminary design Phase II – Detailed Design and preparation of Tender Documents Stage III – Supervision of Construction Works</i>
5.	Non eligible countries	Not Applicable
6.	Materials, equipment and supplies used by the Consultant are not permitted if they have originated in	Not Applicable
7.	Language	English.
8.	The addresses for Communications and Notices	Client: Regional Administrative Secretary, Ubora Region, Imara Street, P.O. Box 235, MADHUBUTI - UBORA. Attention : Regional Secretariat Engineer Tel: +255 (030)-xxxxxxx Fax: +255 (030)- xxxxxxx Email: ras.ubora@pmoralg.go.tz Consultant : Attention : Facsimile : E-mail :
9.	The Member in Charge is	<i>[Insert name of member]. Note: If the Consultant consists of a joint venture of more than one entity, the name of the entity whose address is specified in Clause SCC 11 should be inserted here. If the Consultant consists only of one entity, this Clause SCC 15.1 should be deleted from the SCC.</i>
10.	The Authorised Representatives are:	For the Client :Regional Secretariat Engineer For the Consultant
11.	Effectiveness of Contract	None
12.	Termination of Contract for Failure to Become Effective	The time period shall be One (1) month.
13.	Commencement of Services	The time period shall be Fifteen (14) Days
14.	Expiration of Contract	The time period shall be Thirty Six (36) Months.
15.	The ceiling on Consultant's liability	Shall be limited to <i>not less than total payments expected to be made under the Consultant's contract or proceeds the Consultants is entitled to receive under its insurance, whichever is higher</i>
16.	The risks and the coverage shall be as follows	Professional Liability insurance, with a minimum coverage equal to the Value of the Contract Employer's Liability and Workers' Compensation insurance in

		<p>respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel, or other insurance as may be appropriate; and</p> <ul style="list-style-type: none"> - insurance against loss of or damage to equipment purchased in whole or in part with funds provided under this Contract, the Consultant's property used in the performance of the Services, and - Any documents prepared by the Consultant in the performance of the Services.
17.	Advance payment guarantee	10 % of the contract Price shall be made within 21 days after the effective and upon submission of a bank guarantee for the same
18.	Payment shall be made according to the following schedule:	<p>Ten (10) percent of the Contract Price shall be paid against the submission of a bank guarantee for the same;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission of and acceptance of Inception Report;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission of and acceptance of Draft Feasibility Study and Preliminary Design Report;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission of and acceptance of Final Feasibility Study and Preliminary Design Report;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission and acceptance of Progress report of the commencement of the detailed design;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission and acceptance of Draft Final Design Report and Draft Tender Documents including Confidential estimate;</p> <p>Ten (10) percent of the Contract Price shall be paid upon submission of and acceptance of Final Design Report and Final Tender Documents;</p> <p>Twenty (20) percent of the contract price shall be reserved and disbursed during supervision stage and the invoicing shall be undertaken in each month and in the proportion to the progress of the works.</p> <p>Five (5) of the contract Price shall be paid after the final account for the works has been submitted and accepted by the client.</p> <p>Five (5) of the contract sum shall be paid upon expire of defect liability period</p> <p>The Bank Guarantee shall be released upon submission of and acceptance of Draft Design Report and Draft Tender Documents.</p>
19.	The Client shall effect payment	Within 28 days.
20.	The interest rate	Shall be 1% above the lending rate of scheduled banks in Tanzania
21.	The number of months for which the Advance payment will be offset	20 months.
22.	The place of Arbitration	Regional Administrative Secretary's Office.

23.	Settlement of arbitration according to	TANZANIA Arbitration Rules; 1998 Edition
24.	Publisher of the rules	National Construction Council

Session 4: The Procurement Process of Consultancy services Part - 2

Session Objectives

To enable participants to handle procurement process after the invitation has been sent out to the consultants

! In this session you will be exposed to important actions to be taken by a PE after the Invitation of Consultants to submit a proposal until the award of contract.

Training Materials

Section 6.3 of the Reference Manual.

GN.446 – Part IX

Session 5: Exercise on the Evaluation of Tender for Consultancy Services

Session Objectives

To enable participants to demonstrate skills on how to evaluate tenders for consultancy services

! In this session you will get exposed on know how to carry out evaluation of a proposal

Training Materials

Section 6.3 of the Reference Manual.

GN.446 – Part IX

Group Exercise 6-2

Recently, one Procuring Entity was caught in a dilemma in which one consultant had submitted a zero financial proposal to execute the assignment. This matter was discussed extensively in the Tanzania Public Procurement Forum (<http://ppra.forumotions.com/t108-when-a-consultant-offer->

[us-0-in-financial-proposal](#)). It will help participants appreciate the Evaluation of Consultants proposals under Quality and Cost Based Selection (QCBS) Method.

When a Consultant Offers Tsh 0 (Zero) in Financial Proposal

One Procuring Entity advertised the tender for Provision of Consultancy Services and in the said tender has two phases of which they are interdependent i.e. phase one must be completed prior to commencing phase two. The consultants were required to submit proposals for the two phases separate and evaluation will be done by phases. After shortlisting, four firms submitted proposals and three firms scored above minimum pass mark as result their financial proposals were opening publicly. The following were recorded in the opening ceremony for phase one assignment:

Firm A – Technical Score 89%	Firm B – Technical Score 91%	Firm C – Technical Score 83%
Staff Remuneration - Tsh 280 million	Staff Remuneration Tsh. 0	Staff Remuneration Tsh. 320 million
Reimbursable Expenses - Tshs80 million	Reimbursable Expenses Tsh. 0	Reimbursable Expenses Tshs.70 million
Total Tsh. 360 million	Total Tsh. 0	Total Tsh. 390 million

Evaluation Process – Combined Technical and Financial Proposals

The Evaluation Committee [EC] carried out a combined technical and financial proposals for three firms; A, B & C. As result firm B emerged as a winner who indicated that they will charge nothing [Tsh 0] for the assignment. In order to apply the formula stipulated in the RFP document for conversion of financial figures into financial scores, EC changed the offer of firm B from Tsh 0 to Tsh. 1 – “Otherwise applying “0” in the formula could have make mathematical expression impossible and meaningless” – Mathematicians can help. The formula is familiar to us!

$$SF = 100 \times Fm/F$$

SF = the financial score

Fm = the lowest price

F = price of the proposal under consideration

When the report was submitted to Tender Board for adjudication, TB was in dilemma whether to go on award the contract to firm B or not? Most of them took the view that there is something finish is going on.

Discuss in Groups on the assumptions made by the Evaluation Committee and on their recommendations for contract award?

Apart from Zero Proposal as discussed in this case study, what other challenges can a PE get when using Quality and Cost Based Selection? How can they overcome such challenges?

Group Exercise 6.3

As an employee of DSM CITY COUNCIL you have been assigned the task of overseeing the design and supervision of construction of a road. Due to shortage of Engineers in your organization you decide to engage the Consultant to carry out the design and supervision on your behalf.

Describe to DSM CITY COUNCIL the procedure to be used to obtain a suitable Consultant for the works taking into consideration that your employer is interested to obtain a quality product.

How would the procedure be if your employer were interested in the quality product and value for money?

Following your advice, DSM CITY COUNCIL obtained technical and financial proposals from 7 (Seven) Consultants invited to submit proposals to carry out the Works. After carrying out the technical evaluation and later opening the financial proposal the following results were obtained:

Consultant	Scores obtained for the Technical Proposal	Financial Proposals (Million Tsh)
A	70%	650
B	85%	600
C	68%	400
D	80%	350
E	95%	750
F	65%	300
G	88%	500

The allowed minimum score on Technical score is 80%.

Using a quality based selection, recommend a Consultant to be awarded the contract by DSM CITY COUNCIL. Clearly show the arguments to support your recommendation.

In a combined quality and cost selection, the Technical Proposals has a weight of 80% and the Financial Proposal has a weight of 20%. Using this selection criterion which Consultant should be awarded the Contract? Show how you arrive at your decision.

MODULE 6

PROCUREMENT OF CONSULTANCY SERVICES

REFERENCE NOTES

6.1 General Introduction

Consultancy services is any object of procurement or disposal other than works and goods and includes professional, non-professional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services.

6.2 Procurement of Consultancy Services through the Request for Proposal Method

Consultancy services are invited using Request for Proposal Method. Part IX of GN. 446 gives five methods of selection of Consultants under Request for Proposal Method. These are

Quality and Cost Based Selection (QCBS)

- Selection Procedure Based on Combined Technical Quality and Price Consideration or Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultant services, and uses a merit-point score system. It is a procedure based on the quality of the proposals and the cost of the services offered. The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of Reference, will receive the major percentage of the total points to be awarded. Because under QCBS the cost of the proposed services is a factor of selection, this method is appropriate when:
 - The type of service required is common and not too complex;
 - The scope of work of the assignment can be precisely defined and the TOR are clear and well specified; and
 - The PE can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants;

Quality Based Selection (QBS);

This method is appropriate for the following types of assignments:

Complex or highly specialized assignments for which it is difficult to define the precise TOR and the required input from the consultants assignments that have a high downstream impact and in which the objective is to have the best experts; and assignments that can be carried out insubstantially different ways, such that proposals will not be comparable. In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposal sat the same time, but in separate envelopes (two-envelope system). If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the consultant with the highest ranked technical proposal will be requested to submit a detailed financial proposal. The PE and the consultant shall then negotiate the financial proposal, including remuneration and other expenses and the contract. All other

aspects of the selection process shall be identical to those of QCBS which are discussed in detail in the previous section.

Least Cost Selection (LCS)

This method is only appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, a minimum qualifying mark for the quality is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened in public and evaluated. The firm with the lowest evaluated price shall then be selected.

Fixed Budget Selection (FBS)

This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out a loud and shall be subjected to an evaluation. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

Single Source Selection (SSS)

Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. Single-source selection may be appropriate only if it presents a clear advantage over competition:

- For tasks that represent a natural continuation of previous work carried out by the firm; or
- in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency; or
- for very small assignments; or
- When only one firm is qualified or has experience of exceptional worth for the assignment.

Consultants Qualification Selection (CQS)

This method may be used for small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment, establish a shortlist, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

6.3 Key Stages in the Procurement of Consultancy Services

Key stages of procurement of consultancy services are shown in Figure 6.1 and are discussed hereunder.

6.3.1 Establishment of Procurement Needs for Selection of a Consultant

Not every service of intellectual nature in a PE requires the services of a Consultant. A PE must therefore make a decision on services which will require the use of consultants based on availability of necessary expertise, both qualitative and quantitative, within the organization to carry out the assignment. The completion requirements of the assignment compared to the workload of its staff. PE must make a decision on which is cost effective and sustainable – the use of consultant or its staff. Once a decision is made to use consultant then it must be included in the procurement plan.

6.3.2 Decision on the Method of Procurement

PE is required to select the method of procurement depending on the nature of the assignment. For Request for Proposal Method a decision shall be made on the use of any of its variants mentioned in Section 6.2. The use of any variant of Request for proposal method requires the approval of Tender Board.

6.3.3 Preparation of Terms of Reference

Preparation of Terms of Reference (TOR) is required under GN. 446-R.275. The TOR should be comprehensive enough to enable prospective Consultants understand clearly the scope of the assignment.

The TOR should provide sufficient information to enable bidders to understand the services required by the PE. They should be complete, precise and clear, but should not be over-prescriptive, where the success of an assignment is largely dependent on the skills and experience of the consultants. Well-prepared TOR will facilitate the preparation of proposals by bidders and the evaluation of proposals by the PE.

The precise contents of the TORS will be determined by the individual assignment, but should include the following details, where applicable:

- The background to the assignment, including details of any larger project which the assignment will be part of;
- The objectives of the assignment and what it is expected to achieve;
- A description of the scope of the services required;
- The specific deliverables required, such as study reports and recommendations, software, databases, bidding documents, drawings, specifications, maps, software, training materials etc and the dates by when they are required;

- Requirements for the transfer of knowledge or training programmes;
- The role, qualifications and experience of any key staff required;
- The duration of the assignment and expected completion dates;
- Any facilities, services or resources to be provided by the PE, including any counterpart staff;
- Arrangements for reporting to the PE, including lines of communication and the contact point for management and administration of the assignment; and
- A schedule of any reports required, including inception, progress and final reports; any other details or requirements relevant to the assignment.

6.3.4 Preparation of Cost Estimate and Budget

PEs are required to ensure that they have sufficient funds before they invite tenders. It is therefore important to establish the cost estimate for an assignment before inviting consultants to submit their proposals. For some methods of procurement like Fixed Budget Selection – the budget will be expected to be disclosed to consultants and therefore it needs to be established.

The Cost Estimates or Budget should be based on the assessment of the resources needed to carry out the assignment, staff time, logistical support, and physical inputs (for example, vehicles, office space and equipment). Costs shall be divided in two broad categories: Fee or remuneration and Reimbursable costs.

6.3.5 Invitation of Expression of Interest

Invitation for Expression of Interest as explained in GN. 446–R.280 read together with GN. 333 of 2016 requires tenderers to be given 7 and 21 days under national and international competitive selection respectively to submit their expression of interest to the PE for performing a given assignment. The process is covered under GN. 446-R.281.

The expression of interest (EOI) procedure obtains and assesses information on the qualifications and experience of potential bidders, in order to restrict actual bidding to a list of qualified bidders. This is achieved through the publication of a notice calling for expressions of interest, the receipt and assessment of expressions of interest and the development of a limited shortlist.

6.3.6 Shortlisting of Consultants

Shortlisting of Consultants shall take into account GN. 446-R.281 by ensuring that those shortlisted possess the necessary qualification and experience to undertake the assignment if selected. Apart from using expression of interest to obtain consultants, pre-qualification may be used for complex assignment while for less competitive assignments the shortlist may also be based on PEs own experience of consulting firms.

6.3.7 Request for Proposals

Request for Proposals from the shortlisted Consultants shall be carried out in accordance with GN. 446-R.287. The information to be included in the RFP is particularly covered GN. 446-R.289 and it should be sufficient enough to enable the Consultant prepare his proposal in the manner consistent

with the PEs requirements and also how the proposal shall be submitted and evaluated. PEs are required to use Standard Request for Proposal Documents issued by PPRA.

Request for Proposal Document is critical to the success of the tendering process. It informs consultants of:

- The precise description of the services required
- The rules for the tendering process;
- The evaluation criteria and methodology which will be applied;
- Any eligibility and qualification criteria which will be applied; and
- The type and conditions of the proposed contract.

A well drafted bidding document should result in a successful procurement process.

6.3.8 Receipt and Opening of Proposals

GN. 446-R.295 read together with GN. 333 of 2016 discusses in detail on receipt and opening of Proposals. The time allowed for submission of proposal shall depend on the assignment, but normally shall be 21 or 30 days for national and international selection respectively.

The firms may request clarifications about the information provided in the RFP.

The clarifications must be given in writing and copy to all the firms. The technical and financial proposals shall be submitted at the same time, but in different sealed envelopes. *The technical proposals shall be opened immediately by the Tender Opening Committee, after the closing time for submission of proposals. Any proposals received after the closing time shall be returned unopened.*

The public tender opening is an important step in the tendering process as:

- Opening tenders publicly helps to demonstrate that the tendering process is transparent and increases bidders' confidence in the public procurement process;
- Reading out technical scores and prices at the financial opening should avoid any disputes regarding changes of price or the evaluation results at a later date; and
- The formal procedure, which coincides with the tender closing, should prevent late tenders from being included in the evaluation.

The Procedure for Opening

The outer envelopes of tenders, which have been received on time, are opened publicly, in the presence of consultants to obtain the separate envelopes containing the technical and financial proposals within. The technical proposals are then opened and summary details read out and recorded. Financial proposals are kept sealed until the technical evaluation has been completed and approved.

The financial proposals of tenders proceeding to the financial evaluation are opened publicly at a separate tender opening meeting, at a date and time notified to the bidders whose technical proposals have been evaluated and accepted after the technical evaluation. Total prices quoted,

together with all itemised unit prices, together with the technical scores awarded to bidders in the technical evaluation, are read out and recorded.

6.3.9 Evaluation of Proposals

Precise evaluation procedures vary between the different methodologies, but all consist of three stages:

- A preliminary screening, to eliminate proposals which do not comply with the basic requirements of the Request for Proposals Document and bidders who do not meet mandatory eligibility requirements;
- A detailed evaluation, to determine whether proposals are responsive to the terms of reference in the RFP Document, to assess the relative quality of the proposals, using a merit point scoring system and to determine which proposals should proceed to the financial opening and evaluation; and
- A financial evaluation to examine the prices of the proposal or proposals and determine which is the successful proposal and should be recommended for award of contract.

GN. 446-R.299 to R.303 gives the procedures to be followed in the evaluation of technical and financial proposals.

Selection of Evaluation Committee

Formulation of an evaluation committee for consultancy services consisting of not less than three and not more than five members is covered in GN. 446-R.297. Selection of an appropriate Evaluation Committee is critical to the whole proposal evaluation process. In identifying staff to provide inputs to an evaluation or to be members of an evaluation committee, the head of the PE must consider the type of skills, knowledge or experience needed, which might include:

- Procurement and contracting skills;
- Technical knowledge;
- Financial management skills;
- Legal expertise;
- Representation by the end user; and
- Specialist knowledge or experience.

Stages of Evaluation of Consultant's Proposals

Evaluation procedure for consultancy services for QCBS, QBS and LCS are summarised in Figures 8.2, 8.3 and 8.4 respectively.

Preliminary Screening

The preliminary screening is conducted to determine whether proposals comply with the basic instructions and requirements of the RFP Document. It enables the evaluators to eliminate the

weakest proposals, without the time and effort spent in conducting a detailed point evaluation. The preliminary screening can also be used to assess whether bidders meet the mandatory eligibility.

The preliminary screening is conducted on a Pass or Fail basis, with proposals that are not substantially compliant being rejected. The criteria to be used for the preliminary screening depend on the requirements and instructions of the RFP Document, so the preliminary screening must always start with a review of the RFP Document to list the requirements to be met. As guidance only, the preliminary screening might typically include checks of the following:

- Submission of an original and the correct number of copies of the proposal;
- Submission of all forms and documents required, including, in particular the proposal submission form;
- Signature and authorisation of the proposal in accordance with the instructions in the RFP document, including any required power of attorney;
- Signature of curriculum vitae by proposed consultants, if required;
- Submission of a separately sealed financial proposal;
- Correct proposal validity;
- Submission of any additional documentation required; and
- Whether the bidder meets the mandatory eligibility requirements.

Detailed Technical Evaluation

The detailed evaluation must only be conducted on proposals which were determined to be substantially responsive during the preliminary screening. The evaluation of technical proposals will strictly follow the criteria provided in the Instruction to Consultant in the Request for Proposal Document particularly with regard to weights attached to each evaluation criteria of the technical proposal.

Financial Evaluation

The proposal or proposals proceeding to the financial evaluation will be determined by the relevant methodology for the technical evaluation i.e. will depend on whether the method adopted is QCBS, QBS, LCS or FBS.

The financial evaluation is conducted to determine the evaluated price of proposals, compare the proposals and determine the successful proposal, i.e. the proposal which should be recommended for award of contract. The financial evaluation and the determination of the successful proposal differ according to different evaluation methodologies.

Unless otherwise required by the evaluation methodology or the instructions in the RFP Document, the procedure for determining the evaluated price of each proposal for QCBS is as follows:

determine the total proposal price, including or excluding particular costs, as indicated in the RFP Document e.g. the RFP Document may state that all taxes and duties are to be included in the evaluation;

- Correct any arithmetical errors
- Assess whether all items are included in the proposal price and add the cost of any missing items;
- Convert all proposals to a single evaluation currency for purposes of comparison, using the currency and the date and source of the exchange rate specified in the RFP document;
- Apply any margin of price preference;
- Determine the total evaluated price of each proposal.
- Financial scores must be awarded using the method specified in the RFP document. This is normally as follows:
 - The lowest priced proposal is given a financial score of 100;
 - All other proposals are given a financial score proportionate to this, using the formula.

$$S_f = \frac{100 \times F_m}{F} \quad \text{in which}$$

S_f denotes the financial score of the proposal under consideration;

F_m is the price of the lowest price proposal;

F denotes the price of the proposal under consideration.

For example, if prices were as follows:

	Proposal A	Proposal B	Proposal C
	Tsh 5,000,000	Tsh 4,500,000	Tsh 6,000,000
Weight	100 $\frac{4,500,000}{5,000,000} =$ 90%	100%	100 $\frac{4,500,000}{6,000,000} =$ 75%

Combining Technical and Financial Scores for QCBS

The technical and financial scores must be weighted using the weights stated in the RFP document. This is normally in the range of 70-90% for the technical score and in the range of 10-30% for the financial score. The combined weights must always total 100%.

Example

	Original Scores	Weight in RFP document	Calculation	Weighted Scores
Technical	75	80%	$75 \times 80/100$	60
Financial	85	20%	$85 \times 20/100$	17
Total		100%		77

Validity of the Proposal

Evaluation of proposals must be conducted within their validity period. The proposal validity period requested in the RFP Document should normally be sufficient to enable the PE to undertake both the technical and financial evaluations, obtain approval from the Tender Board and award a contract. Therefore, extensions to the validity of proposals should not normally be required.

Where an extension to the validity of proposals is required, all Consultants should be requested, in writing, to extend the validity of their proposals for an additional specified period of time. This request should be issued a reasonable period before the expiry of the validity of proposals to give sufficient time for responses to be received.

Consultants must not be permitted to change the price, or any other details, of their proposal, when extending the validity. Any consultant is free to refuse to extend the validity of his proposal.

6.3.10 Negotiations

GN. 446-R.308 provides that PE may negotiate with the person who submitted successful proposal. It is a practice that negotiations be conducted by a minimum of three people, who will include staff with technical knowledge of the services being procured and who are able to represent the needs of the end user.

The Head of the PE must select the most appropriate members of staff to conduct negotiations. Where it offers benefits of continuity or significantly reduces the amount of preparation work required, staff who contributed to the evaluation should be used, as they will already be familiar with the requirements of the PE, as defined in the bidding document, the contents of the successful tender, the reasons why negotiations were recommended, the areas requiring negotiations and the objectives of those negotiations. The appropriate number and type of staff will depend on the type, value and complexity of the procurement, the areas which require negotiations and the extent of the negotiations.

In identifying staff to be involved with negotiations, the head of the PE must consider the type of skills, knowledge or experience needed, which might include:

- Procurement and contracting skills, including experience of negotiations;
- Technical knowledge;
- Legal expertise;
- Representation by the end user.

It is important that members of the Tender Board should not be involved in conducting negotiations, but only in approving the results and recommendations. If members of the Tender Board are selected as negotiators, they will be in conflict of interest because they will then end up reviewing and approving their own work. The negotiation work should be conducted by one group of people, and the approvals must be sought from another group, so that the one can check the work of the other.

Negotiations may not relate to the price or substance of tenders or proposals e.g. man/month rates or unit rates (i.e. prices) specified by the bidder in his tender, but only to minor technical,

contractual or logistical details. As guidance only, negotiations may normally relate to the following areas:

- Minor alterations to technical details, such as the terms of reference, the scope of work, the specification or drawings;
- Minor amendments to the special conditions of contract;
- Finalising the payment arrangements;
- Mobilisation arrangements;
- Agreeing final delivery or completion schedules to accommodate any changes required by the PE;
- The proposed methodology or staffing;
- Inputs required from the PE;
- Clarifying details that were not apparent or could not be finalised at the time of bidding; and
- The bidder's tax liability in Tanzania, if the bidder is a foreign company.

Negotiations must not be used to:

- Substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the bidder or the performance of the services;
- Substantially alter the terms and conditions of contract stated in the request for proposal;
- Reduce unit rates or reimbursable costs;
- Reduce work inputs solely to meet the budget; or
- Substantially alter anything which formed a crucial or deciding factor in the evaluation of the tenders or proposals.

In the case of consultancy services, the bidder should not be allowed to substitute key staff, unless the PE and the bidder agree that delays in the procurement process, changes in the terms of reference or other unavoidable circumstances make it necessary.

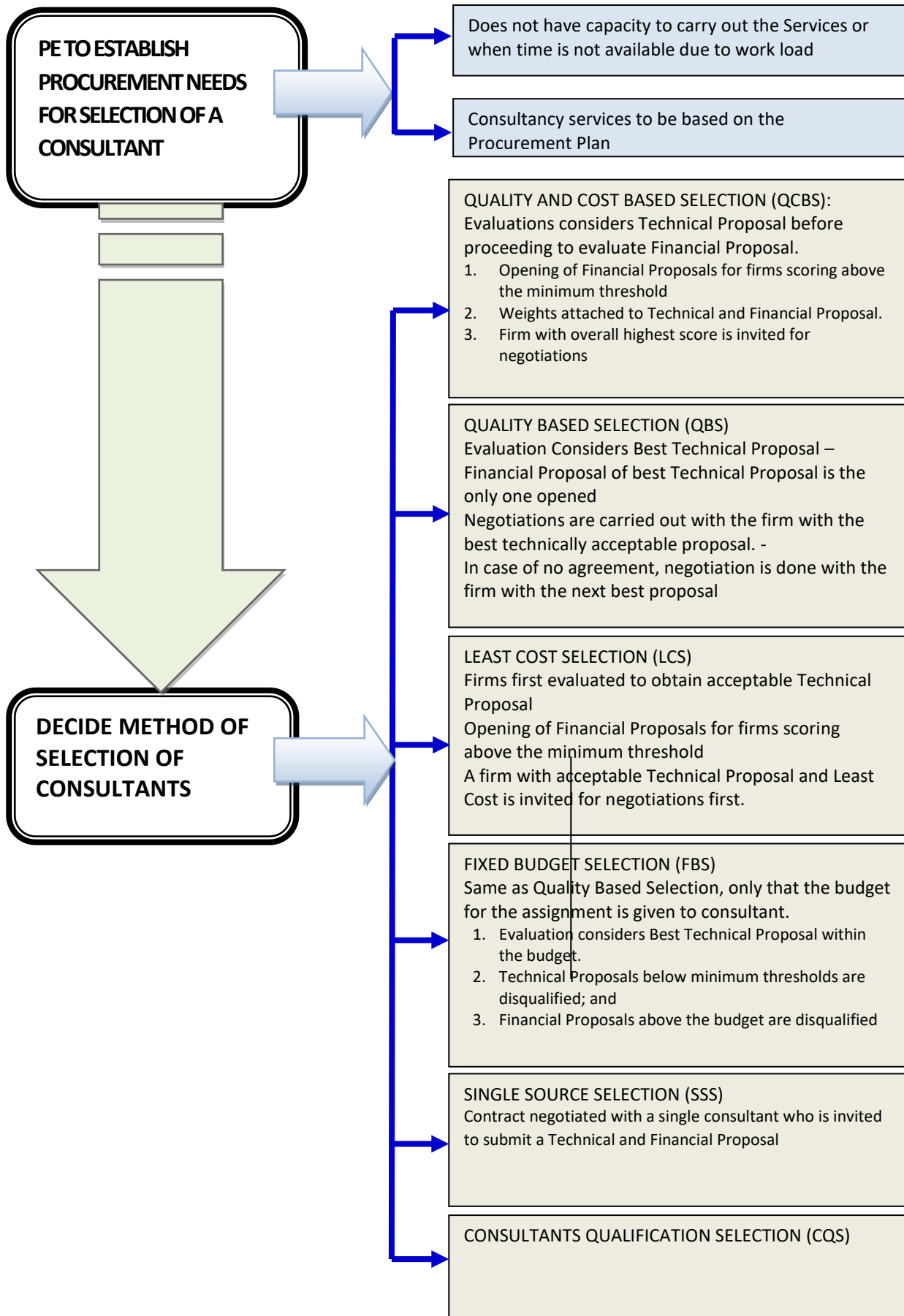
6.3.11 Award of Contract

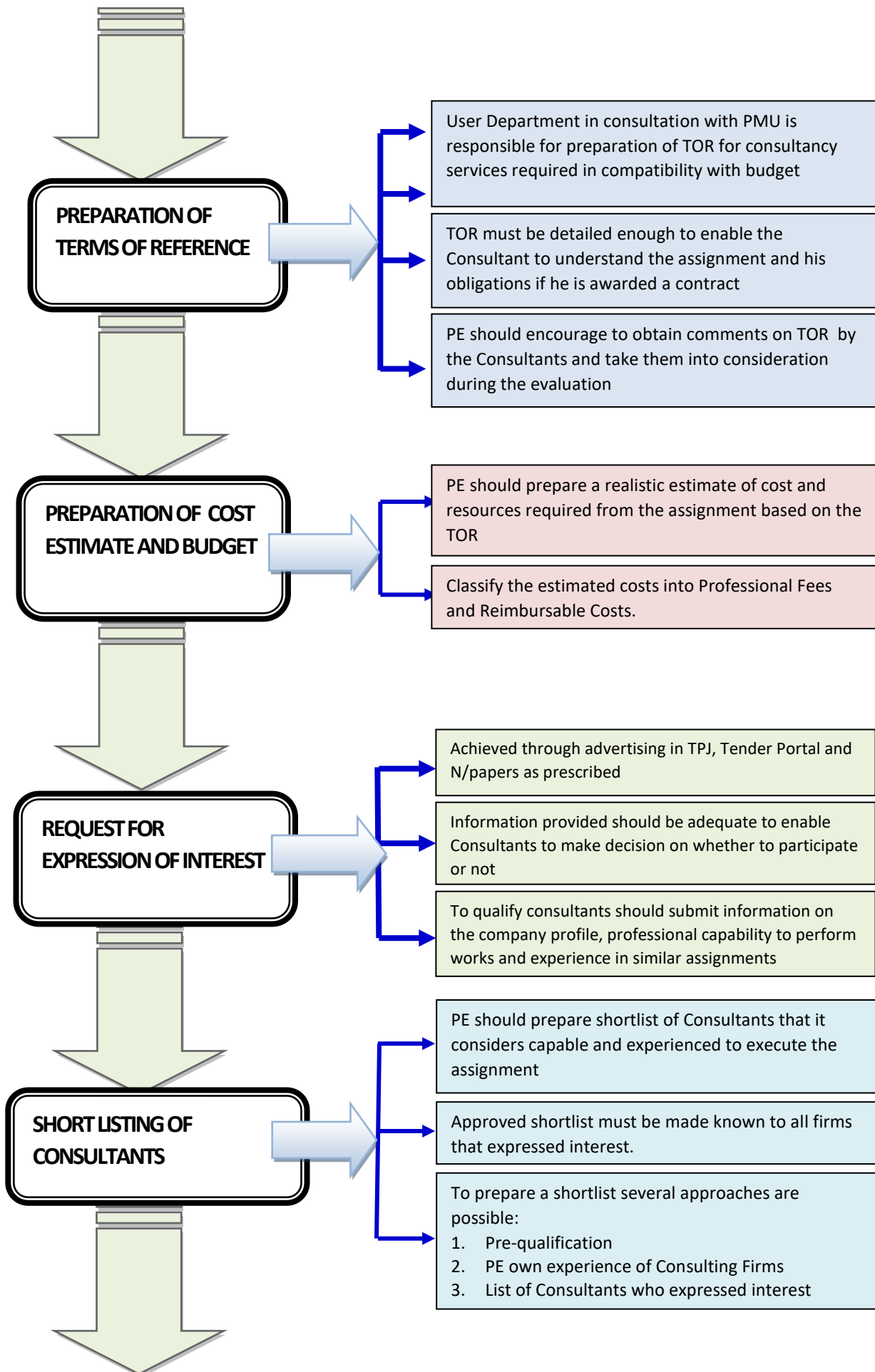
Following negotiations, the recommendations made to the Tender Board may include:

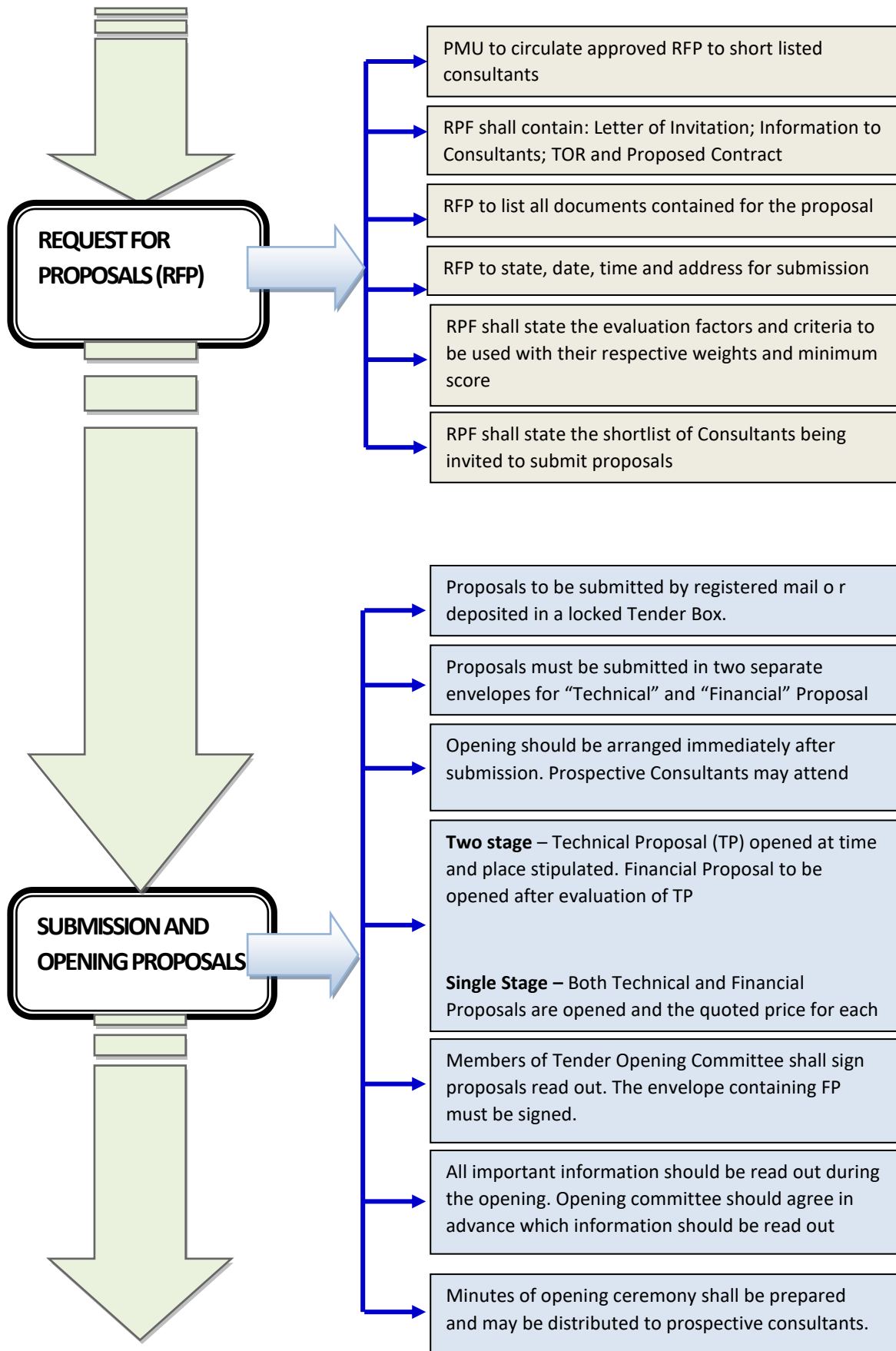
- Proceed with contract award to the successful bidder, incorporating the revisions agreed during negotiations;
- Revise the objectives of the negotiations and negotiate further on specified areas;
- Terminate the negotiations, where they have failed to result in an acceptable contract, reject the bidder and award the contract or hold negotiations with the next lowest ranked responsive bidder;

- Cancel the procurement proceedings, where it is believed that the original request for proposal document was flawed, the need has changed or the budget is insufficient for the requirement.

Figure 6.1: Flow chart of Procurement Process for Consultancy Services







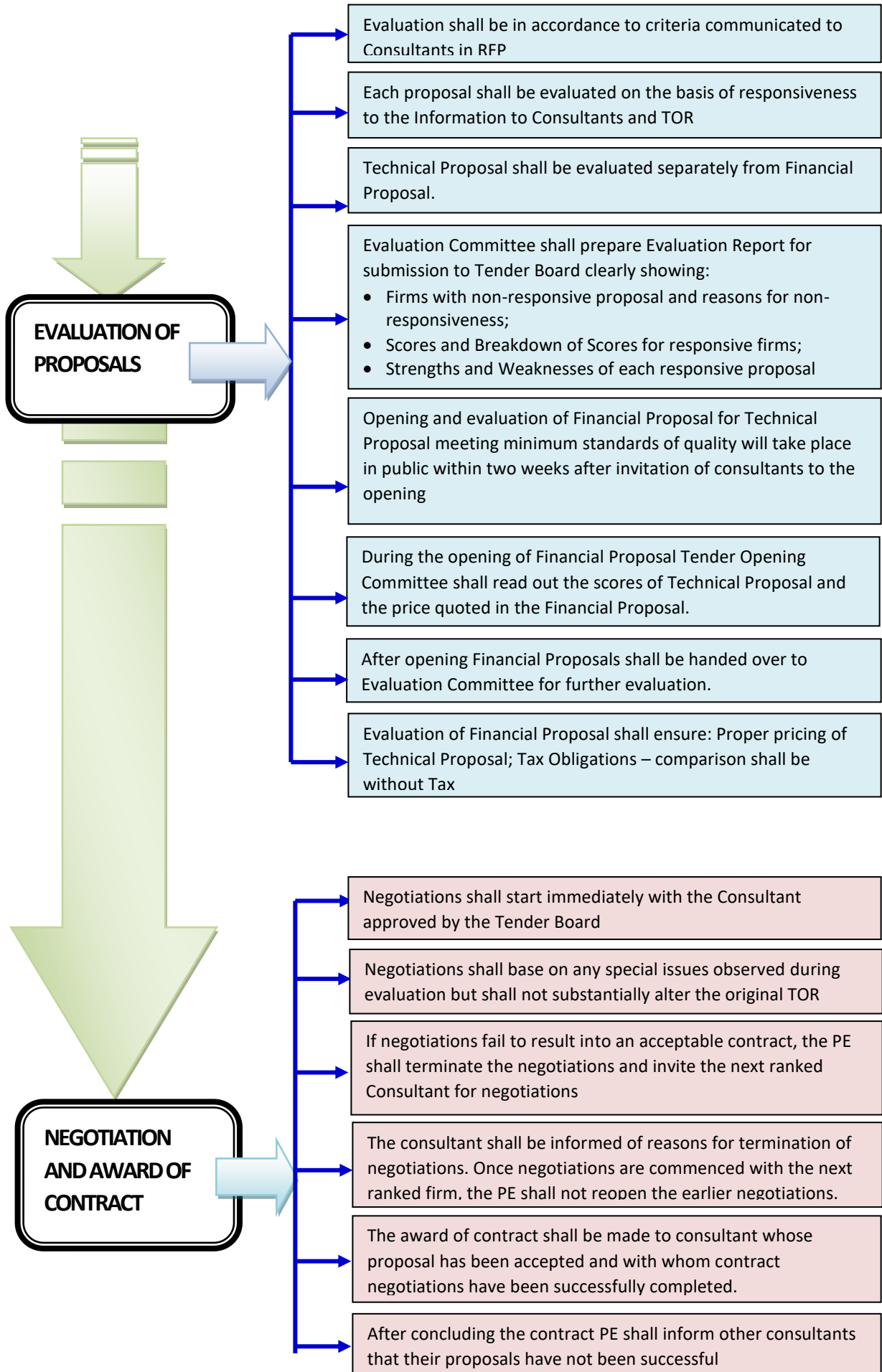


Figure 6.2 Evaluation Procedure for Consultancy Services (QCBS)

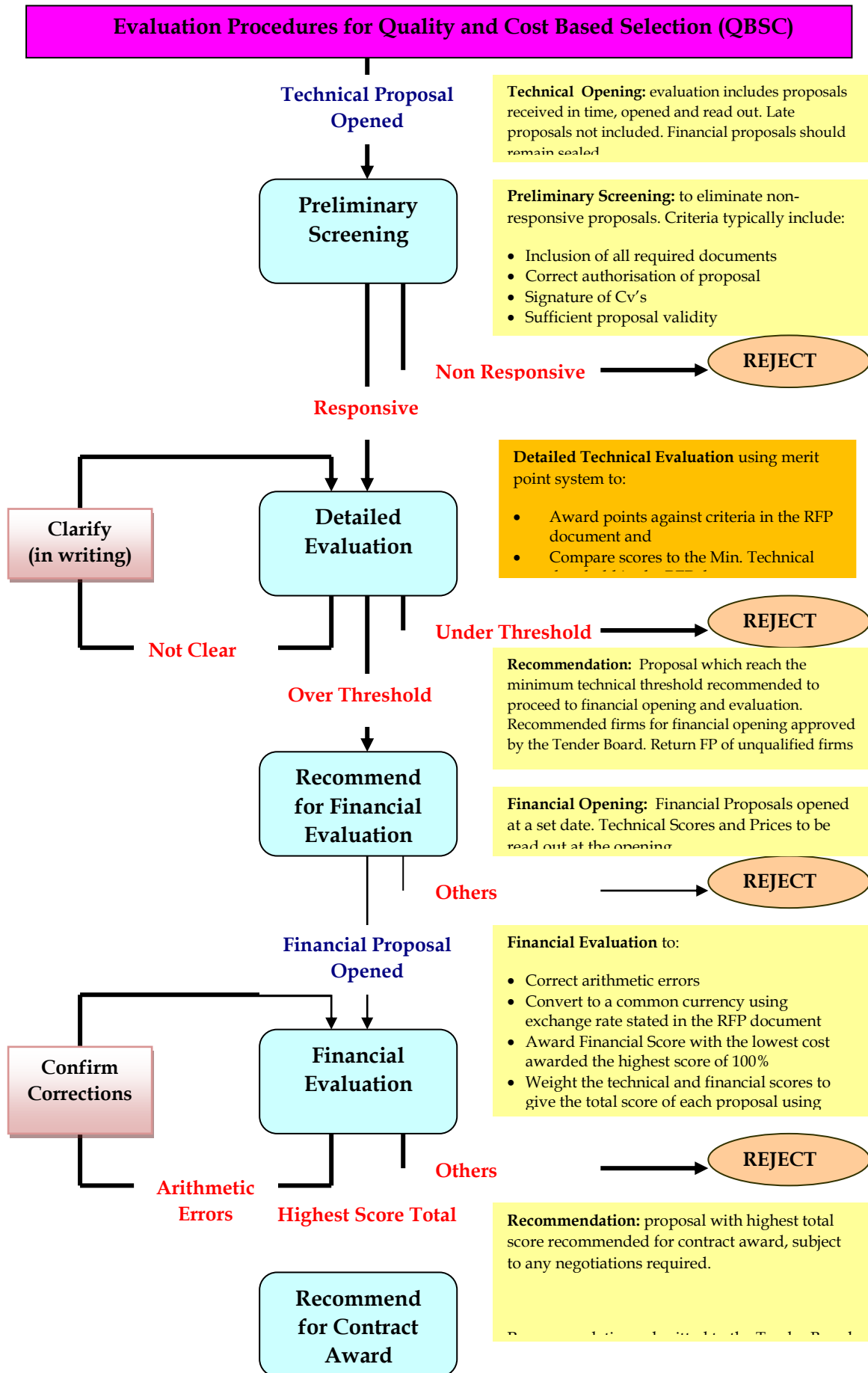


Figure 6.3 Evaluation Procedure for Consultancy Services (QBS)

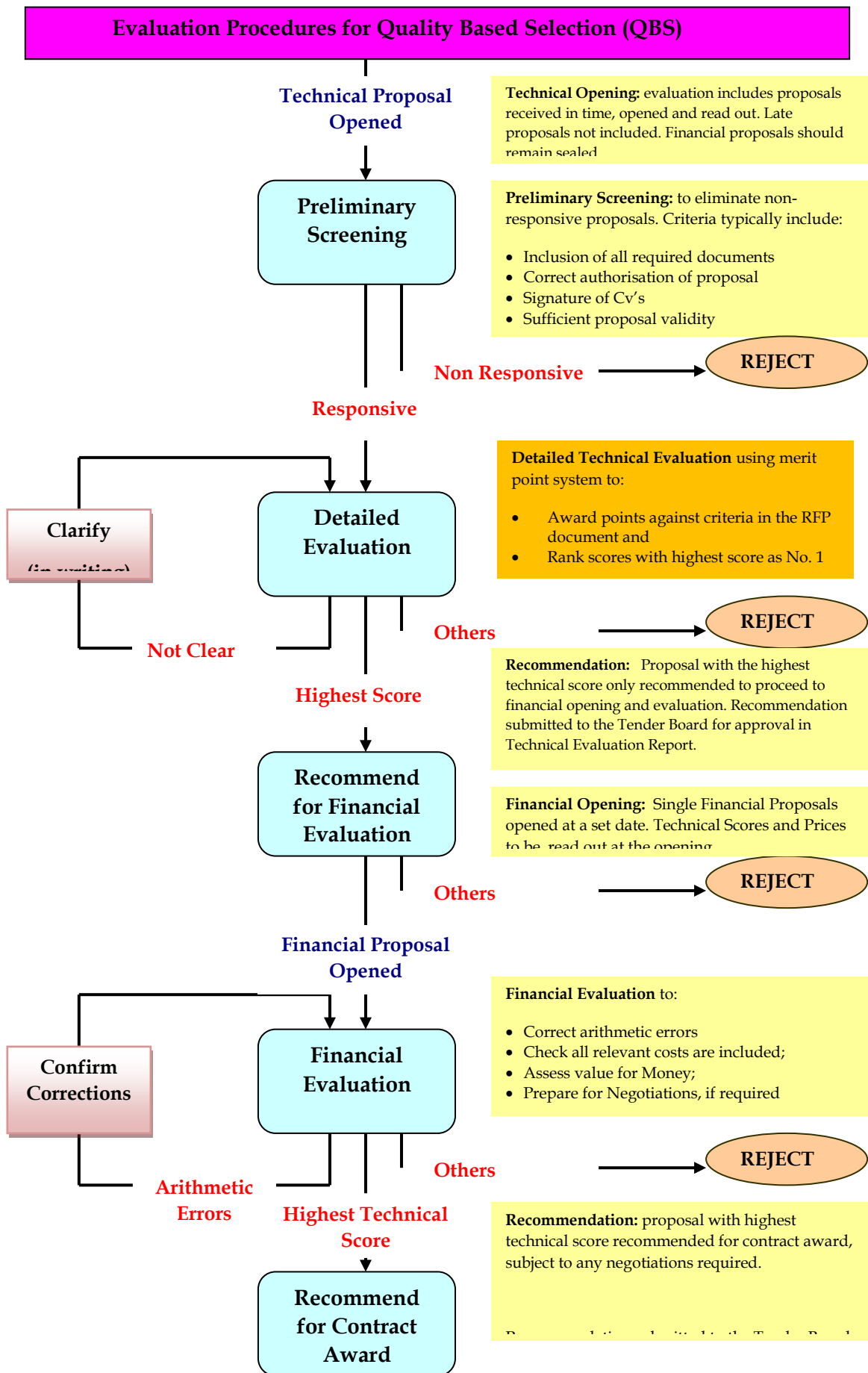
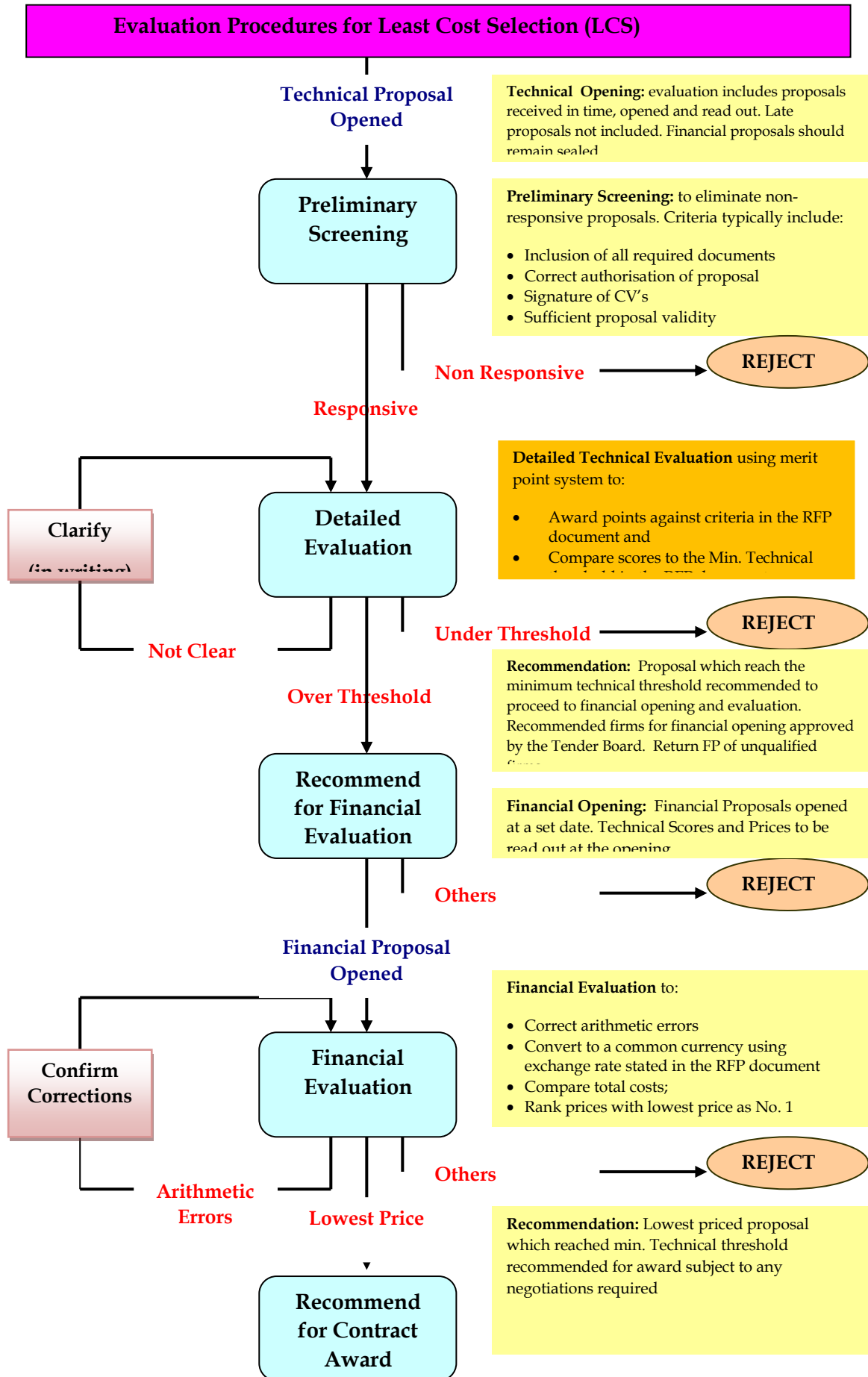


Figure 6.4: Evaluation Procedure for Consultancy Services (LCS)



Case Study 6.1

Zero dilemma in quality and cost based selection method of consultants

Recently, one Procuring Entity was caught in a dilemma in which one consultant had submitted a zero financial proposal to execute the assignment. This matter was discussed extensively in the Tanzania Public Procurement Forum (<http://ppra.forumotions.com/t108-when-a-consultant-offer-us-0-in-financial-proposal>). It will help participants appreciate the Evaluation of Consultants proposals under Quality and Cost Based Selection (QCBS) Method.

When a Consultant Offers Tsh. 0(Zero) in Financial Proposal

YOUR VIEWS on Wed Mar 16, 2011 2:09 pm

One Procuring Entity advertised the tender for Provision of Consultancy Services and in the said tender has two phases of which they are interdependent i.e. phase one must be completed prior to commencing phase two. The consultants were required to submit proposals for the two phases separate and evaluation will be done by phases. After shortlist, four firms submitted proposals and three firms scored above minimum pass mark as result their financial proposals were opening publicly. The following were recorded in the opening ceremony for phase one assignment:

Firm A – Technical Score 89% Staff Remuneration - Tsh 280 million Reimbursable Expenses - Tsh 80 million Total Tsh 360 million	Firm B – Technical Score 91% Staff Remuneration Tsh 0 Reimbursable Expenses Tsh. 0 Total Tsh 0	Firm C – Technical Score 83% Staff Remuneration Tsh 320 million Reimbursable Expenses Tsh 70 million Total Tsh 390 million
---	---	---

Evaluation Process – Combined Technical and Financial Proposals

The Evaluation Committee [EC] carried out a combined technical and financial proposals for three firms; A, B & C. As result firm B emerged as a winner who indicated that they will charge nothing [Tsh 0] for the assignment. In order to apply the formula stipulated in the RFP document for conversion of financial figures into financial scores, EC changed the offer of firm B from Tsh 0 to Tsh. 1 – “Otherwise applying “0” in the formula could have make mathematical expression impossible and meaningless” – Mathematicians can help. The formula is familiar to us!

$$Sf = 100 \times Fm/F$$

Sf = the financial score

Fm = the lowest price

F = price of the proposal under consideration

When the report was submitted to Tender Board for adjudication, TB was in dilemma whether to go on award the contract to firm B or not? Most of them took the view that there is something fishy is going on. What is your take on this?

RSM on Thu Mar 17, 2011 6:52 am

YOUR VIEWS

Is this a hypothetical or true case? How can a Consultant charge nothing for carrying out the assignment?

Logic tells me before deciding, a clarification should be sought from the Consultant on import of their financial submission.

YOUR VIEWS on Thu Mar 17, 2011 8:36 am

RSM, this is true case and not hypothetical. Even the Tender Board is in dilemma how can a consultant charge nothing for carrying out the assignment? Financial Submission Form [Form of Tender] indicated Tsh. 0. Do we need to seek clarification on the offer? I think after clarification you can now contribute effectively?

Let us keep the ball rolling.

RSM on Thu Mar 17, 2011 6:16 pm

YOUR VIEWS

Let's wait until you get the clarification.

Other forum members

For the sake of keeping this dialogue going, let us assume that the consultants will say that indeed their financial proposal is Tsh. 0. What advise do we give YOUR VIEWS?

YOUR VIEWS on Fri Mar 18, 2011 5:46 pm

RSM + FORUM MEMEBERS,

We have just received clarification from FIRM B. They have confirmed that their offer is Tsh. 0 as indicated in the Financial Proposal Submission Form.

RSM your assumption was right!

RJM on Mon Mar 21, 2011 5:56 pm

This is interesting!

I think there are two dimensions we should focus:-

1. One of the fundamental elements in forming a valid contract is CONSIDERATION.

For an offer and acceptance to form a contract there must be consideration. Consideration is defined as 'some right, benefit or profit accruing to the promisor, detriment, loss or otherwise responsibility suffered by the 'promisee'. What this means is that the party trying to enforce the contract must have 'paid' something in exchange for the promise of the other party. Consideration must be of real value, but it does not have to be money. It can take the form of money, physical objects, services, promised actions, abstinence from a future action, and much more. IS THERE ANY CONSIDERATION FROM FIRM B?

2. The applicability of the offer [Tsh. 0] offered by Firm B in the comparison of other offers using the formula provided. To me the offer of Tsh. 0 does not allow freely application of the formula especially in converting the financial figures into financial score in order to combine technical and financial scores.

RSM on Thu Mar 24, 2011 5:14 pm

RJM

I tend to concur with your first point - if there is no consideration - then there is no possibility of forming a contract.

However I disagree with second point that 0 cannot be applied in the comparison formula. What if it was a methodology like least cost comparison, quality based or even fixed budget where you do not compute combined score?

RJM on Thu Mar 24, 2011 6:10 pm

RSM wrote

RSM, I think you miss something from the submission of YOUR VIEWS that the selection method was Quality and Cost Based Selection and formula was given AND I confined by myself on the issue under discussion.

If selection method was either quality based, least cost or fixed budget one need to analysis.

1. Quality Based Selection – since Firm B scored highest among others his financial proposal will be opened first and result Tsh 0 – as you have concurred with me above- NO CONSIDERATION = NO CONTRACT.

2. Least cost comparison – it is obvious his offer “in the eyes of many it will be lowest” but no contract can be concluded in case - NO CONSIDERATION = NO CONTRACT.

3. Fixed Budget – Since Firm B scored highest among others AND mathematically the offer is within the budget and lowest BUT again no contract be can concluded - - NO CONSIDERATION = NO CONTRACT.

RSM, Now that it is apparent that QCBS was deployed in this case, if we are to apply the offer in the formula how should we proceed?

MODULE 7: MANAGEMENT OF PROCUREMENT CONTRACTS

PARTICIPANTS INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Learning Outcomes Module Content
Session 1:-Overview of Contract Management and its Importance to Attaining Value for Money	45 Minutes	Basic Introduction to Contract Management Pre-requisites of Good Contract Management Legal Requirements for Contract Management
Session 2: Legal Requirements for Contract Management	60 Minutes	Provisions of the PPA 2011 and GN. 446 with respect to Contract Management
Session 3:The Contract Management Process	120 Minutes	Appointment of Contract Administrator Contract Delivery Follow-up for Works, Goods and Services; Contract Amendments
Session 4: Bringing a Contract to an End	90 Minutes	Contract Close Out Contract Termination

Introduction

Introducing the Module

Session Objectives

To enable the participants have a clear picture of the objectives, learning outcomes and the content of the module and to agree on the proposed time allocation.

!In this session you will get to know the objectives, learning outcomes and contents of the module

Session 1: Overview of Contract Management and its Importance to Attaining Value for Money

Session Objectives

To enable the participants to mention at least three importance of contract management in attaining value for money

!In this session you will appreciate the contribution of good contract management in the attainment of value for money

Training Materials

Section 7.1 and 7.2 of the Reference Manual.

Session 2: Legal Requirements for Contract Management

Session Objectives

To enable the participants to state the legal provisions with regard to contract management.

! In this session you will understand the legal obligation of individuals operating in a PE to ensure good contract management in the delivery of goods, works and services.

Training Materials

Section 7.4 of the Reference Manual.

GN.446- Part VIII and IX

Session 3: The Contract Management Process

Session Objectives

To enable the participants to identify the key aspects of procurement contract management

! In this session you will get know key considerations in the management of contracts that are aimed at ensuring that a PE gets value for money.

Training Materials

Section 7.5 to 7.7 of the Reference Manual.

Tender Documents for Goods, Works and Services

Group Exercise 7-1

The Class will be divided into groups of Eight, each of two groups will work for list down key aspects that must be carried out to ensure proper contract delivery for (1) Goods (2) Works (3) Consultancy Services and (4) Non- Consultancy Services.

Session 4: Bringing a Contract to an End

Session Objectives.

To enable the participants outline important aspects on how a PE can bring a contract to an end

!In this session you will understand how you as a PE you can bring the contract to an end both through performance and non-performance of the contract

Training Materials

Section 7.8 and 7.9 of the Reference Manual.

Conditions of Contract

Group Exercise 7.2

In groups of two or three discuss what should be included in a contract closeout checklist for (1) a goods contract (2) works contract (3) Non-Consultancy Services Contract and (4) A consultancy services contract.

MODULE 7

MANAGEMENT OF PROCUREMENT CONTRACTS

REFERENCE NOTES

7.1 Introduction

Contract administration is an important aspect in the procurement cycle which ensures that the PE gets what it procured. Unfortunately, it is a stage which is not given adequate attention during contract implementation thus causing unnecessary complaints of the parties to a contract.

PE puts in a lot of efforts in ensuring that they select a supplier or service provider who shall deliver the works, goods, services of the required quality, in a timely manner and within the agreed costs. The selection process is however, in some cases, not supported by a vigorous system which ensures that what was bought is indeed what is delivered.

7.2 Importance of Proper Contract Management

Contract administration or management involves those activities performed by PE after a contract has been awarded to determine how well the PE and the supplier or service provider performed to meet the requirements of the contract. It encompasses all dealings between the PE and the supplier or service provider from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the PE gets what it paid for.

There are three aspects to a contract that must be managed while the assignment is being carried out: time, cost and performance. Time and cost must be measured against the budget and projected time required to complete the contract to detect deviations from the plan. The performance of the contract must be checked to ensure that the targets are being met. Sound record keeping makes the management of the contract easier and more effective. Without complete records any possible disputes or claims may be difficult and very time consuming to sort out.

Good contract administration assures that the end users are satisfied with the product or service being obtained under the contract. It is absolutely essential that those entrusted with the duty to ensure that the PE gets all that it has bargained for must be competent in the practices of contract administration and aware of and faithful to the contents and limits of their delegation of authority from

7.3 Prerequisites of good contract management

Good contract management ensures that each party to a contract gets what it has bargained for. In order for this to happen, the following are important prerequisites:

- There has to be very clear terms on what must be accomplished by each party;
- Rights and obligations of each party must be defined very clearly;
- There must be a system in place of ascertaining that rights and obligations of each party have been accomplished; and

- There must be a system in place to handle disagreements.
- There must be a system in place for winding up the contract.
- Legal Requirements for Contract Management

Management of contracts is an important aspect to ensure that a PE gets value for money and is addressed briefly in GN. 446-R114 and in detail in GN. 446- Part VIII for goods, works and non-consultancy services, and in GN.446-Part IX (g) for consultancy services.

PEs obligation to ensure sound contract management is given in GN. 446-R114 as shown in Box 7.1 and specific actions to be undertaken are included in GN.446-Part VIII and GN. 446- Part IX (g). They can be summarized as follows:

- General obligation to manage good contracts and obtain early warning in case of delay and institute liquidated damages in case of the actual delay – GN. 446-R.242;
- Management of Services and Works Contracts GN. 446-R.243;
- Monitor progress against statement of requirements or schedule of works by means of daily, weekly and monthly reports;
- Authorize payments by measurement and certification at intervals stated in the contract-remember deduction of retention money, if provided;
- Inform the service provider where performance is not satisfactory that he is in breach of contract and in addition invoke procedures for instituting disputes prescribed in the contract;
- If there is failure to provide services to the required standard withhold payments of retained money; and call for any performance security if such security has been furnished by the service provider;
- Use of Contingency sum to cover variations under the contract; and Additional services or works considered necessary; and
- Only when works or services are completed and defects corrected to the satisfaction of PE should the final payment made and release of performance guarantee made.

Box 7.1: PEs General Obligation for Contract Management

114. A procuring entity shall be responsible for the effective management of any procurement of goods, services or works for which it is undertaking and shall-

- (a) monitor the costs and timely delivery of goods and services in the correct quantities and to the quality specified in each contract;
- (b) monitor the progress and timely completion of works in accordance with the terms of each contract;
- (c) take or initiate steps to correct or discipline deviations from observance of contract condition; and
- (d) ensure that the responsibilities imposed on it by the contract are fully discharged.

Appointment of Works or Non-Consultancy Supervisors GN. 446-R.252 – normally a public officer, a unit responsible for works in PE or a Consultant- Manages the works of the inspection committee.

Management of goods contracts (GN. 446-R.244 to R.251):

- Ensure Inspection of goods and those below standard should be rejected. The costs of justified rejection of goods to be met by the supplier and this should be included in the contract –GN. 446-R.244;
- The obligation of the Accounting Officer to appoint an Inspection and Acceptance Committee for each tender including call off orders – GN. 446-R.245;
- Procedure for inspection and acceptance of goods by the Inspection and Acceptance Committee must be observed as covered under GN. 446-R.246 to R.251. Note that partial acceptance is permitted in the case of items which work independently but no partial acceptance shall be permitted for goods which are in a set or unit, and any missing component part of which would render the use incomplete or impossible – GN. 446-R.249.
- Payment shall only be effected upon issuance of a goods acceptance certificate – GN. 446-R.248; and
- Disagreement amongst members of the goods inspection and acceptance committee shall be referred to the Accounting Officer for consideration and decision – GN. 446-R.250.

Management of consultancy services contracts (GN. 446-R.319 to R.322)

- The provisions for Management of Services and Works Contracts in GN. 446-R.243 are replicated in GN.446-R.319.
- Professional liability of consultants is covered under GN. 446-R.321 in which applicable laws on professional liability shall apply unless parties wish to limit the liability but shall not be less than the total payments expected to be made under the consultant’s contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and the limitation shall be towards the PE only and not its liability towards third parties.
- One aspect of management of consultancy contracts provided in the GN.446 2013 which need to be emphasized here is the issue of performance security. Many consultants like those using FIDIC White Book – Client/Consultant Model Services Agreement, 2006⁹ are used to a system which does not require submission of bid or performance security. Reading PPA 2011–S.58 (2), GN. 446-R.29 together with the interpretation of a tenderer and services as given in PPA 2011-S.3 it is implied that performance security is required for consultancy services in Tanzania. This has been further reinforced in GN. 446-R.112 and GN. 446-R.322 (2) in which the maximum amount of liquidated damages for consultancy services is pegged on the amount of performance security.
- There is likely to be an outcry from consultants arising out of the imposition of the requirement to submit performance security, but it is important to note that circumstances justifying the requirement of tenderers to submit bid security and performance security are

⁹ Read FIDIC Commentary on Bid and Performance Security in <http://fidic.org/node/760>

applicable in works, goods, non-consultancy and consultancy services. The provision of bid security is intended to safeguard a PE from premature withdrawal of tenders by participating tenderers and performance security is intended to safeguard a PE from non-performance of the winning tenderer. The key questions to ask is can't consultants withdraw their bids before expiry of bid validity period? And cant Consultant's fail to perform under a given contract? If the answer is no then bid security or performance security is unjustified. If the answer is yes then bid security or performance security are justified unless other ways are introduced to safeguard PEs interest. Other procurement jurisdiction like that of Philippines also impose bid as well as performance security in consultancy assignments¹⁰. In Uganda a bid securing declaration is imposed on consultancy assignments and no performance security¹¹. This is an area that GN.446A is required to issue guidelines very soon as required in PPA 2011-S.58 (4).

Other Legal Provisions

Contracts Amendments and Extension of Time

Any amendments to a contract after signature must obtain the approval of the Tender Board and generally the PE shall have no power to authorize additions beyond the scope of the contract without the approval of Paymaster General or appropriate budget approving authority for additional financial authority to meet the costs of such additions- GN.446 –R.110. Changes in the scope of the contract include all changes in the quantity and quality of goods to be supplied, services to be provided or work to be performed by the tenderer who has been awarded the contract and these have been regarded as changes of policy nature. – GN.446-R.110 (8) read together with GN. 333 of 2016.

The Accounting Officer is the only person empowered to issue time extension orders, and the reasons for granting such orders are required to be documented in the contract implementation records. It is particularly emphasized not to request a tenderer to carry out further work on the contract after issuance of contract completion certificate. This is intended to safeguard PEs right to impose liquidated damage if there is delay of delivery of goods and services or completion of the works - GN.446-R.111. If extra work is required it shall be arranged separately out of the original contract, possibly through the use of single source or direct contracting method.

Liquidated damages

The imposition of liquidated damages and the rates to be used are covered under GN.446-R.112 as being 0.10 to 0.20 percent in the case of procurement of goods and consultancy services, and 0.10 to 0.15 percent in the case of works of contract value per day of delay up to the maximum sum equivalent to the amount of performance guarantee. To be applicable they must be specified in the tender documents- GN. 446–R.112

¹⁰ Read Pages 18 to 21 of Manual of Procedures for Procurement of Consulting Services issued by Government Procurement Policy Board of Philippines downloadable from <http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.4.pdf>

¹¹ Guideline Ref 3/2014 – Guideline on Bid and Performance Securities of 3rd March 2014 issued by Public Procurement and Disposal Authority of Uganda downloadable from http://www.ppda.go.ug/index.php/downloads/cat_view/11-guidelines/29-central-government.html

On liquidated damages there is contradiction of what is provided under GN.446-R322 with what is provided under GN. 446-R.112. GN. 446–R.322 (2) provides for imposition of liquidated damages in an amount equal to one-tenth of one percent of the cost of unperformed portion for every day of delay, and in no case shall the sum of liquidated damages exceed ten percent of the performance security while GN.446-R.112 (2) (C) provides for imposition of 0.10 up to 0.20 percent of contract value per day up to a sum equivalent to the amount of performance guarantee. This needs to be sorted out.

Termination for failure to implement the works or services

Failure by a tenderer to implement a contract within stipulated time or failure to comply with the contract or agreement without justifiable and acceptable reason may result into termination of a contract. Accounting Officers who terminate tenderers for failure to implement shall refer the matter to PPRA and Attorney General for information and appropriate action. PEs are prohibited to procure from such a tenderer unless an approval is granted by PPRA – GN.446-R.113. It should be noted here that one of the possible actions that may be taken by PPRA against such tenderers is blacklisting in accordance with PPA 2011-S.62 (3) (c) and GN.446-R.93 (3) (c). Termination of contract for failure to perform need to be handled very carefully by ensuring that all contractual provision are properly adhered to.

Sometimes non-performance by the tenderer may be so severe to the extent that it is the political leader who orders such a termination. To me there is nothing wrong with who ordered the termination if it was justifiable. What is important is that once a political leader orders a termination, those responsible for managing the contract should follow the procedures provided in the contract to bring the contract to an end. Failure to do so may give the supplier or service provider a right to resist a termination which did not follow procedures.

7.5 Appointing a Contract Administrator/Supervisor

GN. 446–R.243 and R.319 emphasizes on the need for each contract, A PE to monitor the performance of a supplier or service provider entrusted to implement a contract. It is usually advisable to appoint a person within the organisation to oversee the administration of a contract.

In selecting the person responsible for day-to-day contract administration, the following should be considered:

- Where supervision needs to be conducted by a person with appropriate technical skills, such as for construction contracts or the installation of complex plant and machinery, contract administration is best allocated to the end user or an external consultant;
- Where contract administration is likely to be time-consuming or require skills not available within the PE, an external contract administrator should be appointed, such as a project manager for a major construction contract;
- Where goods are to be received and issued by stores, contract administration is best allocated to the stores staff;

- Where goods are to be delivered directly to the end user, contract administration is best allocated to either the end user or procurement staff, although there may still be a need for the goods to be included in the PEs record of assets;
- Where a consultant is required to work with the end user in conducting a study, providing advice or building capacity, contract administration is best allocated to the end user and particular counterpart staff may need to be designated to work with the consultant;

7.6 Contract delivery follow-up

7.6.1 Contract Delivery Follow-up Defined

One important aspect of contract management is to follow up on the state of what has been bought after it has been delivered, to ensure that the PE is satisfied. The extent of the follow-up may vary depending on the contract value or the commodity involved. Responsible PEs staff should establish any expected delivery follow-up requirements at the time the contract is being set up. In many cases problems arise during implementation because mitigating measures were not taken into account during the preparation of the contract.

It is normally required to deal with reports of unsatisfactory delivery immediately. Decision must be made on a supplier or service provider who has not delivered goods or services of the expected quality or who has not delivered on time on whether it should be considered as in contract default and what steps should be taken.

Contract delivery follow-up is also responsible for dealing with supplier or service providers whose goods, during the warranty period, become defective or fail to meet contract requirements as a result of faulty manufacture, material or workmanship.

7.6.2 Contract File

In order to allow for effective contract delivery follow-up, the Contract manager is required to open and keep a contract file after the contract is signed. The contract file supersedes the procurement file which is used for the purpose of keeping all important records of the procurement process until a formal contract is entered.

It is important to appreciate that proper recording keeping is fundamental to contract administration. Therefore a contract file is used for recording all information regarding the actual performance of the requirements of the contract.

7.6.3 Contract Delivery Follow up for Goods

Contracts administration for goods focuses on ensuring that goods are delivered on time, that the goods are acceptable to the PE, in terms of quantity, quality and supporting documentation, and that the PE meets its obligations to pay for the goods delivered in a timely manner

For goods contracts, contract delivery follow up encompasses the following:

- Ensuring that the actual dates when deliveries are due are agreed with the supplier, based on the date of contract effectiveness;

- Expediting during the delivery period, to ensure that manufacturing, freight-forwarding and deliveries are proceeding on schedule;
- Witnessing tests or approving samples, where required;
- Arranging collection, freight-forwarding, customs clearance or delivery, where the PE is responsible for any of these tasks;
- Arranging for receipt and inspection of the goods by the Inspection Committee
- Checking all documentation relating to the goods, such as delivery notes, and ensuring that documentation is correct before signing;
- Recording any missing, damaged or incorrect items and initiating claims against insurance policies or the supplier;
- Reporting any contractual problems or requests for contract amendments;
- Checking invoices and supporting documentation for payment are correct and arranging payment;
- Managing payments to suppliers by ensuring payment is effected on time to avoid paying interest on delayed payments
- Managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
- Ensuring all documentation and information relating to warranties and warranty claims are in good order;
- Ensuring that assets are registered and labelled, where required; and
- Ensuring all user guides, manuals, licences etc are kept with the goods or in an appropriate place.

Goods should be recorded in the PE's asset records and issued to the end user in accordance with applicable stores and supply management procedures.

7.6.4 Contract Delivery Follow up for Works

Contracts administration for works is often complex and time-consuming, as it involves supervision of the progress of the works, ordering variations where unforeseen conditions are encountered and measuring the work completed for payment purposes. For major contracts, the PE will normally use a full-time supervising engineer or project manager, who will exercise control and supervision of the contract on behalf of the PE. Where a project manager is used, the PE must:

- Ensure that the role of the project manager is clearly defined, in particular his powers to issue contract variations, which result in changes to the overall cost, completion date, quality and design of the works and to settle disputes;

- Establish arrangements for keeping the PE informed of contract progress, variations issued and any disputes; and
- Designate a contract administrator within the PE, who will be the contact point for the project manager.
- In works contract delivery follow up encompasses the following:
 - Ensuring that the actual mobilisation and completion dates are agreed with the contractor, based on the date of contract effectiveness;
 - Monitoring the overall progress of the works and the performance of the project manager;
 - Reporting any contractual problems or requests for contract amendments to the PMU;
 - Checking invoices and supporting documentation for payment are correct and arranging payment;
 - Managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
 - Ensuring all final acceptance and hand-over arrangements are completed and documented satisfactorily; and
 - Ensuring all final drawings, manuals etc are received and kept in an appropriate place.

7.6.5 Contract Delivery Follow up for Services

Contracts administration for services focuses on ensuring that services are delivered on time and to an acceptable quality. This can be difficult, as the quality of services, particularly consultancy services, can be subjective and difficult to measure. A good working relationship with the Consultant and ongoing monitoring of services is therefore important, to ensure successful contract performance.

The PE must also ensure that it meets its obligations, particularly where the performance of consultancy services is dependent on certain inputs or information from the PE or where staff must be made available to benefit from capacity building initiatives.

For services contracts, contract delivery follow up encompasses the following:

- Ensuring that the actual dates for mobilisation, key milestones or deliverables and completion are agreed with the supplier, based on the date of contract effectiveness;
- Monitoring contract performance to ensure that levels of service are maintained and that deliverables are submitted or completed on time;
- Ensuring that all required reports are submitted on time;
- Ensuring that, where required, the PE provides written comments or approvals to deliverables or reports in a timely manner;

- Ensuring that any resources, assistance or counterpart staff to be provided by the PE are made available at the appropriate time;
- Checking invoices and supporting documentation for payment are correct and arranging payment;
- Managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value when required, and releasing them promptly, when all obligations have been fulfilled;
- Notifying the service provider in writing of any failings in performance or failure to meet targets; and
- Ensuring all reports or deliverables are kept in an appropriate place and circulated or implemented as required.

7.7 Contract Amendments

Contract amendments are used to change the original contract. The need for an amendment may be the result of more negotiations, changes in the original requirement, or the need to deal with something unforeseen. The contractor must agree with the amendment.

When there is a need to amend a contract because the quantity, time, cost or quality is different from the original requirement, PE's agreement must be obtained before asking the contractor to implement the amendment. Normally the format for an amendment follows the form of the original contract. The amendment should identify, by using complete clauses, any changes, additions or deletions. Any aspect of the contract which will be affected by the amendment must be identified and dealt with in the amendment.

The contents of a contract amendment will be determined by the reason for the amendment and the term or condition which is being amended. However, all contract amendments must include the following details:

- The reference number and date of the contract which is being amended and a brief description of the subject of the contract;
- The number of the contract amendment i.e. "Contract Amendment No 1, 2, 3 etc";
- The date of the contract amendment;
- A clear statement of the part of the contract which is being amended, including relevant clause or annex numbers;
- A clear statement of how the contract is amended e.g. "the completion period is hereby extended by one week, to give a revised completion period of thirteen weeks" or "the quantity for item 3 is hereby increased by two (2) to give a revised quantity of five (5)";
- Where the contract price is being amended, a clear statement of the amount by which the contract is increased or decreased and the revised total contract price i.e. "the contract price

is hereby increased by a sum of Tsh 500,000 giving a revised total contract price of Tsh 3,500,000”;

- A statement that all other terms and conditions of the contract remain unchanged.

7.8 Contract Closeout

7.8.1 Contract Closeout Defined

A completed contract is one that is both physically and administratively complete. A contract is *physically complete* only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. These deliverable items include such things as reports, spare parts, warranty documents, and proof of insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made. A contract is *administratively complete* when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

Contract close out is a part of contract administration and therefore has the same purpose: to “...ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” Like contract administration, the extent of the effort involved in contract close out varies widely with contract type and the type of product or service procured. Therefore, there is no single procedure that can be used for the full range of contract types and products procured. Essentially it is a review and documentation of the fulfilment of all contract requirements.

Contract close out is quite simple with respect to a firm-fixed-price, off-the-shelf supply contract where the file contains documentation that the end product has been received, inspected and accepted and that full payment has been made. The process is more complex when large contracts containing progress payments, partial deliveries and many change orders are involved. However, the end objective is the same; to determine if the contractor fulfilled all requirements of the contract and if the PE fulfilled its obligations.

7.8.2 Contract Completion Checklist

Before closing a procurement file, the PMU should check that:

- All goods have been delivered, works completed and handed-over, services performed and contract deliverables received;
- There are no outstanding claims for missing or damaged items against either the supplier or an insurance company;
- All necessary payments have been made;
- The total payment total is correct, taking into account any contract amendments, variations, price variations and the amortisation of any advance payment;
- All guarantees and securities have been returned; and

- All necessary documentation is in place and correct.

7.9 Terminating a Contract

Generally it is not desirable to terminate an ongoing contract and it should normally be a last resort to a PE when things are not working well as planned. The grounds for termination of a contract will depend on the terms and conditions of the individual contract concerned. The following notes provide guidance on typical grounds for termination of a contract, but it is essential that a PE should be guided by the contract document itself:

- Termination for convenience: most contracts include a condition which enables the PE to terminate the contract for its own convenience, without there having been any default by the supplier. Where the PE terminates for its own convenience, it must make payment for all goods, works or services satisfactorily completed prior to termination and any other expenses incurred by the supplier.
- Termination for default: most contracts include a condition which enables the PE to terminate the contract, where the supplier has failed to perform its obligations under the contract or to comply with an agreement reached through arbitration or other dispute resolution mechanism. The contract will often specify a procedure by which the PE must formally notify the supplier of the default and give them time to correct the default, before actually terminating the contract. Where the PE terminates because of the supplier defaulting, it is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- Termination for corrupt practices: most contracts include a condition which enables the PE to terminate the contract, where the supplier has engaged in corrupt or fraudulent practices in competing for or implementing the contract. As with termination for default, the PE is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- Termination for insolvency: most contracts include a condition which enables the PE to terminate the contract, where the supplier has become bankrupt or insolvent. In such cases, there is normally no compensation to the supplier.
- Termination for force majeure: most contracts include a condition which enables the PE to terminate the contract, where the supplier has been unable to perform the contract for a specified period of time, due to an event of force majeure. In such cases, the PE must normally make payment for all goods, works or services satisfactorily completed prior to termination and any other expenses incurred by the supplier.

The PE should note that a contract will also give the supplier grounds for termination, which normally include failure by the PE to make payments which are overdue by a specified period of time, force majeure or failure of the PE to comply with an agreement reached through arbitration or other dispute resolution mechanism.

MODULE 8: MONITORING OF PROCUREMENT AND KEEPING OF RECORDS

PARTICIPANT'S INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Module Overview and Objectives Learning Outcomes Target Participants Module Content.
Session 1- Mandate of PEs in Complying with Procurement Act	10 Minutes	Responsibility of PEs to Comply with Procurement Law
Session 2:-PPRA's Mandate to Ensure Compliance with the law	100 Minutes	PPRA's Procurement Audits The Procurement Audit Process Preparation for Procurement Audits; Compliance and Performance Indicators
Session 3: Internal Monitoring of Procurement by the PE	30 Minutes	Role of Internal Auditor Role of Internal Auditor General
Session 4: Monitoring Procurement by CAG	30 Minutes	CAG's Mandate to Audit Procurement
Session 5: Investigation of Procurement Activities	30 minutes	Investigation by PPRA; Investigation by Regional Commissioner
Session 6: Keeping of Procurement Records	60 Minutes	The needs for Records Keeping The Importance of Procurement Records Challenges of Procurement Records Management Procurement Records to be kept Accountability in Procurement Records Management Records Retention and Disposal Scheduling
Session 7: Group Exercise in Records Management	60 Minutes	Identification of Records to be Kept in Procurement File; Identification of Records to be Kept on Contract File

Introduction: Introducing the Module

Session Objectives

To enable the participants have a clear picture of the objectives, learning outcomes and the content of the module and to agree on the proposed time allocation.

!In this session you will get to know the objectives, learning outcomes and contents of the module

Session 1: Mandate of PEs to Comply with PPA 2011

Session Objectives

To enable the participants to explain the importance of the PEs to comply with PPA 2011, its amendments of 2016 and Its Regulations.

!In this session you will get know the obligation of a Procuring Entity to comply with PPA 2011 and Its Regulations

Training Materials

Section 8.1 of the Reference Manual.

PPA 2011-S.48

GN. 446-R.87

Session 2: Mandate of PPRA in Ensuring Compliance with the Law

Session Objectives

To enable participants to state the role of PPRA in ensuring that PEs comply with the Public Procurement Act, its amendments of 2016, Its Regulations and various guidelines prepared by them.

!In this session you will get know the mandate of PPRA to carry out procurement audits, the audit process, the compliance and performance indicators, and corruption red flag indicators used.

Training Materials

Section 8.2 to 8.4 of the Reference Manual.

PPA 2011-S.9

GN. 446-R.88

Homework 8-1

Obtain a recent procurement audit report conducted by PPRA for your organization and check the scores provided for each indicator and sub-indicator as shown in Table 8-1.

In your opinion, do those scores represent the true situation in your organization? What do you think contributed to such a score and what do you think can be done to improve the situation?

Session 3: Internal Monitoring of Procurement by the PE

Session Objectives

To enable participants to describe the provisions of the law with regard to Internal Auditors responsibility to ensure compliance with the law.

! In this session you will get know the role of Internal Auditor and Internal Auditor General to ensure PEs compliance with the law

Training Materials

Section 8.6 of the Reference Manual.

PPA 2011-S.48

GN. 446-R.86

Session 4: Monitoring of Procurement by CAG

Session Objectives

To enable participants to explain the mandate of the CAG to audit procurement.

! In this session you will get know the mandate of CAG to audit procurement and the linkages between PPRA's audits and the CAG.

Training Materials

Section 8-7 of the Reference Manual.

Sections 48 of PPA 2011-S.48

GN. 446-R.15 (6), R.32 (1), R. and R.231 (1)

Group Discussion 8-1

Below is the extract from the CAG Report for 2013/14.

Procurement management: The following weaknesses were noted in this area which include:

- Procurement made without being incorporated in the budget
- Lack of Inspection and Acceptance Committees.
- Procurements of goods by cash
- Procurement without approval of the Tender Board
- Procurements made from unapproved suppliers
- Implementation of projects activities not in the annual procurement plan

Contract management: The following weaknesses were noted in this area which include:

- Non-performance of post-qualification assessment being among the evaluation criteria.
- Advance payment made to contractors to facilitate mobilization of equipment which were not found at site.
- Substandard work related to construction works
- The Council selected the contractor who was in Class V instead of the required Class IV.
- Slow pace in the implementation of project.
- Missing Tender documents
- Contracts entered into prior to conducting feasibility study

Discuss in groups of two or three to what extent are the problems mentioned in the CAG report occur in your respective LGAs and suggest ways to overcome them.

Session 5: Investigation of Procurement Activities

Session Objectives

To enable participants identify the mandate of PPRA and Regional Commissioners to conduct investigations on procurement activities.

! In this session you will get know the mandate of PPRA and the Regional Commissioner to conduct investigations and the disciplinary action that may be taken for any uncovered wrongdoings.

Training Materials

Section 8.8 of the Reference Manual.

PPA 2011-S.10 to 20 and the Public Procurement (Amendment) Act, 2016

GN. 446-R.89 and GN. 330-R.33 to R.39

Session 6: Procurement Records Management

Session Objectives

To enable the participants to state the importance of records keeping by a PE, legal requirement to maintain records and categories of records to be maintained.

! In this session you will get know the requirements of PPA 2011 with regard to records management and categories of records to be maintained as well as the accountability to keep procurement records

Training Materials

Section 8.9 of the Reference Manual.

PPA 2011-S.61

GN.446-R.15

Group Discussion 8-2

Identify and Discuss in groups of two for ten minutes indicators of failure to manage procurement records by the PE.

Each Group should come up with a list of at least ten indicators which shall be presented to the whole class for discussion.

Session 7: Group Exercise in Records Management

Session Objectives

To enable participants to identify and appreciate records that are required to be maintained in the procurement and contract file.

! In this session you will be exposed to procurement records that must be maintained in accordance with the requirements of PPA 2011 and GN. 446

Training M

Section 8.9 of the Reference Manual.

PPA 2011-S.61

GN.446-R.15

Group Exercise 8-2

The Class will be divided into groups of two or three and will be directed by the Instructor either to list down all records that must be maintained in the procurement file or those to be maintained in the contract file.

At the end each group will be required to present its list to the rest of the Class.

MODULE 8

MONITORING OF PROCUREMENT AND PROCUREMENT RECORDS KEEPING

REFERENCE NOTES

8.1 Mandate of PEs in Complying with Procurement Act

All PEs as defined in the Public Procurement Act are required to comply with the law. PPA 2011-S.48 (1) puts the responsibility to the Accounting Officer to ensure that all procurement of goods, works or services shall be done in accordance with the procedures prescribed under the Act or Regulations.

It is therefore the responsibility of the Accounting Officer and any person involved with procurement activities of the organisation to ensure compliance with the Act and the Regulations, failure of which he shall be held accountable- Section of PPA 2011-S.48(4) and (5).

8.2 Mandate of PPRA in Ensuring Compliance with Law:

Amongst the objectives establishing the PPRA are to ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices, and to monitor compliance of procuring entities to the PPA 2011 and its regulations.

The specific functions of the PPRA directly related to monitoring of procurement are contained in PPA 2011-S.9 and include:-

To monitor and report on the performance of the public procurement systems in the United Republic of Tanzania and advise on the desirable changes,

To conduct periodic inspections of records and proceedings of the procuring entities to ensure full and correct application of the PPA 2011;

To monitor the award and implementation of public contracts with a view to ensuring that:

- Such contracts are awarded impartially and on merit;
- The circumstances in which each contract is awarded or as the case may be, terminated, do not involve impropriety or irregularity;
- The implementation of each such contract conforms to the terms thereof.

To institute

- That Procurement audits during the tender preparatory process,
- Contracts audits in the course of execution of an awarded tender, and
- Performance audits after the completion of the contract in respect of any procurement as the case may be.

Further GN. No. 446-R.88 amplifies the role of PPRA with regard to procurement, contract and performance audit.

The purpose of this chapter is to assist a PE prepare for the audits that are conducted by PPRA.

8.3 Objectives of PPRA's Procurement Audits

The primary objective of the procurement audits is to: provide PPRA with independent information, assurance and opinion about economy, efficiency and effectiveness in the use of public funds; ensure that all eligible suppliers, contractors and service providers are given equal opportunity to compete in providing goods, executing works or providing services, and; ensure that there is integrity, accountability, fairness and transparency in the procurement process. The secondary objective is to identify weaknesses in complying with the provisions of the PPA and its Regulations so as to enable appropriate measures to be taken including implementation of appropriate capacity building strategies.

8.4 The Procurement Audit Process

8.4.1 The Process

The approach to be followed by PPRA in carrying out procurement audit is prescribed in GN. 446-R.88. It encompasses the following:

- Before embarking on the audit, PPRA shall notify the PE on the intention, objectives and compliance indicators to be used for the audit;
- The PE shall make available all the documents requested for the audit in the timely manner;
- There would be two meetings (1) kick off meeting and (2) wrap up meeting with the Management Team to brief them about the audit.
- On completion of the audit, and before issuing the final report, PPRA shall submit to the PE the audit findings;
- The PE shall respond to PPRA's audit findings within 14 days of receiving the audit report; and
- Finally the audit report shall be submitted to the relevant committee of the Board of PPRA which shall approve the audit report, and its recommendations thereof shall be forwarded to the PE.

To facilitate the audit process a PE is required to make available a dedicated office space to be used by the auditors and for keeping documents during the audit and one staff should be dedicated to work with the auditors to make sure that all documents that are requested by the auditors are provided/produced in time.

8.4.2 PEs Preparation for the Procurement Audit

A PE is required to make available various information to PPRA to facilitate the audit process. Experience shows that many PEs start compiling the information required for the audit when they receive notification from PPRA. It is a good practice for a PE to have the procurement audit in mind when carrying out procurement, and therefore should continuously keep up to date all the necessary information which shall be required for the audit which includes the following:

- A list of all actual procurement (classified into goods, works, consultancy services and non-consultancy services) and their respective values.
- Procurement plan.
- All tender files.
- PE detailed budget.
- All tender evaluation reports.
- Minutes of all tender related meetings e.g. tender opening, etc.
- Audit reports (external, internal, special reviews, investigations, etc).
- Contract documents.
- Tender notices and adverts.
- Delivery certificates/notes/final payment certificate.
- Inspection reports.
- Notifications of tender awards.
- Bidders register.
- Status of the awarded contracts.
- Minutes of all tender negotiations.
- PE Organization Chart.
- List of rejected/cancelled tenders.
- Minutes of tender board meetings
- Stock verification report.
- Complaints log.
- General procurement correspondence files.
- Summary of payments made, classified by vendor and tender.
- Bid securities, performance securities, warranties etc.
- Minutes of site meetings, site supervision reports, progress reports etc

8.4 Compliance and Performance Indicators

In order to measure compliance with the Law, PPRA uses Compliance and Performance Indicators (CPIs) which were adopted from the System of Checking and Mapping Procurement. These are shown in Table 8.1

Table 8.1: Compliance and Performance Indicators used by PPRA

No	Indicator	Max Score
1	Institutional Set up and Performance	10.0%
1.1	Institutional set up	5.0%
1.1.1	Properly established Tender Board	1.0
1.1.2	Notification to PPRA	0.5
1.1.3	Establishment of procurement management unit	1.0
1.1.4	Establishment of PMU sub vote and allocation of fund	0.5
1.1.5	Existence of Internal Audit Unit	0.5
1.2	Performance Measures	
1.2.1	Knowledge of PPA and PPR for members of TB	0.5
1.2.2	Knowledge of PPA and PPR for PMU staff	0.5
1.2.3	Knowledge of PPA and PPR for IAU staff	0.5
1.3	Compliance of Organs to their stipulated powers and Responsibilities	5.0%
1.3.1	Accounting Officer exercise all his powers and responsibilities and observes independence.	1.0
	TB exercise all its powers and responsibilities and observes independence	1.0
	BAA exercise all its powers and responsibilities and observes independence	0.5
	PMU exercise all its powers and responsibilities and observes independence.	1.0
	UD exercise all its powers and responsibilities and observes independence.	1.0
	IAU exercise all its powers and responsibilities and observes independence.	0.5
2.0	Appropriate preparation and implementation of Annual Procurement Plan (APP)	10.0%
2.1	Properly prepared APP	3.0%
2.1.1	Use of appropriate PPRA's templates and tender numbering as per PPRA's guidelines	0.6 0.6
2.1.2	Tender processing time allocated properly	0.6
2.1.3	Proper aggregation of requirements	0.6
2.1.4	Proper arrangement of TB/committees meetings	0.6
2.2	The APP approved by Budget Approving authority	1.0%
2.3	GPN published in the tender portal and its summary in TPJ	1.0%
2.4	APP implemented properly	5.0%
2.4.1	APP adhered to (Unless there are acceptable justifications)	2.0
2.4.2	Efficiency in implementing the APP	3.0
2.4.2.1	From submission of requirements by User Department to Tender Advertisement	1.5
2.4.2.2	From tender opening to contract signing	1.5

3.0	Appropriateness of the Tender Process	20%
3.1	Approval to start the procurement process	1.0%
3.1.1	Initiation of need by user department	0.25
3.1.2	Confirmation of funds availability by vote book accountant	0.25
3.1.3	Approval to proceed with procurement	0.25
3.1.4	Confirmation of funding by the AO	0.25
3.2	Properly prepared tender documents	1.5%
3.2.1	Used Standard Tender Documents issued/ approved by PPRA	0.3
3.2.2	Arrangement and completeness tender documents	0.3
3.2.3	Neutral specification/ToR	0.3
3.2.4	Properly filled tender data sheet	0.3
3.2.5	Unambiguous evaluation criteria	0.3
3.3	Appropriate methods of procurement	1.0%
3.4	Approval of advert and tender document	1.0%
3.5	Approval of shortlist of suppliers/contractors	1.0%
3.6	Public advertisement of bid opportunities	1.0%
3.7	Adequate time for preparation of bids	1.0%
3.8	Submission of tender adverts to PPRA	1.0%
3.9	Tenders properly received and opened	1.0%
3.10	Clarification received and given properly	-2.0%
3.11	Proper evaluation of bids	1.0%
3.11.1	Evaluation team properly appointed	0.25
3.11.2	Evaluation team signed code of conduct/covenant forms	0.25
3.11.3	Evaluated by using criteria explicitly stated in the tender documents	0.25
3.11.4	Evaluation report contain all necessary attachments	0.25
3.12	Approval on recommendation for award	1.0%
3.13	Proper negotiation of bids	1.5%
3.13.1	Appointment of negotiation team	0.5
3.13.2	Preparation and approval of negotiation plan	0.5
3.13.3	Appropriateness and completeness of negotiations	0.5
3.14	Approval of negotiation minutes and award recommendation	1.0%
3.15	Issue of notice of intention to award contract	1.0%
3.16	Proper communication of awards	1.0%
3.17	Contract awarded within the tender validity period	1.0%
3.18	Publication of procurement awards in the Tender Portal and TPJ	1.0%
3.19	Notification of unsuccessful bidders	1.0%
3.20	Using procedural forms issued by PPRA	1.0%
3.21	Approval by the Authority on rejection of all tenders	-2.0%
4.0	Appropriateness of contract preparation, formation and implementation	40.0%

4.1	Contract preparation and formation	8.0%
4.1.1	Contract prepared by PMU and approved by TB	2.0
4.1.2	Arrangement and completeness of contract documents	2.0
4.1.3	Vetting of contracts by AG or Legal officers of the PE	2.0
4.1.4	Proper signing of contracts	2.0
4.2	Appropriate management of general contracts administration issues	8.0%
4.2.1	Appropriate management of performance securities, insurances, advance payment guarantees (whichever is appropriate)	3.0
4.2.2	Timely issuance of instructions	2.5
4.2.3	Management meetings are held (records prepared and signed)	2.5
4.2.4	Dispute resolution	-1.0
4.2.5	Notice of termination of contracts are submitted by the AO to PPRA	-1.0
4.2.6	Submission to the Authority proposals for debarment of firms/individual	-1.0
4.3	Appropriate management of time control issues	8.0%
4.3.1	Timeliness of site possession/contract commencement	1.5
4.3.2	Appropriate extension of contract duration/delivery period	1.5
4.3.3	Appropriate application of remedies for delays	1.5
4.3.4	Quality of the project/service programme	1.5
4.3.5	Adherence to project/service programme	1.0
4.3.6	Progress reports are prepared	1.0
4.4	Appropriate management of quality control issues	8.0%
4.4.1	Appointment of Project Managers/ supervisor	1.0
4.4.2	Confirmation of Appropriate qualification of Project Managers	1.0
4.4.3	Availability and quality of implementation reports (service delivery reports)	1.0
4.4.4	Appointment of inspection and acceptance committees	1.0
4.4.5	Appropriate qualification of inspection committees	1.0
4.4.6	Availability of inspection reports	1.0
4.4.7	Availability of quality assurance plan	1.0
4.4.8	Adherence to quality assurance plan	1.0
4.5	Appropriate management of cost control issues	8.0%
4.5.1	Certification of payments	2.0
4.5.2	Payment certificates are attached with inspection reports/measurement sheets	2.0
4.5.3	Payments made on time	2.0
4.5.4	Contract close out, rectification of defects and payment of retention money	2.0
4.5.5	Justification for variations	-1.0
4.5.6	Appropriate procedures followed in issuing variation orders/contract amendments	-1.0
5.0	Record Keeping	10.0%
5.1	Availability of complete records (<i>Per Tender</i>)	4.0%
5.2	Proper arrangement and location of procurement records (<i>Per Tender</i>)	2.0%

5.3	Availability of adequate space for keeping procurement records (General Information)	2.0%
5.4	Availability and adequacy of storage facilities for procurement records (General Information)	2.0%
6.0	Implementation of systems prepared by PPRA (PMIS/CMS)	10.0%
6.1	Submission of APP	2.0%
6.2	Submission of complete checklist	2.0%
6.3	Submission of contract completion report	2.0%
6.4	Submission of monthly procurement reports	1.0%
6.5	Submission of quarterly procurement reports	1.0%
6.6	Submission of annual procurement reports	2.0%
7.0	Handling of complaints	-10%
7.1	Improper handling of complaints	- 5.0%
7.2	Submission of complaints decisions to the Authority	- 5.0%
GRAND TOTAL		100%

8.6 Internal Monitoring of Procurement by the PE

PPR 2011-S.48 (1) requires the Executive Director of an LGA to ensure that procurement of goods, works or services is carried out in accordance with the Act or Regulations. To ensure that this is achieved PPA 2011-S48 (2) requires the Internal Auditor to include in his quarterly audit report to state whether there is compliance. The same Section requires that the copy of the quarterly report be submitted to PPRA.

Further GN.446-R.86 requires the Head of Internal Audit to submit the quarterly Internal Audit Report to PPRA within 14 days after the same has been submitted to the Accounting Officer. If PPRA finds any violation with PPA 2011 and its Regulation, it shall require the Accounting Officer to submit more details of procurement whose violation has been observed.

Given this responsibility of complying with the Act, it is therefore the duty of a PE through its Internal Audit Unit to ensure that the organisation complies with the procurement act and its regulations. The Head of PE needs to put into place an Internal Control System to ensure that procurement law is complied with.

To facilitate auditing by the Internal Audit Department PPRA has prepared Guidelines for Procurement Auditing by Internal Auditors.

8.7 Monitoring of Procurement by the Controller and Auditor General

Further to the requirement of the Internal Auditor to ensure PEs compliance with PPA 2011-S.48(1), the CAG is also, in accordance with PPA 2011-S48(3) to ensure compliance with the Act through his Annual Statutory Audits.

Other implied role of the CAG office to monitor procurement in country includes the requirement of PPRA to submit copy of its Annual Performance Report, which contains procurement audit findings of the PEs, to the CAG in accordance with PPA 2011-S.29(1)(b).

PPA 2011-S.61 (1) requires procuring entities to maintain a record of its procurement proceedings in which it is involved, including decisions taken and the reasons for it and such record to be kept for a period of not less than five years from the date of completion of the contract and be made available when required to the Minister and the Controller and Auditor-General. This provision has been reinforced by GN.446-R.15 (6).

The requirement placed for PEs to report on any emergency procurements (GN.446-R.64 (1) and GN.330-R.32 (1)); to submit signed contracts and letter of award (GN.446-R.109 and R.232 (1) to CAG among other oversight bodies, is also a procurement monitoring role by CAG.

To avoid possibilities of duplicating efforts, PPRA and the National Audit Office (NAOT) signed a Memorandum of Understanding with the objective of collaborating in the following areas;

Conducting procurement audits, special investigations in public procurement, performance and forensic audits in relation to public procurement by exchanging and sharing technical expertise and information whenever it is necessary, and Co-operating in building the capacity of staff of the two institutions on the following areas: training on the basic techniques for carrying out forensic and value for money audits in relation to public procurement;

Training on the application of PPA and its Regulations; sharing of guidelines for procurement audits, forensic audits and value for money audits in relation to public procurement.

Through the signed MOU it has been possible for PPRA to share with NAOT its procurement audit reports and for the CAG to include the findings of those reports in his Annual Audit Report.

8.8 Investigation of Procurement activities

8.8.1 Investigations by PPRA

PPRA as a Regulator of procurement is mandated to carry out investigation on any aspect of procurement.

GN. 446-R.89 allows PPRA to conduct procurement investigation on its own initiative or through the request of budget approving authorities. PPRA's request for information to assist in such an investigation shall be made to any member of the PE or any other person it considers that can assist in that matter, and the information must be provided within seven days from the day it is requested. Note that failure to provide information is an offence under PPA 2011-S.104 (2) (a).

Refer to PPA 2011, S.10 to 20 and GN. 446-R.8; read together with The Public Procurement (Amendment) Act, 2016

The need to establish mechanism for PPRA to cooperate with other law enforcement organs with regard to the outcome of its audits and investigation, and in enforcement of the findings is emphasized in GN.446-R.90. The contemplated law enforcement organs include the Controller and Auditor General, the PCCB, the Director of Prosecution, Professional Bodies etc.

After investigation PPRA is required to submit a written report of its findings and recommendation of the actions to be taken by the competent authorities. Actions that may be recommended according to GN. 446-R.91 (2) are shown in Box 8.1 and they are in accordance with PPA 2011-S.16, 19 & S20. Following the submission of such

reports together with the recommendations, the competent authorities are required to respond within 14 days from the date of receipt of recommendations indicating the actions taken, and in addition they are required to submit a report of the status of implementation of the recommendation within three months from the date of receiving the recommendations.

Box 8.1: Possible Disciplinary Recommendations by PPRA

- (2) There recommendations may include the
- (a) disciplining of the accounting officer, chairman or member of the tender board, the head of procurement management unit, a member of the tender evaluation committee or any other officer concerned with the procurement process;
 - (b) replacement of the head of procurement management unit, the chairman, or any member of the tender board, as the case may be;
 - (c) termination of the procurement proceeding;
 - (d) rectification of the contravention by taking such actions as may be necessary to rectify the same;
 - (e) suspension of the officer concerned to participate in pro

8.8.2 Investigations by Regional Commissioner

In addition to the investigation that may be conducted by PPRA, GN 330-R.33 to 39 provides for conduct of investigations by the Regional Commissioner of any aspect of procurement of a Council. Issues to note include the following:

Refer to GN. 330-R.33 to 39

- The investigations shall be carried out in consultation with PPRA;
- Investigations may be undertaken by RC on his own initiative or as a result of representations made to him;
- RC shall inform the Executive Director the results of the investigations and make such recommendations as he considers necessary in respect of the manner in which the investigation was carried out;
- Disciplinary actions may be undertaken by the Council or Minister against an officer or Director found to flout the procurement procedures.

8.9 Procurement Records Keeping

8.9.1 The Need for Records Keeping

Records mean a thing constituting a piece of evidence about the past, especially an account kept in writing or some other permanent form. In a broader form records means recorded information regardless of form or medium created, received and maintained by any institution or individual in

the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business. Records provide evidence of decisions and actions taken as part of the execution or support of procurement activities.

According to ISO – 15489-1, Records Management is a field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. The purpose of procurement records management is to enhance accountability, transparency and efficiency in the execution and support of the PE's procurement activities, to protect the PE's operational, legal and financial interests, and to preserve and manage PE's knowledge and memory.

8.9.2 Importance of Records

Organization's ability to function effectively and give account of its actions will be undermined if sound records management principles are not applied. Procurement records play a significant role as evidence of purchases of goods and services. Unorganized or otherwise poorly managed records mean that an organization does not have ready access to authoritative information, to support sound decision making or delivery of programs and services.

Sound records management is a critical component for good governance, effective and efficient administration, transparency, accountability and delivery of quality services to the citizens.

All of the elements for effective procurement process depend upon an effective records management infrastructure. Without a records management infrastructure, PEs are incapable of effectively managing current operations, and have no ability to use the experience of the past for guidance. Records are inextricably entwined with increased transparency, accountability and good governance in the procurement process.

Without records:

- There can be no rule of law and no accountability;
- Officials are forced to take decisions on an ad hoc basis without the benefit of an institutional memory;
- Fraud cannot be proven and meaningful audits cannot be carried out; and
- PEs procurement actions are not open to review.

The effectiveness of development projects must suffer as there will be no means of verifying that funds earmarked for development are used as intended.

Lack of records management is directly linked to the persistence of corruption and fraud. Experts in procurement recognize that well-managed record systems are vital to the success of most anti-corruption strategies. Records provide verifiable evidence of fraud and can lead investigators to the root of corruption. Well-managed records can act as a cost effective restraint.

8.9.3 Procurement Records Management

The overall goal of procurement records management is to make the public procurement process more transparent to ensure accountability and to reduce wastage of public resources. The PPA 2011 and GN. 446 require PEs to manage procurement records properly and effectively.

Among the challenges faced by PEs is major weakness in records management. In most PEs management of procurement records PEs is not given enough attention in terms of resource allocation, personnel, equipment, space and accommodation. It is important that management of procurement records should be mainstreamed and integrated with the overall records and information management function in the PEs.

Some of the indicators of failure to manage procurement records effectively by PEs include the following:

- Non-maintenance of an accurate, comprehensive and complete file for each procurement;
- Non-compliance with the regulatory and legal requirements for records management;
- Existence of a huge backlog of unfilled procurement documents;
- Absence of record keeping policy and regulations;
- Non-assignment of procurement records keeping responsibility to a specific officer or office;
- Officers keeping official records in personal folders, and desks;
- Absence of co-ordination of management of records in entities;
- Disorganized storage of and inadequate accommodation for closed records;
- Mixing of active records with the closed ones which impedes access and retrieval;
- Absence of an official filing scheme and failure to update where the file scheme is available for records;
- Inadequate accommodation and security safeguards for records;
- Lack of senior management support and commitment to records management services which leads to low ranking of records services;
- Fragmentation of procurement records, where different documents pertaining to a single procurement activity are kept by different offices, such as accounts, registry, and stores section;
- Existence of different versions of the same information and the absence of a definitive or authentic version;
- Unauthorized access to, alteration or destruction of records;
- Inability to locate and retrieve needed document due to disorganized storage;
- Absence of reliable records control systems;

- High incidence of lost and missing files which necessitates opening of many temporary files;
- Inadequate and weak file movement control procedures;
- Unqualified staff in charge of records;
- Huge backlogs of closed and unorganized files; and
- Inappropriate, dilapidated and inadequate filing equipment.

A well-structured record keeping system is a key component for effective and efficient delivery of services and a foundation of accountable and transparent administration. It is important to have procedures and control systems to ensure that complete, accurate and comprehensive records are created and maintained, that records can easily be located and retrieved when needed, that records are not destroyed when still required and, most importantly, that responsibility for the records management function is assigned.

8.9.4 Procurement Records to be kept

PPA 2011 – S.61 requires a PE to maintain procurement records for a period of not less than five years from the date of completion of the contract. The kept records must be made available when required by the Minister of Finance and CAG.

Refer PPA 2011-S.61 and GN. 446-R.10 & R.15 on Records to be kept by PE.

The requirement of records keeping is further emphasized by GN. 446-R.10 (1) & (2) so as to ensure transparency and fairness. Further GN.446-R.15 gives a list of records that can be kept and how such records can be shared. These include description of goods or services, the procurement process/method adopted, names of all participating firms, the evaluation process and the contract award process.

For the purpose of keeping procurement and contract management records, a PE is required to open a procurement file and a contract file respectively.

The Procurement file is important in the management of a procurement contract. The file is opened for the purpose of processing the procurement before the contract is awarded. It contains the following:

- Procurement initiation requisition.
- All correspondence on the procurement.
- Bid document
- Bids received.
- Evaluation and award of the contract.
- Information on the award of the contract and particulars of the contract.

The contract file shall be opened after the procurement contract is signed and it shall be opened by the Contract Manager. The file shall be used for recording the actual performance of the requirements indicated in the contract. The file should contain the following:

- Signed original procurement contract;
- Any signed modifications to the contract;
- Contract correspondence between the parties;
- Information on the performance;
- Correspondence on the contract;
- Management progress reports;
- Minutes of meetings of project team;
- Payment records and close up documents;
- Copy of performance security (where required); and
- Any other relevant information.

PPRA has prepared a guide of records to be maintained in the procurement and contract file as shown in Annex 8.1

8.9.5 Accountability for Procurement Records Management

There are many users of procurement records including the Procurement Management Unit, User Departments, Financial Auditors, Procurement Auditors and other authorized persons. However, the accountability for procurement records falls under the following:

Accounting Officer

The Accounting Officer – through the Council Human Resource Officer - of the PE is required under PPA 2011-S.48 to ensure that his PE complies with the Act, the Regulations and any directions of PPRA. This implies that he is required to ensure that requirements with regard to keeping procurement records as provided in PPA 2011-S.61 and GN. 446-R.15 are complied with.

Head of Procurement Management Unit

The Head of Procurement Unit is responsible for the overall management of procurement records of the PE. PPA 2011-S.38 (l) requires the Head of PMU to ensure that he keeps procurement records

User Department

User Department is responsible for the overall management of contract records as per PPA 2011-S39 (1) (i).

8.9.6 Records Retention and Disposal Scheduling

Effective records management requires controlling records throughout their life cycle of creation, use, maintenance, review, appraisal, preservation and disposal. It is important to plan the actions to be taken on records at various stages in their life in order to avoid their uncontrolled accumulation and consequently taking up valuable office space. A records retention and disposal schedule is a policy document that prescribes the retention periods for specified categories of records and the applicable disposal action. The objectives of a records retention and disposal schedule are:

To facilitate identification and selection and retention of records needed for conduct of business;

- To minimize requirements for filing equipment and space, as the records that are not needed for current operations will be removed from the office for storage in a departmental records room or the national archives; and
- To facilitate identification and procedural destruction of records those are judged to be of no further fiscal or administrative value.

A records retention and disposal schedule should be as comprehensive as possible and cover all the records of a Procuring Entity. According to PPA 2011-S.61 the procurement records must be retained for period not less five years from the date of completion of a contract.

ANNEX 8.1

PROCUREMENT RECORDS KEEPING

Details of Records to be Included in the Procurement and Contract File.

Chronological Mapping of Procurement Records as per PPA and Regulations	
S/n	Record
	A: Records to be Maintained in the Procurement File.
1.	Copy of Annual Procurement Plan
2.	Minutes of Management Meeting which approved the Procurement Plan
3.	Requisition of Procurement to initiate Process;
4.	Approval of Procurement Method
5.	Minutes of TB Meeting that approved tender advert, bidding documents (advert/specifications/TOR/ Statement of Requirements);
6.	Copy of Adverts/Invitation for Tenders/Quotations where non- open method was employed
7.	Tender Document/ RFP issued to Bidders (if any);
8.	Clarifications received & Issued to Bidders (if any);
9.	Minutes of Pre-bid meeting (if any);
10.	Amendments/addendum to Bidding Document/RFP issued to bidders (if any) including Notice of Extension of time for submission of bids (if any);
11.	Minutes of Tender Opening;
12.	Tenders submitted
13.	Letter of appointment of evaluation committee;
14.	Evaluation report with all the necessary attachments, particularly all correspondences with bidders regarding notification of arithmetic errors and acceptance of the same
15.	Deficiencies noted by Procurement Unit while reviewing the evaluation report and correspondence with the evaluation committee on the same
16.	Any Declaration of Interest by members of Tender Committee before adjudicating on a particular tender;
17.	Deficiencies noted by the Tender Committee while adjudicating on the Tender and their directives to Procurement Unit on the same;
18.	Minutes of the Tender Committee that approved recommendations of award;
19.	Letter of appointment of negotiation team (if any);
20.	Approval of negotiation plan;
21.	Letter inviting firm to negotiate (letter of intent);
22.	Minutes of Negotiation
23.	Approval of contract award recommendation
24.	Letter of Intent to award
25.	Report on any complaints received from the bidders;
26.	Letter of award/Letter of Acceptance;
27.	Letter of Notification of Unsuccessful bidders;
	B: Records to be Maintained in the Contract File
28.	Contract documents
29.	Approval of Contract documents
30.	Approval of contract amendments (if any);
31.	Copy of performance guarantee where applicable;
32.	Copy of Signed Contract;

Chronological Mapping of Procurement Records as per PPA and Regulations	
S/n	Record
33.	Copy of advance payment guarantee, where applicable
34.	Records for site handover where applicable;
35.	Notice to commence works/services where applicable;
36.	Instructions or Formal Communications;
37.	Approval for variation orders/ contract amendments where applicable;
38.	Variation orders/change order;
39.	Progress reports, where applicable;
40.	Letter of appointment of Inspection and Acceptance Committees for Goods
41.	Inspection and Acceptance Committee report;
42.	Certificates/Delivery Reports/ Goods Receiving Notes;
43.	Payment Certificates (Buildings and Civil Works) to be accompanied by testing results & measurement sheets where applicable;
44.	Letter of Credit/Invoices/ Payment Vouchers (for goods);
45.	Claims submitted by the supplier, Contractor, consultant or service provider
46.	Claim Valuation Reports
47.	Disputes (if any) and how they were handled – Records of settlement proceedings
48.	Snag list (list of defect works to be corrected during defect liability period, if any
49.	Final Inspection and Handover Report;
50.	Final Account and Contract Closure Report

MODULE 9: ASSET MANAGEMENT AND THEIR DISPOSAL

PARTICIPANT'S INSTRUCTIONS

Module Outline

Session	Duration	Components
Introducing the Module	10 Minutes	Module Overview and Objectives Learning Outcomes Target Participants Module Content.
Session 1- Importance of Effective Stores Management	30 Minutes	Effective Stores Management and Its Impact on Organisations Operations Differentiating Stores Management and Stock Control
Session 2:-Challenges of Asset Management in LGAs	60 Minutes	Share by the Participants key Challenges with regard to Asset Management in their Organisation and How to Overcome them
Session 3: Responsibilities of with Respect to Stores Management	30 Minutes	Role of Head of PMU Role of Head of Stores
Session 4: Disposal of Public Assets by Tender	90 Minutes	Authority to Dispose an Asset; Disposal Plan Disposal Process

Introduction: Introducing the Module

Session Objectives

To enable participants to state module contents, learning outcome and proposed time allocation.

!In this session you will get to know the module contents and its objectives

Session 1: Importance of Effective Stores Management

Session Objectives

To enable participants to appreciate the importance of effective stores management to ensure effective utilisation of resources

! In this session you will be exposed on how good stores management can enable a PE to timely deliver its services and save money in its operations.

Training Materials

Section 9.1 of the Reference Manual.

Session 2: Challenges of Asset Management in LGAs

Session Objectives

To enable participants to describe challenges faced by PEs in managing their assets and possible solutions to overcome them.

! In this session you will be able to identify challenges that many LGAs face with regard to management of assets and what can be done to overcome those challenges

Training Materials

Section 9.2 of the Reference Manual.

Group Discussion 9-1

In groups of two or three Identify twenty challenges that you face in your organization with regard to assets management. Out the list of twenty, identify five critical challenges in the order of severity and propose solutions to overcome them

Session 3: Responsibilities of with Respect to Stores Management

Session Objectives

To enable participants to describe responsibilities of various individuals in the PE in managing assets and stores

! In this session you will be able to identify the role of Head of PMU and Head of Stores in managing the organisations assets.

Training Materials

Section 9.3 of the Reference Manual.

Session 4: Disposal of Public Assets by Tender

Session Objectives

To enable participants to carry out tender process for disposal of a public asset.

!In this session you will be able to identify process of disposing public assets.

Training Materials

Section 9-4 of the Reference Manual

GN. 446-R.329 to 339

MODULE 9

ASSET MANAGEMENT AND THEIR DISPOSAL

REFERENCE NOTES

Importance of Effective Stores Management and Stock control

Stores play an important role in PEs operations. Effective stores management and stock control ensures timely availability of essential items for efficient operations of the PE with minimum blocking of capital by timely ascertaining the needs of stores and arranging such materials in the most efficient, economical and expeditious manner.

Store is a place where excess materials are kept which will be used as and when required. It follows that stores management is to “receive materials, to protect them while in storage from damage and unauthorized removal, to issue the material in the right quantities, at the right time to the right place and provide these services promptly and at least cost.

Stores Management encompasses the entire range of functions which affect the flow, conservation, utilization, quality and cost of materials. These activities include materials planning, programming, purchasing, inventory control, receiving and warehousing, transportation, materials handling and disposal of scrap.

Whatever its size and the volume of its stocks, the success of a PE in delivering its services can depend to a large extent on the efficient management of its Store and stocks. The items in the store cost money; if, through bad stores Management, there are too many held in the Store or if the wrong items are being held, money will be “tied up” – money which might be required to buy other, needed items or to pay the many expenses involved in running the PE. Conversely, if poor stores management has led to shortages of needed items, there will be hold-ups and interruptions in delivering of services and thereby causing bad image to the organization.

If items in the Store are lost, stolen or damaged in any way, the organization loses money and will fail to deliver its services. It also costs money to run the Store – on building maintenance and/or rent, on salaries of stores personnel, on containers and equipment, on heating or cooling, on lighting and power. All these aspects need to be considered in order to determine the need and the size of stores that an organization requires.

The term storekeeping covers the actual handling of the items or materials received into, held in and issued from the Store. The work involves:

- Receiving items and materials, including their inspection;
- Storing the various stock items in the most appropriate fashion, binning and/or racking them by the best methods, and placing them in such a way that any item or material in the store can be located quickly and easily when it is required;
- Ensuring the safety of all items and materials whilst in the store – that is, protecting them from pilfering, theft, damage and deterioration; and

- Ensuring, when necessary, that items issued from the store are so packed that they will not be damaged or caused to deteriorate whilst in transit to their destinations.

Stock control on the other hand comprises mainly the clerical and administrative functions of stores work. It involves:

- Ensuring that the right types and qualities of items needed for the services offered by the organization are always available when required;
- ensuring that stock is issued in the correct sequence, that is, “first in first out”, so that “older” stock is not allowed to deteriorate by being kept too long in the Store, for instance because it has been hidden from view by more recently received stock;
- Maintaining records showing the “movement” of items into and out of the Store, controlling and monitoring those movements and maintaining full records of the items in the Store;
- Ensuring that the correct “stock levels” of the various items are set and are maintained, that orders and reorders are made (or requested to be made) in good time, and that what is ordered is received;
- Checking, counting or otherwise measuring stock to ensure that records are accurate and that no losses are occurring due to pilfering, theft, damage or poor storage; and
- Pricing and valuing the items in the Store.

From the above it is seen that it is important for PEs to give serious attention to stores management and stock control. Many organizations put a lot of effort in cash management forgetting that stored items also represent cash, and therefore the utmost economy in their ordering, issuing, use and accuracy in all transactions relating to them need to be given top priority as well.

Challenges of Asset Management

Despite of the importance of managing assets as discussed above, many PEs faces challenges in managing their assets as follows:

- Improper use of assets;
- No clear demarcation on who is responsible for asset register between PMU & Treasurer;
- Late codification of assets;
- Lack of maintaining of assets inventory sheets in users premises;
- No routing maintenances on assets leading users to demand new assets;
- Change of technology for ICT equipment;
- Unmonitored transfer of assets from one place to another in LGAs;
- Lack of sense of ownership of assets;
- No proper keeping of defective assets hence accelerating damaging of the same;

- Preferences of type of assets among staff leading to demanding new assets instead of keeping old functioning assets;
- Lack of spirit of sharing asset among staff (e.g. ICT)
- Difficulties in managing intangible assets;
- Lack of asset management policy;
- Difficulties in managing assets from donors

Responsibilities of Procurement Management Unit with Respect to Stores Management

9.3.1 Responsibilities of Head of PMU

It is important to emphasize here that stores management functions are not expressly covered under the Public Procurement Act and therefore they are not reflected in the functions of PMU given under PPA 2011-S.37.

It is important to emphasize here that the responsibility of asset management is to every staff as everyone uses the assets. However, PMU is responsible for asset management on behalf of the AO and must ensure that:

- An officer is appointed to be in charge of stores;
- All stores purchased are actually received and taken on charge, and should arrange for occasional visits of inspection to the stores, at least once in each quarter of the year, by himself or by a representative in order to ensure that Storekeepers carry out their duties as discussed herein;
- Stores are not allowed to suffer deterioration from any preventable cause;
- Overstocking of any particular item is avoided;
- Adequate fire-fighting appliances as approved by firefighting authorities are installed in the store premises, are maintained in good working order and are readily available for emergencies, and that watchmen and staff are instructed in their use.

9.3.2 Responsibilities of the Head of Store

The Head of Stores shall, amongst others, have the following responsibilities:

- Ensure that store rooms are kept clean, properly ventilated and in good condition and that the stores are well arranged and easy to assess;
- Inspect the store regularly and report to the Head of PMU any case of loss, leakage, damage or deterioration;
- Report on agreed period, usually half yearly, in writing to the Head of PMU of any obsolete or unserviceable items;

- Examine frequently the locks of doors and fastening of windows; shall not permit the store-rooms to remain unattended when open for any purpose and will be solely responsible for the keys of all store-rooms and buildings and will not delegate the duty of locking up the rooms to any unauthorized person;
- Ensure the stores are properly stored, frequently examined and adequately protected. In particular, clothing and other stores subjected to deterioration by dampness or insects should be frequently examined and not placed on the floor. Fluids contained in tins or drums should, whenever possible, be stored off the ground to enable leakage to be readily detected;
- Apply good storage and preservation practices for all store items;
- Damaged or expired stores for condemnation should be kept separately from unused stores;
- All stores of highly inflammable or explosive nature should be kept in a separate store room;
- Ensure that issues are made from old consignments of stores before issuing new consignment;
- Bin cards are properly kept for each item of stores and placed on or near the respective item;
- Notices prohibiting smoking are prominently exhibited with the store premises; and
- Access to the stores is restricted.

The above are few practical aspects of managing stores in a PE.

9.4 Disposal of Public Assets

9.4.1 Decision to Dispose

The procedures for disposing public assets are outline is the Public Finance Act No.6 of 2001 [Principal Legislation Revised Edition, 2004].

Regulation 325 of the PPR 2013 states that:

- Any Disposal by tender by a PE shall be authorized by the Paymaster General or Competent Authority;
- The procedure for obtaining approval for disposal of public assets by tender shall be in accordance with the Public Finance Act and Regulations made under it
- Moreover, Regulation 253 of the Public Finance Regulations states that *“Except for minor items, the authority of the Permanent Secretary is required for the writing-off ledger charge and disposal of all unserviceable or obsolete stores, vehicles, plant and equipment”*.

Regulation 254 (1) of the Public Finance Regulations [Condemnation of Unserviceable Store etc.] states that *“Where it is considered that stores, vehicles, plant or equipment have reached the end of their useful life or are beyond economical repair or are unserviceable for any other reason or have become redundant through obsolescence they must be retained until a sufficient quantity has*

accumulated to merit the convening of a Board of Condemnation to inspect them". Furthermore, Regulation 254(2) of the Public Finance Regulation states that "List of the items should be prepared giving the details of articles and where appropriate their age and approximate value, four copies of the list being submitted by the Accounting Officer to the Accountant General with the request that a Board be appointed to inspect the stores and to make recommendations as to their condemnation and disposal.

The procedures of Appointment of Board Condemnation and how the Board will conduct the inspection are explained in the Regulation 255 and 256 of the Public Finance Regulation respectively.

9.4.2 Disposal Plan

PEs are required to prepare a Disposal Plan in which assets to be disposed are required to be grouped in a manner which attracts maximum possible competition and reduce transaction costs- PPR 2013-Reg. 236.

Re-use of items through repair is encouraged in PPR 2013-R.237.

9.4.3 Disposal Process

The Disposal process of assets by tender is covered from PPR 2013-R.328 to 339. Important Items to note include the following:

- An approval must be obtained from the Paymaster General to dispose an item following the procedure provided in the Public Finance Act and Its Regulations before an item can be included in the Disposal Plan;
- A Disposal Plan, just like the procurement plan must be prepared by a PE to show all the items to be disposed and the key dates for the tender process;
- A default method of procurement is open tendering through International for National competitive Tendering (for items with value up to Tsh. 3 billion).

Refer to 15th Schedule of GN. No. 416 of 2013.

The invitation of tenders for disposal of item resembles that of buying goods and services which was discussed in Module 5 with exception that in the case of disposal we are interested to get a highest evaluated bid instead of lowest evaluated bid.

Refer to Regulation 2 332 to 338 of GN. No. 416 of 2013.