



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Transforming Procurement

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To: All Accounting Officers
All CEOs, State Corporations
All Vice Chancellors, Public Universities
All Managers, Co-operative Societies
All Clerks, Local Authorities
All Principals, Public Colleges/ Schools
All Chairpersons, CDF Committees

RE: ROLE OF BOARDS OF MANAGEMENT IN THE PROCUREMENT AND DISPOSAL PROCESS

The Government of Kenya enacted the Public Procurement and Disposal Act, 2005 and its Regulations, 2006 which are based on the tenets of maximising economy and efficiency; promoting competition, integrity and fairness; and increasing transparency, accountability and public confidence in the procurement and disposal process.

Also, the spirit of the Public Procurement and Disposal Act requires all procurement decisions to be conducted in a structured, systematic and segregated manner as set forth in the provisions of Section 26 of the Act. Accounting officers, Board members and staff

of procuring entities are expected to supplement the aforesaid objectives and principles in the procurement process. Thus, following the operationalization of the Procurement Act and the issuance of Treasury Circular Ref. No. 4/07 VOL.I (47), it has become necessary to clarify their respective roles in the Act as follows:-

Boards of Management

Generally, Section 5(2) of the Public Procurement and Disposal Act does not oust setting of approval mechanisms by other Acts but rather acknowledges policy and corporate approvals. In a specific sense, Regulation 20(5) requires that no procurement and disposal can be implemented before such is based on a plan that is approved by the Board of Management. Therefore, where there are Board Committees established in accordance with the State Corporations Act or any existing Government policy, such committees should carry out their functions as indicated in their terms of reference which excludes operational activities that are performed by the institutions outlined in the Procurement Act and its attendant Regulations. The Board may consider monitoring the procurement function through one of its committees set forth under the State Corporations Act. However, it should be noted that such mechanisms though acknowledged as necessary are not meant to be substitute for operational related decisions that are supposed to be within the purview of management. In other words, the law provides that such approvals should not be construed as power with respect to procurement proceedings. Thus, the principle of segregation of responsibilities should be observed with a view to instil prudent management practices.

Staff of Public Entities

After approval of procurement and disposal plans, staff of public entities are expected to implement those plans in a manner within the provisions of the procurement law. The spirit of the Law requires that procurement and disposal proceedings from initiation,

invitation of bids to the time of adjudication and notification for award be managed by staff of the organization. Section 26(3) (c) provides that procurement proceedings from initiation, processing and receipt of procurement items be undertaken by different persons and offices. The overall intention of this requirement is to enhance integrity, transparency and accountability in the procurement process.

Chief Executive Officers/Accounting Officers

Section 27(2) of the Act provides that Accounting Officers/Chief Executives have primary responsibility within their organizations to ensure compliance with the Act and the Regulations. This includes authority to veto the decision of any institutional committees or individuals set forth in the threshold matrix for the purpose of ensuring compliance with the law. The committees and individuals in the set forth structures are institutional arrangements within which Chief Executive Officers would delegate their primary authority and responsibility vested by the law. Further, there is absolutely nothing in the Law or the Regulations that limits the Chief Executives' authority to be informed on how procurements are being managed within their organizations. Therefore, the Chief Executive Officer in his/her own capacity as Secretary to the Board will be expected to systematically inform the Board Members on the progress of implementation of the approved procurement plan as need arises without infringing the principle of segregation of responsibilities.

The principles of corporate governance as envisaged in the Law should also be observed. Firstly, procurement proceedings should be systematic in that authorisation processes should be observed at every stage of procurement and disposal and feedback of information availed to all authorising organs. Secondly, decisions should be structured in a manner that at no one time they can be made by an individual except where prescribed.

Taking cognizance of the foregoing, this arrangement would avoid potential conflicts with the Act, increase procuring entities' accountability to Boards of Management and be a basis for assessing Management's operational performance.

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