

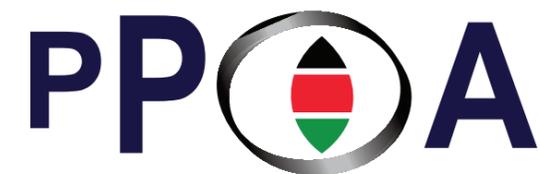
QUESTION	ANSWER
Section 66 (4) states that the successful tender shall be the bid with the lowest evaluated price, rather than the best evaluated offer. Reference to price would seem to exclude use of a marking scheme whereby scores from technical evaluation and from financial evaluation are aggregated to produce a best evaluated offer.	Even in instances where the evaluation criteria applied the formula that weighted technical and financial capacity, the responsive bid in that case would have also considered the price winning.
Can the Accounting Officer instruct the Tender Committee to change an award decision?	In relation to Section 27 (2), the Accounting Officer may raise any concerns regarding the processing of the tender before signing the contract. In that case the relevant committee or person who made the decision on a particular stage of tender processing shall consider the concerns of the Accounting Officer.
It's too difficult to make payments on time. Can PPOA waive the requirement for interest on overdue payments?	Section 26(6) does not allow commencement of a procurement process unless a budget has already been provided. In addition, the Tender Committee or Procurement Committee shall not award a contract unless they confirm availability of funds.
Is advance payment permissible? This is normal practice for certain types of consultancy.	Payment terms to a contract should be clearly prescribed as per the conditions in the bid document and the contract.



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PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Transforming Procurement



Frequently Asked Questions

on the
Public Procurement System
in
Kenya

Frequently Asked Questions

QUESTION	ANSWER
What is PPOA's mandate?	<ul style="list-style-type: none"> a) Ensuring that procurement procedures established under the Act are complied with; b) Monitoring the procurement system and reporting on its overall functioning c) Initiating public procurement policy d) Assisting in the implementation and operation of the public procurement system by: <ul style="list-style-type: none"> i. preparing and distributing manuals and standard tender documents, ii. providing advice and assistance to procuring entities, and develop, promote and support training and professional development of staff involved in procurement
How do you deal with errant suppliers?	One of the means of ensuring compliance to the procurement law is the use of Debarment provided for under Section 115 of the Public Procurement and Disposal Act, 2005. Debarment is a process used to impose sanctions on errant suppliers to ensure such suppliers do not continue participating in the public procurement proceedings.
How is the County Government going to undertake its procurements?	The Public Procurement and Disposal (County Government) Regulations, 2013 has been gazetted to facilitate the County Governments.
Is honoraria payable to Tender Committee (TC) members and those staff in attendance at these meetings?	Regulations 12 (5) has prescribed that members of TC may be paid such honoraria, however Public entities are advised to take into account other government directives on the same.
Can procurement officers be posted to individual departments to help them prepare procurement plans?	There is no need to have procurement officers in every department. The procurement unit may make its work easier by helping departments within PE's to prepare their departmental plans for consolidation. For instance, the column on choice of proc method in the procurement plan shall filled by the procurement unit.
What do we do about tenders which arrive 2 minutes late and all bidders present agree to accept the late tender?	Any late tenders submitted after the deadline date or time should be rejected in line with the Invitation to Tender. It is expected that PEs comply with the Act at all the stages of the procurement process.
Is it permissible for 2 bids with the same directors to compete against each other, hence creating artificial competition?	One of the means of ensuring compliance to the procurement law is the use of Debarment provided for under Section 115 of the Public Procurement and Disposal Act, 2005. Debarment is a process used to impose sanctions on errant suppliers to ensure such suppliers do not continue participating in the public procurement proceedings.
If the Tender Committee has a Vice-Chairman appointed by the Accounting Officer who is not the individual stated in the Regulations 2nd Schedule is it validly constituted?	The only persons to sit on the Tender Committee are those prescribed in the 2nd schedule of the regulations. Section 27 (1) demands that the Accounting Officer of a Public Entity ensures that the provisions of the Act and the Regulation are complied with.
Should the Procurement Unit or the User Department undertake market research on an item?	Regulation 8 (3) (z) provides that one of the functions of the procurement unit is to carry out periodic market surveys to inform the placing of orders or adjudication by the relevant awarding committees.

QUESTION	ANSWER
Do the thresholds in Schedule 1 of the Regulations apply to individual items or to orders?	The thresholds in schedule 1 applies to individual items.
How often can a Public Entity refresh a list of pre-qualified suppliers?	It is the prerogative of a Public Entity to determine the period the pre-qualification list.
Can the Secretary of the tender committee also be a member of an evaluation committee?	The composition of the Tender Committee is provided for in the second schedule of the regulations and the establishment of an evaluation committee is provided for under Regulations 16 (3). In particular, the Secretary of the Tender Committee shall not evaluate tenders but coordinate the evaluate process. In accordance with Regulations 8(3)(h).
Where can Public Entity obtain the standard documents listed in the Third Schedule to the Regulations and the list of insurance companies approved to issue bid security and performance security?	From the PPOA website or offices.
There is concern over Regulation 47 and the rejection of bids for minor deviations, such as an incorrect number of copies of a tender submitted. Isn't this unnecessarily restrictive?	If the condition of the tender was prescribed as mandatory in the bid document, it shall not be considered a minor deviation during evaluation of the tenders.
Must a Public Entity have its bills of quantity for works drawn by the Ministry of Works?	Regulations 9 (i) provides that it is the responsibility of the user to prepare technical specifications. In case the user lacks the capacity to prepare specifications the Public Entity may outsource the service or use another Government agency.
Can an Inspection and Acceptance Committee co-opt other technical experts?	Like in the preparation of specifications, a Public Entity may outsource for technical capacity during inspection of delivered items, however the Accounting officer is primarily accountable for the report from the outsourced expert.
What constitutes "undue influence"? Is it permissible for a Public Entity to have a supplier pay for a visit overseas for a team to visit their facilities during a tendering process?	In any purchasing transaction, the bonus is on the buyer to ensure there is value for money. It is normal that Government as the buyer pays for all visits to facilities.
Is the approval of award of a contract effective from the date of the meeting of the Tender Committee which makes the decision or only when the minutes are approved at a subsequent meeting?	The decision of a Tender Committee is effective when made. Minute writing and subsequent approval are administrative duties and are only meant to reflect the decision already made.
There seems to be a conflict between Companies legislation and procurement legislation, in that under companies' legislation the Board of Directors will be able to overrule any decisions made by any committees, including the Tender Committee.	Payment terms to a contract should be clearly prescribed as per the conditions in the bid document and the contract.