

## PART I - PRELIMINARY

Citation and commencement.

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

Interpretation.

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

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

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

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

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

(a) the private party undertakes to perform a public function or provide a service on behalf of the procuring entity;

(b) the private party receives a benefit for performing the function, either by way of-

(i) compensation from a public fund;

(ii) charges or fees collected by the private party from the users of a service provided to them;  
or

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

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

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

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

“tenderer” means a person submitting a tender;

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

Public entity.

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

(a) any body that uses public assets in any form of contractual undertaking including public private partnerships;

(b) a company owned by a public entity to carry out functions that would have otherwise been performed by the public entity; and

(c) any body in which the Government has a controlling interest.

Capacity building levy.

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

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

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

Membership of the Advisory Board.

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

(a) the Institute of Certified Public Accountants of Kenya;

(b) the Institution of Engineers of Kenya;

(c) the Kenya National Chamber of Commerce and Industry;

(d) the Kenya Federation of Master Builders;

(e) the Kenya Institute of Management;

- (f)the Kenya Association of Manufacturers;
- (g)the Law Society of Kenya;
- (h) the Institute of Certified Public Secretaries of Kenya;
- (i)the Marketing Society of Kenya;
- (j)the Architectural Association of Kenya ;
- (k) the Computer Society of Kenya;
- (l) the Institute of Surveyors of Kenya;
- (m)the Federation of Kenya Employers, and
- (n)the Central Organization of Trade Unions.

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

Threshold matrix.

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

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

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