

2nd ZERO DRAFT
PUBLIC PROCUREMENT AND ASSET DISPOSAL
REGULATIONS, 2016

LEGAL NOTICE NO.....

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT

(No. 33 OF 2015)

ARRANGEMENT OF REGULATIONS

Regulation

	PART I – PRELIMINARY
1	Citation
2	Interpretation
2A	Application of the Regulations
3	Object and Purpose of the Regulations
4	Bilateral and multilateral agreements
	PART II – BODIES INVOLVED IN PUBLIC PROCUREMENT
5	National Treasury
6	Institutional framework for common user items and establishment of the Public Procurement and Asset Disposal Services Agency
7	Establishment of the Public Procurement and Asset Disposal Services Agency Board
8	Qualifications for appointment as a chairperson or a member of the Board

9	Procedure for appointment of a chairperson or a member of the Agency Board
10	Tenure of office
11	Appointment of head of the Agency
12	Vacancy
13	Filling of vacancy
14	Terms and conditions of service
15	Functions of the Agency
16	Functions of the Authority
17	Appointment of the Board
18	Capacity building levy
19	Accessibility of Review Board services
20	Nomination of Review Board members
21	Full board meeting of the Review Board
22	Resignation of the chairperson or a member of the Review Board
23	Removal of Review Board chairperson or member
24	Appointment of Review Board secretary
25	Functions of the Review Board secretary
26	Acting Review Board secretary
27	Employees of the Review Board

28	Funds and operations costs of the Review Board
29	Annual performance reports
	PART III –COUNTY GOVERNMENT RESPONSIBILITIES WITH RESPECT TO PUBLIC PROCUREMENT AND ASSET DISPOSAL
30	Additional responsibilities of County Treasury
31	Establishment of County Procurement and Asset Disposal Services Agency
	PART IV – POWERS TO ENSURE COMPLIANCE
32	Powers of investigators
33	Debarment proceedings
	PART V – INTERNAL ORGANISATION OF PROCURING ENTITIES
34	Responsibilities of the accounting officer
35	Full-fledged procuring entity
36	Function of tender opening committee
37	Threshold matrix
38	Low value procurements
39	Evaluation of tenders
40	Composition of evaluation committee
41	Functions of the evaluation committee
42	Technical evaluation
43	Financial evaluation

44	Post qualification
45	Evaluation report
46	Procurement professional opinion
47	Approval of the accounting officer
48	Role of procurement function
49	Role of user department
50	Role of inspection and acceptance committee
51	Sector-specific procuring and disposal agencies
52	Consortium buying
53	Procuring or asset disposal agents.
54	Transfer of procuring responsibility to another public entity
	PART VI – GENERAL PROCUREMENT AND ASSET DISPOSAL PRINCIPLES
55	Procurement planning
56	Contents of a procurement plan
57	Procurement and asset disposal planning formats
58	Procurement pricing and requirement not to split contracts
59	List of suppliers
60	Tender Security
61	Tender Securing Declaration form

62	Declaration not to engage in corruption
63	Termination or cancellation of procurement and asset disposal proceedings
64	Forms of communications, electronic procurement and asset disposal
65	Annual Procurement Plan (APP) preparation and publication
66	Requisition
67	Tenderer registration
68	Procuring entity registration
69	Submission of e-tenders
70	Inquiries relating to tender documents
71	Opening of e-tenders
72	e-tender clarifications
73	Evaluation of e-tenders
74	Digital signature
75	Publication of e-tender and contract awards
76	e-Notification and acceptance of e-tender awards
77	Administrative review of tender disputes
77A	Award of e-tenders
78	Invoicing and generation of orders
79	e-documents and e-records management

80	Confidentiality declaration form
81	Procurement records
82	Dissemination of laws, Regulations, directives and circulars
	PART VII – BASIC PROCUREMENT RULES
83	Standard tender documents and formats
84	Registration of suppliers
85	Initiation of procurement
86	Invitation to tender
87	Opening of tenders
88	Preliminary evaluation of open tender
89	Non responsiveness to tender
90	Technical evaluation
91	Financial evaluation
92	Evaluation report
93	Post qualification
94	Professional fees
95	Notification of award
96	International tendering and competition
	PART VIII – CLASSIFIED PROCUREMENT METHODS AND PROCEDURES

97	Classified procurement methods and procedures
	PART IX – METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES
	<i>A. Open Tender</i>
98	Threshold for advertising of open tender
99	Time for preparation of open tenders
	<i>B. Two Stage Tendering</i>
100	Two stage tendering
	<i>C. Design Competition</i>
101	Design Competition
	<i>D. Restricted Tendering</i>
102	Restricted tendering
	<i>E. Direct Procurement</i>
103	Direct procurement
	<i>F. Request for Quotations</i>
104	Request for quotations
	<i>G. Electronic Reverse Auction</i>
104A	Electronic reverse auction
	<i>H. Low Value Procurement</i>
105	Low value procurement

106	Procedure for low value procurement
	<i>I. Force Account</i>
107	Force account
108	Procedure for use of force account under section 109 (2) (a) of the Act.
109	Procedure for use of force account under section 109 (2) (b) of the Act.
110	Procedure for use of force account under section 109 (2) (c) of the Act.
110A	Procedure for use of force account under section 109(4) of the Act
	<i>J. Competitive Negotiations</i>
111	Competitive negotiations
112	Procedure for competitive negotiations
	<i>K. Framework Agreements</i>
113	Framework agreement method
114	Framework agreement entered into with a single supplier or contractor
115	Framework agreement entered into with multiple suppliers or contractors
116	Framework agreements
117	Types of framework agreements
118	Conditions for use indefinite- delivery framework agreement
119	Indexing prices
120	Multiple award decisions

121	Acceptability of differing prices for identical or similar goods and services
122	Conditions for use of multiple awards
123	Approval by the accounting officer
124	Provisions for ordering
125	Maintenance of framework agreements records
126	When to use definite quantity framework agreements
127	When requirements framework agreements may be used
128	Procedure of requirements framework agreements
129	Public assets furnished for repair.
130	Conditions for use of indefinite-quantity framework agreement.
	<i>L. Community Participation</i>
131	Community Participation method
132	Conditions for use of community participation method
133	Procedure for use of community participation method
134	Direct community participation
135	Community based service provider
	PART X – PROCUREMENT OF CONSULTANCY SERVICES
136	Request for proposals
137	Expression of interest

138	Opening of request for proposals
139	Standard bidding documents
140	Regulated professional services
141	Evaluation of proposals
142	Time for preparation of request proposal
143	Opening of proposals
144	Terms of reference
145	Procedure for quality and cost based selection method
146	Procedure for quality-based selection evaluation method
147	Procedure for evaluation of fixed budget selection
148	Procedure for evaluation of least cost selection
149	Procedure for consultancy qualification selection Method
150	Negotiations with successful tenderers
151	Procedure for negotiations
	PART XI – PROCUREMENT CONTRACTS
152	Procurement contracts
152A	Treatment of partial supplies
153	Amendments or variations to contracts
154	Interest on overdue amounts and liquidated damages

155	Conditions for use of indefinite quantity framework
156	Framework contracting
157	Record for multiple award decision
158	Planning the acquisition
159	Acceptability of differing prices for identical or similar items
160	Limitations for use of multiple awards
161	Provisions for multi-year framework contracts
162	Approval by the accounting officer
163	Provisions for ordering
164	Equal opportunity
165	Exceptions to the equal opportunity process
166	Documentation of decision for orders.
167	When definite-quantity framework contract may be used
168	When Requirements framework contract may be used
169	Procedure of requirements for framework contracts
170	Public assets furnished for repair
171	Application
172	Framework contracting documents
173	Performance security

174	Advance payment
175	Contract administration
176	Complex and specialized contracts
177	Contract review reports
178	Payments to contractor
179	Contract monitoring
180	Contract termination
181	Handover and acceptance of goods, works and services
	PART XII – PREFERENCES AND RESERVATIONS
182	Requirement for preference and reservations
183	Transfer of skills and technology
184	Eligibility criteria
185	Registration of enterprises and groups
186	Qualifications of contractors
187	Application by foreign contractors.
188	Participation of candidates in preference and reservations
189	Reservation of budget
190	Prompt payment for performed contracts
191	Regions where exclusive preference shall apply

192	National Reservations
193	Single preference to tenderers
194	Unbundling of procurements
195	Tender security
196	Preference and reservation term limit
197	Open tender advertisement
198	Procurement to be competitive
199	Framework contracts with target groups
200	Monitoring and evaluation
201	Reports to the Authority
202	Register of contractors
203	Preference to disadvantaged groups
204	Margin of preference for international tendering and competition
205	Sourcing supplies from citizen contractors by international tenderers
	PART XIII – INVENTORY CONTROL, ASSET AND STORES MANAGEMENT AND DISTRIBUTION
206	Receipt and recording of goods, stores and works
207	Asset and inventory management
208	Objectives of inventory control, assets and stores management and distribution
209	Transfer of inventory stores and management systems

210	Responsibilities of accounting officer upon transfer of assets and liabilities register of assets
211	Responsibilities of head of procurement function
212	Responsibilities of officer in charge of stores
	PART XIV – DISPOSAL OF ASSETS
213	Annual assets disposal plan
214	Constitution of the disposal committee
215	Quorum for disposal committee
216	Functions of a disposal committee
217	Procedure or Authority to disposal
218	Methods of disposal
219	Transfer to another public entity
220	Sale by public tender
221	Disposal documents
222	Tender notice for public tenders
223	Site Visits for the Public
224	Sale by public auction
225	Inviting bids under the public auction sale method
226	Eligibility criteria for the public auction sale method
227	Bid preparation period for the public auction sale method

228	Public auction notices, sale, administration and awards
229	Payment for and collection of items
230	Use of waste disposal management
231	Assessment of waste disposal management
232	Justification for waste disposal management
233	Destruction certificate
234	Use of trade-in method of disposal
235	Justification for the trade-in
236	Procedure for trade-in
237	Evaluation report and recommendations
238	Reserve price
239	Disposal to employees
	PART XV – ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS
240	Request for review
241	Deposits
242	Notification of the review and suspension of procurement proceedings
243	Notice hearing
244	Hearing panels, quorum, and proceedings.
245	Representation by person of own choice.

246	Preliminary Objections
247	Hearing notice
248	Business hours
249	Disclosure of interest
250	Attendance at the hearing
251	Procedure at the hearing
252	Consolidation of requests
253	Withdrawal of requests
254	Experts
255	Rules of evidence
256	Proof of documents
257	Communication to the Review Board
258	Powers of the Review Board
259	Security fee
	PART XVI – OFFENCES AND SANCTIONS
260	Additional prohibitions and sanctions
	SCHEDULES
1	Request for Debarment

2	Threshold Matrix
3	Annual Procurement and Asset Disposal Plan
4	Tender Securing Declaration Form
5	Self-Declaration Forms
6	Confidentiality Declaration Form
7	Summary of Procurement Proceedings
8	Standard Tender Documents and Forms
9	List of Classified Procurements and Disposals
10	Registration Form for Small and Micro-Enterprises and Target Groups
11	Lifespan of Assets
12	Request for Review

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015
(No. 33 of 2015)

	In exercise of the powers conferred by section 180 of the Public Procurement and Asset Disposal Act, 2015, the Cabinet Secretary for the National Treasury makes the following Regulations:-	
		PART I - PRELIMINARY
<i>Citation</i>		These Regulations shall be cited as the Public Procurement and Asset Disposal Regulations, 2016 and shall come into operation on
<i>Interpretation</i>		1. In these Regulations unless the context otherwise requires:-
		“access codes” means the user identification and password collectively;

		“accounting officer” has the same meaning assigned to it in section 2 of the Public Finance Management Act, No. 18 of 2012
		“Agency” means the Public Procurement and Asset Disposal Services Agency established under Regulation 6;
		“Agency Board” means the Public Procurement and Asset Disposal Services Board established under Regulation 7;
		“complex and specialized procurement”
		“corporate governance”
		“county government entity” has the same meaning assigned to it in section 2 of the Public Finance Management Act no. 18 of 2012.
		“County Treasury” has the same meaning as assigned to it in section 2 of the Public Finance Management Act No. 18 of 2012;
		“definite-quantity framework agreement” means a pact to provide for the delivery of a definite quantity of specific goods or services within a fixed period, with deliveries or performance to be scheduled at designated locations upon order;
		“definite-quantity framework contract” means a pact to provide for the delivery of a definite quantity of specific goods or services within a fixed period, with deliveries or performance to be scheduled at designated locations upon order;
		“digital signature” means an electronic signature used through asymmetric cryptography that can be used to authenticate the identity of the sender of a message or the signer of a document, and possibly to ensure that original content of the message or document that has been sent is unchanged;
		“electronic document transmission” means the electronic transmission of information via computerized systems;
		“electronic” means any electrical, digital, magnetic, optical, electromagnetic or other form of technology that entails capabilities similar to these technologies. Electronic includes transmission via a facsimile device;

		“e-procurement system” means a system or technology that can be used to automate the internal and external processes associated with strategic sourcing , purchasing and inventory management of goods, works and services;
		“e-procurement website” means the electronic online platform that a procuring entity’s uses for issues relating to the purchase of goods, works and services by that procuring entity and includes advice to suppliers on how to sell to the procuring entity, relevant policies, tender procedures and details of tenders that are open to suppliers;
		“e-Tender documents” includes electronic tender documents issued by a procuring entity specifying the goods, works or services it intends to purchase, the contractual terms, conditions for the tender and instructions for responding to bids;
		“e-Tender” means a supplier or contractor selection procedure implemented by electronic means;
		“indefinite-quantity framework agreement” means a pact to provide an indefinite quantity, within stated limits, of goods, works or services during a fixed period, and may be either a delivery order framework contract or a service order framework contract;
		“indefinite-quantity framework contract” means a pact to provide an indefinite quantity, within stated limits, of goods, works or services during a fixed period, and may be either a delivery order framework contract or a service order framework contract;
		“malware” refers to any form of hostile or intrusive software, including but not limited to computer viruses, worms, trojan horses, ransomware, spyware, adware, scareware, or other malicious programs. It includes executable code, scripts, active content, and other software;
		“micro enterprise” means a business undertaking with an initial– (a) staff establishment of not more than ten employees; and (b) an annual turnover or investment not exceeding Kenya shillings five hundred thousand;
		“national government entity” has the meaning assigned to it in section 2 of the Public Finance Management Act No.18 of 2012.

		“National Treasury” has the same meaning assigned to it in section 2 of the Public Finance Management Act No. 18 of 2012;
		“password” means the secret information in the form of characters which, in combination with the User Identification allows the supplier to be authenticated by the procuring entity’s server;
		“performance security” means any security provided by a supplier or contractor solely for the protection of the procuring entity, procuring agency or user agency receiving the materials, services, or construction, conditioned upon the faithful performance of the contract in accordance with plans, specifications, and conditions of the contract;
		“public entity” has the meaning assigned to it in section 2 of the Act.
		“procuring entity” means a public entity making a procurement to which the Act applies;
		“records” includes electronic and manual archives containing the data, documents and information relating to e-procurement procedures;
		“requirements framework agreement” means a pact to fulfill all actual purchase requirements of a procuring entity’s activities for goods, works or services during a specified agreement period, with deliveries or performance to be scheduled by placing orders with the supplier or contractor;
		“requirements framework contract” means a pact to fulfill all actual purchase requirements of a procuring entity’s activities for goods, works or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor;
		“small enterprise” means a business undertaking with an initial – (a) staff establishment of not less than eleven and not more than fifty employees, and (b) annual turnover or investment not exceeding Kenya shillings five million;
		“supplier registration” means the process by which a supplier registers their interest in receiving tenders from a procuring entity;

		“system” means the solutions and electronic instruments that allow the use the computerized application cited in these Regulations;
		“state corporation” means a state corporation within the meaning of the State Corporations Act.
		“user authorization” means the results of the process that allows the supplier, through the allocation of a user identification and password, to access the system, obtain qualification and participate in e-tenders;
		“user identification” means the electronic means to determine and identify an authorized supplier or contractor which must be used when accessing the system;
		“value for money” means the undertaking by a procuring entity that results in a benefit accruing to that procuring entity defined in terms including cost, price, quality, quantity, timeliness and risk transfer;
		“vote” has the meaning assigned to it in section 2 of the Public Finance Management Act No. 18 of 2012.
		2. The terms used in the Act and these Regulations which are used in the Constitution shall have the same meaning as they have in the Constitution.
<i>Application of the Regulation</i>	2A	Save as otherwise provided in the Act, these Regulations shall apply to :-
		(a) national government and national government entities; and
		(b) county government and county government entities.
<i>Object and purpose of the regulations:</i>	3.	These Regulations operationalize the Public Procurement and Asset Disposal Act No. 33 of 2015. The object and purpose of these Regulations shall be — (a) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation; (b) to harmonize and standardize their application throughout government service in controlling and managing the procurement function in government; (c) to set out a standardized public procurement and asset disposal management system for use in Government service; and (d) to ensure accountability, transparency and the effective, , efficient application and utilization of public resources.

<i>Bilateral and multilateral agreements</i>	4.	<p>(1) Pursuant to section 4 (2)(f) of the Act, where any bilateral or multilateral agreements are financed through negotiated loans for the procurement of goods, works and/or services, the Act shall apply unless where the agreement specifies the procurement and asset disposal procedures to be followed.</p> <p>(2) Pursuant to section 7(2)(d) of the Act, all bilateral and multilateral agreements whose implementation is through procurement in part or in whole shall involve procurement professionals from the initial stages of negotiations for the purposes of ensuring that the public procurement and asset disposal interests of the Republic of Kenya are considered.</p> <p>(3) For greater certainty, the Act and this Regulations shall apply in all agreements where there is no express provision for the applicable procurement procedures.</p> <p>(4) Pursuant to sections 4(2)(f) and 157(2) of the Act, the accounting officer shall ensure that tender documents subject to bilateral and multilateral agreements between the Government of Kenya and any other foreign government, agency, entity or multilateral agency include requirements that the successful bidder shall:</p> <ul style="list-style-type: none"> (a) include a plan of technology and knowledge transfer by training and mentoring of Kenyan citizens; (b) reserve at least 40% employment opportunities for Kenyan citizens; (c) plan for building linkages with local industries which ensures at least 40% inputs are sourced from local markets.
		PART II – BODIES INVOLVED IN PUBLIC PROCUREMENT
<i>National Treasury</i>	5.	<p>(1) Pursuant to section 7(2)(m) of the Act, the National Treasury shall be responsible for training and capacity building for procurement and supply chain management services at the national government level.</p> <p>(2) Notwithstanding the provisions of sub-regulation (1) above, the National Treasury shall assist county governments in training and capacity building of procurement and supply chain management pursuant to section 14 of the Public Finance Management Act No.18 of 2015.</p>

		(3) Pursuant to section 7(2)(h) of the Act, the National Treasury shall publish a list of common user items for utilization and management by the Agency at least once a year.
<i>Institutional framework for common user items and establishment of the Public Procurement and Asset Disposal Services Agency</i>	6.	<p>(1) Pursuant to section 7(3) of the Act, the Public Procurement and Asset Disposal Services Agency is hereby established as an unincorporated body for the purpose of procurement of common user items on behalf of procuring entities at the national government level.</p> <p>(2) The Agency established under sub-regulation (1) above shall be operational within one year after the commencement of these Regulations.</p> <p>(3) An accounting officer of a county government procuring entity may procure from or utilize the services of the Agency established under sub-regulation (1) above.</p> <p>(4) All procuring entities of the national government shall obtain all common user items from the Agency.</p> <p>(5) Notwithstanding sub-regulation (4) above, an accounting officer of a procuring entity may undertake its own procurement or enter into framework contracts for common user items where:-</p> <ul style="list-style-type: none"> (a) the goods, works or services required are not available from the Agency; (b) if the procuring entity demonstrates a clear advantage over procuring from the agency; or (c) a procuring entity is operating on commercial basis <p>(6) Where a procuring entity undertakes any procurement under sub-regulation (5) it shall submit a report to the Authority in a format provided by the Authority.</p> <p>(7) The Agency established under sub-regulation (1) above shall have all the powers necessary for the expedient discharge of its functions.</p>
<i>Establishment of the Public Procurement and Asset Disposal Services Agency Board</i>	7.	<p>(1) There is established an unincorporated Board to be known as the Public Procurement and Asset Disposal Services Agency Board which shall consist of:-</p> <ul style="list-style-type: none"> (a) a chairperson recruited through a competitive process and appointed by the President; (b) the Principal Secretary for the time being responsible for matters relating to finance or his or her representative;

		<p>(c) the Principal Secretary for the time being responsible for matters relating to public works or his or her representative;</p> <p>(d) a nominee from the Kenya Institute of Supplies Management identified through a fair process; and</p> <p>(e) three other members, a third of whom shall be of either gender, recruited through a competitive process and appointed by the Cabinet Secretary from outside the Public Service.</p> <p>(2) The Agency Board established in sub-regulation (1) above may, from time to time, co-opt experts as it may deem necessary for the proper and efficient discharge of the functions of the Board.</p>
<i>Qualifications for appointment as a Chairperson or a Member of the Board</i>	8.	<p>(1) A person is qualified for appointment as a chairperson of the Agency Board, if such person holds the following qualifications:-</p> <p>(a) is a citizen of Kenya;</p> <p>(b) has a university degree in procurement, supply chain management, law, commerce, business administration, economics, or a related field of study from a recognized university;</p> <p>(c) has knowledge and experience at management level of at least fifteen years;</p> <p>(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution; and</p> <p>(e) has had a distinguished career in their respective fields.</p> <p>(2) A person is qualified for appointment as a member of the Agency Board, if such a person —</p> <p>(a) is a citizen of Kenya;</p> <p>(b) has a university degree in procurement, supply chain management, law, commerce, business administration, economics, or a related field of study from a recognized university;</p> <p>(c) has knowledge and experience at management level of at least ten years;</p> <p>(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution; and</p> <p>(e) has had a distinguished career in their respective fields.</p> <p>(3) No person shall be qualified for appointment as a Chairperson or Member if such a person —</p> <p>(a) is a member of Parliament;</p> <p>(b) is a member of a county assembly;</p> <p>(c) has been a member of Parliament or county assembly for the last five years preceding the appointment; or</p>

		(d) is declared bankrupt.
<i>Procedure for appointment of a Chairperson or a Member of the Agency Board</i>	9.	<p>(1) The Cabinet Secretary in consultation with the President shall, within ninety days of the commencement of these Regulations and by notice in the Kenya Gazette, declare vacancies in the offices of the chairperson or member and request for applications to fill the vacancy.</p> <p>(2) Any application under sub-regulation (1) shall be submitted to the Public Service Commission within fourteen days of the notice and may be made by any –</p> <ul style="list-style-type: none"> (a) qualified person; or (b) person, organization or group of persons proposing the nomination of any qualified person; <p>(3) The names of all applicants under sub-regulation (2) shall be published in the Kenya Gazette;</p> <p>(4) For the purpose of considering and shortlisting persons qualified for appointment as a chairperson or member of the Agency Board, the Public Service Commission shall, within seven days of the expiry of the period prescribed under sub-regulation (2) above, convene a panel comprising of representatives from the —</p> <ul style="list-style-type: none"> (a) National Treasury; (b) Kenya Institute of Supplies Management; (c) Public Procurement and Regulatory Authority; (d) State Law Office; (e) Ministry of State for Public Service; (f) Public Service Commission; (g) Kenya Private Sector Alliance; and (h) Institute of Certified Public Accountants of Kenya. <p>(5) the Public Service Commission shall within seven days, upon receipt of the names of three persons shortlisted by the Panel for the position of chairperson, submit the names to the Cabinet Secretary for onward transmission to the President.</p> <p>(6) the President shall appoint one of the shortlisted candidates within thirty days of receipt of the three names , as chairperson by notice in the Kenya Gazette. .</p> <p>(7) Upon receipt of the names of six persons shortlisted by the panel for the position of member, the Public Service Commission shall within seven days submit the names to the Cabinet Secretary.</p>

		(8) Upon receipt of the six names, the Cabinet Secretary shall appoint three of the shortlisted candidates as members by notice in the Kenya Gazette within twenty-one days, of whom a third shall be of either gender.
<i>Tenure of office</i>	10.	The term of office of the chairperson or a member of the Agency Board shall be three years and may be renewed for one final term of three years.
<i>Appointment of head of the Agency</i>	11.	<p>(1) There shall be a chief executive officer of the Agency who shall be recruited through a competitive process.</p> <p>(2) The head of the Agency shall be a procurement professional who has at least ten years of experience in public procurement with managerial qualifications and shall:-</p> <ul style="list-style-type: none"> (a) have a university degree in procurement, supply chain management, law, commerce, business administration, economics, or a related field of study from a recognized university; (b) have a professional qualification in supply chain management from a recognized institution; (c) be a full member of the Kenya Institute of Supplies Management; (d) be of good standing; and (e) meet the requirements of Chapter Six of the Constitution. <p>(3) The head of the Agency shall hold office for a period of three years but shall be eligible for reappointment for a further final term of three years.</p>
<i>Vacancy</i>	12.	<p>(1) The office of the chairperson of the Agency Board shall become vacant if the holder —</p> <ul style="list-style-type: none"> (a) dies; (b) by a notice in writing addressed to the President resigns from office; (c) is convicted of an offence and sentenced to imprisonment; (d) is unable to discharge the functions of his office by reason of physical or mental infirmity; or (e) is declared bankrupt. <p>(2) The office of member of the Agency Board shall become vacant if the holder —</p> <ul style="list-style-type: none"> (a) dies; (b) by a notice in writing addressed to the President resigns from

		<p>office;</p> <p>(c) is convicted of an offence and sentenced to imprisonment;</p> <p>(d) is unable to discharge the functions of his office by reason of physical or mental infirmity; or</p> <p>(e) is declared bankrupt.</p> <p>(3) The President or the Cabinet Secretary shall notify every resignation, vacancy or termination, as the case may be, in the Kenya Gazette within seven days.</p>
<i>Filling of vacancy</i>	13.	Where a vacancy occurs for the position of chairperson or member in line with Regulation 12, the vacancy shall be filled in accordance with Regulation 9.
<i>Terms and conditions of service</i>	14.	<p>The remuneration and benefits payable to or in respect of the chairperson or member shall:</p> <p>(a) be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission; and</p> <p>(b) not be varied to the disadvantage of the holder during his or her term of office.</p>
<i>Functions of the Agency</i>	15.	<p>The Agency shall have the following functions —</p> <p>(a) to manage the procurement of common user items for all procuring entities of the national government;</p> <p>(b) to prepare framework contracts for common-user items on behalf of all procuring entities of the national government;</p> <p>(c) to monitor and manage reverse auctioning;</p> <p>(d) to provide procurement and disposal agency services to public entities within the national government;</p> <p>(e) identification and classification of common user items, in liaison with the National Treasury;</p> <p>(f) establishment of a coding system for the common user items used by public entities for the national government;</p> <p>(g) provide adequate quality supplies and services at competitive prices;</p> <p>(h) provide safety and security in the limited warehousing and storage facilities, including leasing;</p> <p>(i) manage framework agreements and contracts for the procurement of common user items for the national government;</p> <p>(j) maintain and publish a register and database of suppliers of common user items;</p> <p>(k) manage an electronic infrastructure for the procurement of common user items and build the capacity of suppliers;</p> <p>(l) to consolidate procurement and disposal services requirements to</p>

		<p>maximize economies of scale for the national government;</p> <p>(m) to advise on consortium buying by a sector of procuring entities of the national government; and</p> <p>(n) any other function as may be advised through a gazette notice by the Cabinet Secretary.</p>
<i>Functions of the Authority</i>	16.	Pursuant to section 9 (s) of the Act, the Authority shall develop, promote and support the training and professional development of persons involved in public procurement and asset disposal.
<i>Appointment of the Board</i>	17.	<p>(1) Pursuant to section 10(1)(b) of the Act, each organization referred therein shall submit to the Cabinet Secretary the curriculum vitae of two members being nominated, of whom one shall be of the opposite gender and shall reflect regional balance.</p> <p>(2) In the event that the Cabinet Secretary receives nominations which do not adhere to gender and regional balance then the Cabinet Secretary shall cause fresh nominations be carried out.</p>
<i>Capacity building levy</i>	18.	<p>(1) The capacity building levy payable under section 24 (5) (d) of the Act, shall be 0.01% of the contract price for all contracts valued at Kenya shillings ten million and above.</p> <p>(2) The capacity building levy referred to in sub-regulation (1) above shall not apply where the contract is one hundred per cent funded by a donor.</p> <p>(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 of Kenya.</p> <p>(4) The effective date of collecting the levy shall be determined by the Cabinet Secretary by gazette notice.</p>
<i>Accessibility of Review Board Services</i>	19.	<p>(1) Subject to section 27(2) of the Act, the Review Board shall have its services accessible in all parts of the Republic of Kenya by establishing review panels consisting of at least five members, three of whom will form a quorum.</p> <p>(2) The panels referred to in sub-regulation (1) above, may be established by the Authority to carry out its functions at national and county levels as provided for in the Act;</p> <p>(3) For greater certainty, the decisions of a panel shall be treated as the decisions of the Review Board.</p> <p>(4) The Secretary may in consultation with the chairman and the</p>

		Review Board constitute a panel of five members to hear and determine a request for review and each panel shall elect its own chairman.
<i>Nomination of Review Board members</i>	20.	<p>(1) Pursuant to section 29(1)(b) of the Act, the qualification and experience of the Review Board members shall be as provided in section 30 of the Act.</p> <p>(2) Pursuant to section 29(3) of the Act, the procedure for nominating Review Board members shall be as follows:-</p> <p>(a) each organization referred to in section 29(2) shall submit to the Cabinet Secretary the curriculum vitae of two members being nominated, of whom one shall be of opposite gender and reflect regional balance.</p> <p>(b) in the event that the Cabinet Secretary receives nominations which do not adhere to gender and regional balance then the Cabinet Secretary shall cause fresh nominations be carried out.</p>
<i>Full board meeting of the Review Board</i>	21.	<p>(1) The Review Board shall conduct a full board meeting at least once every quarter of each financial year.</p> <p>(2) When conducting a full board meeting the Review Board may consider:-</p> <p>(a) the progress review of its performance including the trend of regional panels decisions;</p> <p>(b) any procurement appeal of national interest; and</p> <p>(c) approval and review of the Review Board's operational budgets and plans.</p> <p>(3) The quorum of a full Review Board meeting as envisaged in the Act shall be nine members including the chairperson or the vice-chairperson.</p> <p>(4) Decisions relating to the administration of the Review Board shall be taken by simple majority but in the case of a tie the chairperson shall have a casting vote.</p>
<i>Resignation of the chairperson or a member of the Review Board</i>	22.	The chairperson or any other member of the Review Board may at any time, by notice to the Cabinet Secretary, resign from the office.
<i>Removal of</i>	23.	(1) The Cabinet Secretary may terminate a person's appointment as

<i>Review Board chairperson or member</i>		<p>a chairperson or member of the Review Board, if the person—</p> <p>(a) is unable to perform the functions of his or her office by reason of mental or physical infirmity;</p> <p>(b) is adjudged bankrupt;</p> <p>(c) is convicted of an offence and imprisoned for a term of more than six months; or</p> <p>(d) violates the provisions of Chapter Six of the Constitution; or</p> <p>(e) is absent for three consecutive meetings of the Review Board to which the member has been invited without reasonable excuse.</p> <p>(2) The Cabinet Secretary shall not terminate the service of a chairperson or member unless he or she has given such person an opportunity for a fair hearing.</p>
<i>Appointment of Review Board Secretary</i>	24.	<p>(1) Pursuant to section 28(3) of the Act, there shall be a secretary of the Review Board who shall be at the level of a head of department of the Authority appointed in writing by the Director General with the approval of the Review Board.</p> <p>(2) The Review Board Secretary shall be a procurement professional who has at least ten years of experience in public procurement, with managerial qualifications and shall:-</p> <p>(a) have a university degree in procurement, supply chain management, law, commerce, business administration, economics, or a related field of study from a recognized university;</p> <p>(b) have a post-graduate degree in a related field of study from a recognized university;</p> <p>(c) have a professional qualification in supply chain management from a recognized institution;</p> <p>(d) be a full member of the Kenya Institute of Supplies Management;</p> <p>(e) be of good standing;</p> <p>(f) have at least ten years' experience in public procurement and supply chain management; and</p> <p>(g) meet the requirements of Chapter Six of the Constitution.</p>
<i>Functions of the Review Board</i>	25.	<p>Subject to the general supervision and direction of the Review Board, the Review Board Secretary shall be responsible for the:-</p> <p>(a) management of the operation of the Review Board;</p>

<i>Secretary</i>		(b) management of funds, property and business of the Review Board; (c) administration, organization and control of officers and staff of the Review Board.
<i>Acting Review Board Secretary</i>	26.	The Director General in consultation with the Chairman of the Review Board may designate a member of the staff of the Authority to act as the Board Secretary during the period of illness or absence of the Board Secretary or during a vacancy in the office.
<i>Employees of the Review Board</i>	27.	The Director General of the Authority shall in consultation with the Secretary of the Review Board deploy such number and categories of staff as necessary for the effective functioning of the Review Board.
<i>Funds and operations costs of the Review Board</i>	28.	(1) The Cabinet Secretary shall ensure adequate funds are allocated to facilitate the operations of the Review Board. (2) The funds of Review Board shall consist of- (a) monies appropriated by Parliament; (b) grants (c) fees collected from applicants (d) forfeited deposits; and (e) any other monies received or made available to it for purposes of its functions. (3) The Review Board shall prepare and submit estimates of revenue and expenditure for the following Financial Year not later than 30 th December each year, to the Authority for review and approval with a copy to the Cabinet Secretary.
<i>Annual performance reports</i>	29.	(1) For each financial year, the Review Board Secretary shall cause one annual report of its performance to be prepared. (2) The Review Board shall submit an annual report to the Cabinet Secretary, within three months after the end of the year to which the report relates. (3) The report shall contain, in respect of the period to which it relates — (a) a description of the activities of the Review Board; (b) an analysis of cases heard and determined; (c) the successes and challenges of the Review Board; and (d) any recommendations on way forward.

		PART III: COUNTY GOVERNMENT RESPONSIBILITIES WITH RESPECT TO PUBLIC PROCUREMENT AND ASSET DISPOSAL
<i>Additional responsibilities of county treasury</i>	30.	<p>In addition to the county treasury functions under section 33(1) of the Act, the county treasury procurement function shall -</p> <ul style="list-style-type: none"> (a) develop county-specific procurement and inventory strategies which shall be consistent with the national policy on public procurement and asset disposal matters; (b) maintain linkages between the county treasury and the National Treasury; (c) coordinate procurement and asset disposal activities of the county; and (d) prepare consolidated procurement and disposal plans for the county.
<i>Establishment of County Procurement and Asset Disposal Services Agency</i>	31.	Pursuant to section 33(3) of the Act, a Procurement and Asset Disposal Services Agency may be established as an unincorporated body for the purpose of procurement of common user items on behalf of procuring entities at the county government level.
		PART IV - POWERS TO ENSURE COMPLIANCE
<i>Powers of investigators</i>	32.	<p>(1) Pursuant to Section 36(2) of the Act, the investigator may require suppliers, contractors or tenderers to provide:-</p> <ul style="list-style-type: none"> (a) relevant documents; (b) explanations; (c) written submissions; and (d) relevant information. <p>(2) Pursuant to section 36(1)(c) of the Act, where an investigator intends to remove original documents from a procuring entity, the investigator shall:-</p> <ul style="list-style-type: none"> (a) request for the documents in writing; (b) sign for the documents in a register including their particulars; and (c) undertake in writing to return the original documents after investigations. <p>(3) Powers of an investigator include conducting interviews with persons involved in the subject procurement and asset disposal.</p>

		(4) The investigator shall not in the course of the investigation advise a procuring entity on any matter relating to the procurement or asset disposal proceedings.
<i>Debarment proceedings</i>	33.	<p>For purposes of section 41(5) of the Act, debarment procedures shall be as follows: -</p> <ul style="list-style-type: none"> (a) The Authority shall constitute a Debarment Committee to hear debarment requests that have been submitted to the Authority; (b) A debarment request shall be initiated by the accounting officer of a procuring entity, or any other person with knowledge of facts that may support one or more grounds for debarment; (c) A request for debarment may also be initiated by the Director General of his own motion based on findings from investigations, inspections, or reviews; (d) A request for debarment may also be initiated on the recommendation of a law enforcement agency with an investigative mandate; (e) Where the request for debarment is initiated through the recommendation of a law enforcement agency with an investigative mandate, or by an investigator duly appointed by the Authority on its own motion, the Director General shall notify the person of the intended debarment and provide details of the findings of the investigator or law enforcement agency; (f) The request for debarment shall be made in the format provided in the First Schedule; (g) Upon receipt of a request for debarment, the Director General shall analyze the case within thirty days to determine whether there is a prima facie case for debarment; (h) If the analysis establishes a prima facie case for debarment, the Director General shall issue a notice of intended debarment to the concerned person, who is the subject of the debarment proceedings who shall become the respondent; (i) The notice of intended debarment issued under sub-regulation (h) above, shall contain the grounds of debarment, a brief statement of the facts in support of debarment and the consequences that will arise from the debarment; (j) The respondent shall within fourteen days of receipt of a notice of intended debarment, file a written response with the Director General; (k) Where the facts of the intended debarment are contested, the Debarment Committee shall within twenty-one days of receipt of the response in sub-regulation (j) above, hold a debarment hearing to determine the disputed facts; (l) Reasonable notice shall be given to the parties to appear before the Debarment Committee;

		<p>(m) The Debarment Committee shall prepare a report of its findings with a recommendation on the debarment and present it to the Board for consideration;</p> <p>(n) The Board may either reject or approve a recommendation for debarment within thirty days;</p> <p>(o) Where the Board approves a recommendation for debarment, such debarment shall be for a period of not less than three years.</p> <p>(p) The decision to debar a person shall promptly be communicated to the parties involved in the debarment proceedings;</p> <p>(q) After the expiry of twenty-one days from the date of the debarment decision, the Authority shall publish the details of the person debarred and the corresponding period of debarment;</p> <p>(r) The Authority shall forward the details of the debarred person to the Cabinet Secretary for gazettelement;</p> <p>(s) A decision to debar a person shall not relieve the debarred person of the obligations under any contract entered into with a procuring entity before the debarment;</p> <p>(t) Debarment of a person shall also apply to the successor in interest of the debarred person; and where the debarred person is a company or partnership, the debarment shall apply to the directors and partners of that company or partnership; and</p> <p>(u) Where a person is debarred from participating in procurement proceedings under section 41 of the Act, the debarment shall extend to any legal entity in which the debarred person has a controlling interest.</p>
		PART V – INTERNAL ORGANIZATION OF PROCURING ENTITIES
<i>Responsibilities of the accounting officer</i>	34.	<p>Pursuant to Section 44 (2) (j) of the Act, an accounting officer shall -</p> <p>(a) ensure that procurement and asset disposal contracts are entered into lawfully and implemented accordingly;</p> <p>(b) bring any matter to the attention of the Cabinet Secretary or county executive member responsible for the entity, or the Chief Justice or the Speaker of the National Assembly or county assembly if, in the accounting officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used for the implementation of procurement plans in a way that is unlawful, unauthorized, inefficient, ineffective or uneconomical;</p> <p>(c) take appropriate measures to resolve any issues arising from investigations, inspections, assessments and reviews, pursuant to sections 38 and 43 of the Act;</p> <p>(d) ensure the implementation of directions as issued by the National Treasury, the Authority or the Review Board from time to time;</p>

		<p>(e) provide information to the National Treasury or the Authority pursuant to section 34 of the Act;</p> <p>(f) ensure the preparation and timely submission of reports to the Authority required under the Act, these regulations and guidelines of the Authority.</p>
<i>Full-fledged procuring entity</i>	35.	<p>(1) For the purpose of sections 44 and 45 of the Act, a full-fledged procuring entity able to make corporate decision and for purposes of internal controls shall have segregated responsibilities which shall include:-</p> <ul style="list-style-type: none"> (a) an accounting officer; (b) a procurement function headed and staffed by procurement professionals; (c) to establish relevant committees under the Act pursuant to section 44(2)(b) and (h) of the Act; (d) a vote where the budget is approved by National Assembly or a county assembly or by a governing body of a public entity. <p>(2) Where a procuring entity is unable to satisfy the requirement of sub-regulation (1) above it may seek assistance from the National Treasury or its respective county treasury, as the case may be.</p> <p>(3) Where a county government is unable to satisfy the requirements of sub-regulation (1) above, it shall seek assistance from the National Treasury.</p>
<i>Tender opening committee</i>	36.	Pursuant to section 78 of the Act, the accounting officer shall appoint a tender opening committee.
<i>Threshold matrix</i>	37.	Subject to section 45(3)(b) of the Act, the threshold matrix shall be as per the Second Schedule
<i>Low value procurements</i>	38.	For purposes of section 46(8) of the Act, low value procurement below specified threshold shall be as per the threshold matrix under the Second Schedule and in addition carried out jointly by the procurement function and respective user department.
<i>Evaluation committee</i>	39.	<p>(1) Pursuant to section 80 of the Act, an ad-hoc evaluation committee shall be established for each procurement within the threshold specified in the matrix under the Second Schedule.</p> <p>(2) The accounting officer of a procuring entity shall appoint an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals.</p>

		<p>(3) Pursuant to section 46(4)(b) of the Act, during the appointment of the evaluation committee, the accounting officer shall designate one of the members as the chairman.</p> <p>(4) Notwithstanding the provisions of section 80(6) of the Act, where a tender is complex or has attracted a high number of tenderers, the accounting officer or head of the procuring entity may extend the period for tender evaluation under sub-regulation (1) above, for a further period within the tender validity period not exceeding thirty more days from date of expiry of initial period.</p> <p>(5) Pursuant to section 46(8) of the Act, the head of the procurement function in consultation with the head of the user department shall appoint an evaluation committee for procurements of below Ksh. 5 million which shall make recommendations to the accounting officer.</p> <p>(6) The approval of any procurement under sub-regulation (5) above, shall be done by the accounting officer or delegated authority under section 69 of the Act.</p>
<i>Composition of Evaluation committee</i>	40.	<p>(1) Pursuant to section 46 of the Act, an accounting officer shall appoint an <i>ad hoc</i> evaluation committee which shall consist of:-</p> <ul style="list-style-type: none"> (a) a chairperson; (b) at least two other members appointed on rotational basis comprising heads of user departments or their representatives; (c) a quorum of at least three members including the chairperson; (d) co-opted or procured technical expertise to join the committee, where necessary; (e) a secretary who shall be the head of procurement function or his appointee in writing as provided under section 69(4) of the Act. <p>(2) The role of the secretary as head of secretariat shall be administrative but not limited to-</p> <ul style="list-style-type: none"> (a) availing all the relevant documents to the evaluation committee; (b) facilitating official communication with tenderers, where clarification is required; (c) providing logistical support to the evaluation committee. (d) providing secretariat services to evaluation committee
<i>Functions of the evaluation</i>	41.	<p>An evaluation committee shall be responsible for:-</p> <ul style="list-style-type: none"> (a) the technical and financial evaluation of the tenders or proposals

<i>committee</i>		<p>availed in strict adherence to the compliance and evaluation criteria set out in the tender documents.</p> <p>(b) performing the evaluation with all due diligence and within a period of thirty days after the opening of the tenders.</p> <p>(c) under no circumstances may any member of an evaluation committee enter into direct communication with any of the tenderers participating in a tender or proposal that such evaluation committee is considering.</p> <p>(d) an evaluation committee shall prepare a report on the analysis of the tenders availed, and final ratings assigned to each tender and make recommendations and submit the report to the Head of procurement function.</p>
<i>Technical evaluation</i>	42.	<p>(1) Each member of the evaluation committee shall evaluate independently from the other members prior to sharing his or her analysis questions and evaluation including his or her rating with the other members of the technical evaluation committee.</p> <p>(2) The individual score sheets shall be kept as records for a procurement proceeding.</p> <p>(3) Upon sharing of individual evaluators ratings, the committee shall moderate the analysis to arrive at common rating.</p> <p>(4) Averaging of individual ratings shall be avoided.</p>
<i>Financial evaluation</i>	43.	The financial evaluation of the tenders or proposals received shall be in strict adherence to the compliance and evaluation criteria set out in the tender documents or request for proposals.
<i>Post qualification</i>	44.	Where the lowest evaluated responsive tenderer under section 83 of the Act is determined not to be qualified, the tender shall be rejected and a similar confirmation of qualification shall be conducted on the tenderer who submitted the second lowest evaluated responsive bid.
<i>Evaluation report</i>	45.	<p>(1) An evaluation committee shall prepare a report on the analysis of the tenders received, and final ratings assigned to each tender and submit the report to the head of procurement function.</p> <p>(2) The report prepared under sub-regulation (1) above shall include-</p> <p>(a) a summary of the tenders or proposals opened;</p> <p>(b) the results of the preliminary evaluation, with reasons why any tenders or proposals were rejected;</p> <p>(c) the scores awarded by each evaluator for each tender or proposal; and</p>

		(d) a summary of the relative strengths and weaknesses of each tender or proposal.
<i>Procurement professional opinion</i>	46.	<p>(1) The evaluation report under Regulation 45 above, shall be reviewed by the head of the procurement function and forwarded to the accounting officer together with the professional opinion.</p> <p>(2) The head of the procurement function may seek for clarification from the evaluation committee before making a professional opinion</p> <p>(3) The professional opinion shall include, but not limited, to the following information:-</p> <ul style="list-style-type: none"> (a) a review of the procurement or asset disposal proceedings; (b) adherence to evaluation criteria disclosed in the bid documents; (c) legality of tender award recommendations; (d) whether the recommendations are realistic and within the prevailing market prices; (e) availability of funds; and (f) a recommendation for change of scope, where the bid document had provided for change of scope, if the successful bid is above the budget available of the procuring entity, taking into account the effect of the scope of change to the entire evaluation of the tender. <p>(4) Where the accounting officer has approved the recommendation of the head of procurement function under sub-regulation (3) (f) above, the head of procurement function shall:-</p> <ul style="list-style-type: none"> (a) inform the user department for concurrence; (b) refer the matter back to the evaluation committee for review and recommendation to the accounting officer; (c) inform the successful bidder for concurrence; and (d) make appropriate recommendation to the accounting officer, taking into account the views of the user department, the evaluation committee and the successful bidder.
<i>Approval of the accounting officer</i>	47.	<p>(1) Upon receipt of the evaluation report and professional opinion, the accounting officer shall take into account the contents of the professional opinion and shall in writing:-</p> <ul style="list-style-type: none"> (a) approve award to the successful tenderer; or (b) seek clarification from the head of the procurement function or the evaluation committee prior to approving or rejecting the award; or

		<p>(c) reject the recommendation(s);</p> <p>(2) Where the accounting officer has rejected the recommendation(s) in sub-regulation (1) (c) above, he or she shall provide further directions to the head of the procurement function in writing.</p> <p>(3) Pursuant to section 68(2)(g) of the Act, any further directions, approval and/or rejection by the accounting officer shall form part of the procurement records.</p>
<i>Role of procurement function</i>	48.	<p>(1) Pursuant to section 47(1) of the Act, a procuring entity shall establish a procurement function.</p> <p>(2) The procurement function shall be handled by the procurement professionals whose qualification and experience are recognized in Kenya.</p> <p>(3) The role of the procurement function shall be to -</p> <ul style="list-style-type: none"> (a) maintain and continually update standing lists of registered supplier required by the procuring entity; (b) liaise with the Authority in respect of the Authority's register of procuring agents; (c) prepare tender and asset disposal documents to facilitate fair competition; (d) prepare, publish and distribute procurement and disposal opportunities including invitations to tender, request for quotations and proposals, pre-qualification documents and invitations for expressions of interest; (e) coordinate the receiving and opening of tender documents; (f) submit shortlists and lists of pre-qualified tenderers to the accounting officer for approval; (g) issue procurement and asset disposal documents to candidates in accordance with the Act and these Regulations; (h) propose the membership of evaluation committee to the accounting officer for consideration and appointment; (i) coordinate the evaluation of tenders, quotations and proposals; (j) recommend for consideration the negotiation of a procurement by the evaluation committee where negotiations are allowed by the Act and these Regulations and participate in negotiations; (k) prepare and publish tender awards; (l) prepare contract documents in line with the award decision; (m) prepare and issue debriefing letters;

		<ul style="list-style-type: none"> (n) prepare contract variations and modifications documents; (o) maintenance and archiving of the procurement and asset disposal documents and records for the required period; (p) provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures; (q) implement the decisions of the accounting officer, including disposal committee and coordinating all procurement activities; (r) act as a secretariat to the evaluation, inspection and acceptance, and disposal committees; (s) liaise with the National Treasury or relevant County Treasury and the Authority on matters related to procurement and asset disposal; (t) prepare and submit to the National Treasury or relevant County Treasury and the Authority reports required under the Act, these Regulations and guidelines of the Authority; (u) monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts; (v) report any significant departures from the terms and conditions of the contract to the head of the procuring entity or accounting officer; (w) recommend for transfer of a procurement or asset disposal responsibility to another procuring entity by the head of the procuring entity when need arises; (x) prepare consolidated procurement and asset disposal plans; (y) advise the procuring entity on aggregation of procurement to promote economies of scale.; (z) co-ordinate internal monitoring and evaluation of the procurement and supply chain function; (aa) carry out market surveys to inform the placing of orders or adjudication by the relevant awarding authority; (bb) conduct periodic and annual stock taking; (cc) certify the invoices and vouchers to facilitate processing of payment to suppliers; (dd) recommend extension of the tender validity period; (ee) verify that the available stock levels warrant initiating a procurement process; (ff) carry out any other functions and duties as are provided under the Act and these Regulations and any other functions that might be stipulated by the National Treasury or relevant County Treasury, and the Authority.
<i>Role of user</i>	49.	Pursuant to section 45 of the Act a user department of a procuring

<i>department</i>		<p>entity shall be responsible for:–</p> <ul style="list-style-type: none"> (a) initiating procurement and asset disposal requirements and forward them to the head of procurement function; (b) participating in the evaluation of tenders, proposals and quotations; (c) managing, monitoring and reporting any departure from the terms and conditions of the contract to the head of procurement function; (d) forwarding details of any required amendments or variations to contracts including extensions to the head of procurement function for consideration and action; (e) maintaining and archiving copies of records of contract management; (f) preparing any reports required to the head of procurement function for submission to the accounting officer; (g) undertaking conformity assessments of supplied goods, works and services with the specifications of the contract documents (h) preparing and submitting technical specifications for goods, works and services to the procurement function; (i) preparing departmental procurement and asset disposal plans and submit to the procurement function; (j) making clarifications on tenders, requests for quotations and any other matter through the head of procurement function as may be required; and (k) carrying out any other functions and duties as provided under the Act or as may be stipulated by the National Treasury or relevant County Treasury and Authority.
<i>Role of inspection and acceptance committee</i>	50.	<p>(1) Pursuant to section 48(1) of the Act, the inspection and acceptance committee shall be appointed by the accounting officer taking into account:</p> <ul style="list-style-type: none"> (a) the recommendations of the head of the procurement function; (b) the value of the contract as per the threshold matrix; and (c) the technical nature, complexity, specialization and specifications of the goods, works and services to be procured. <p>(2) When constituting the inspection and acceptance committee, the accounting officer shall ensure that the following persons are included:</p> <ul style="list-style-type: none"> (a) the user department; (b) the technical department; (c) the head of the procurement function; and (d) any other person as may be deemed fit. <p>(3) Where the procuring entity lacks internal technical expertise to</p>

		<p>carry out the inspection and acceptance, the accounting officer shall request another procuring entity to nominate an officer with the relevant technical expertise to assist or procure a professional with the relevant technical expertise and that person shall be appointed by the accounting officer in writing to form part of the inspection and acceptance committee.</p> <p>(4) The technical person referred to in sub-regulation (3) above shall issue a certificate to the accounting officer confirming the right quality and quantity of goods, works or services to the accounting officer.</p> <p>(5) The inspection and acceptance committee shall take into account all the necessary certificates prior to issuing a certificate of acceptance</p> <p>(6) Pursuant to section 48(4) of the Act, the inspection and acceptance committee shall prepare and issue a report and interim inspection and acceptance certificate and submit to the head of procurement function.</p>
<i>Sector-Specific Procuring and Disposal Agencies</i>	51.	<p>(1) Where a sector-specific procuring and disposal agency is established pursuant to section 49 of the Act, a procuring entity or entities may engage the services of that agency for purposes of procurement and distribution of goods, works and services.</p> <p>(2) A public entity with no procurement capacity in a specific sector, may engage the services of its respective sector-specific agency established in sub-regulation (1) above to procure the specific sector goods, works or services.</p> <p>(3) A public sector of common interest referred in sub-regulation (1) may include –</p> <ul style="list-style-type: none"> (a) education; (b) health; (c) trade; (d) agriculture (e) livestock and (f) any other sector as approved by the Cabinet Secretary. <p>(4) The sector-specific agencies shall be headed by a chief executive officer who shall be a procurement professional.</p> <p>(5) The sector-specific agencies shall have a procurement department staffed with procurement professionals and any other appropriate staff.</p>

		<p>(6) The funds for managing these sector-specific agencies may be:-</p> <ul style="list-style-type: none"> (a) appropriated by parliament or respective county assembly; (b) commissions from principal procuring entities; (c) grants; and (d) fees for services rendered. <p>(7) The sector-specific agency shall:-</p> <ul style="list-style-type: none"> (a) be governed by the Act and the Regulations; (b) report at least quarterly to the Authority and the Cabinet Secretary or respective county executive committee members responsible for the subject sector in a format provided for by the Authority.
<i>Consortium Buying</i>	52.	<p>(1) Where a consortium is established pursuant to Section 50 of the Act, the accounting officers of the procuring entities concerned shall agree on-</p> <ul style="list-style-type: none"> (a) the type of goods, works or services to be procured under the consortium which shall be in the respective procuring entities' procurement plans; (b) the mandate of the consortium; (c) the mechanism for implementation of the consortium arrangement; (d) the reporting and monitoring procedures and responsibilities; (e) any limitations or exceptions to the consortium arrangement; (f) any operational costs to be borne by the parties to the consortium arrangement; (g) the quality assurance and standards; (h) terms of engagement: and (i) any other relevant contract condition related to the consortium as agreed by the parties. <p>(2) The consortium agreement shall be in writing and signed by each respective accounting officer of procuring entities involved in the consortium.</p> <p>(3) The consortium formed under sub-regulation (1) above shall be deemed as a special purpose vehicle to be registered with the Authority.</p> <p>(4) The procuring entities forming a consortium will identify a lead partner.</p> <p>(5) The consortium shall ensure availability of funds prior to initiation of procurement.</p>

		<p>(6) The consortium formed shall be for a specific procurement and shall lapse at the end of subject procurement.</p> <p>(7) The consortium procurement process shall be managed by the procurement professionals.</p> <p>(8) The consortium shall undertake procurement in accordance with provisions of the Act and these Regulations.</p>
<i>Procuring or Asset Disposal Agents.</i>	53.	<p>(1) The Authority, pursuant to section 51 of the Act, shall register and license procuring agents upon payment of registration fee of Kenya shillings fifty thousand.</p> <p>(2) The fee under sub-regulation (1) above, shall be payable only once at the time of initial registration.</p> <p>(3) A procuring entity shall:-</p> <ol style="list-style-type: none"> meet the cost of the services offered by the procuring agent; prepare the terms of reference for the assignment; be responsible for the actions and performance of the agent; and only use a procuring agent who is registered and licensed by the Authority. <p>(4) Where the procuring agent is engaged by a procuring entity the accounting officer shall approve the contract award.</p> <p>(5) The license under sub-regulation (3)(d) shall be renewed annually at a nominal fee of Kenya shillings five thousand.</p> <p>(6) Where the registered procuring agent is a partnership, proprietorship or company it shall employ or have a procurement professional(s).</p> <p>(7) A procuring entity shall not contract out both the procurement functions and its contract management functions to the same procuring agent.</p> <p>(8) None of the functions of the accounting officer shall be contracted out to a procuring agent.</p>
<i>Transfer of procuring</i>	54.	<p>(1) Pursuant to section 52(1) of the Act, the Authority may transfer the procuring responsibility of a procuring entity to another</p>

<i>responsibility to another public entity</i>		<p>procuring entity or procuring agent –</p> <p>(a) where the Authority is of the view that the procuring entity lacks the capacity to comply with the Act, these Regulations or the directions issued by the National Treasury or the Authority due to its size or capacity;</p> <p>(b) where the accounting officer of a procuring entity demonstrates the lack of internal capacity to comply with the Act, these Regulations or the directions issued by the National Treasury or the Authority due its size or capacity and requests the Authority to do so;</p> <p>(c) where the accounting officer of the procuring entity decides that it would be more economical or efficient to transfer the function and requests the Authority to do so;</p> <p>(d) where the procuring entity has established possible collusion, coercion, obstruction, conflict of interest and manipulation over the planned procurement that undermines fair competition and value for money.</p> <p>(2) The accounting officer or the head of the procuring entity who requests the Authority to transfer its function shall remain accountable for all decisions taken by the procuring entity to which the function is transferred.</p> <p>(3) Where the procurement and asset disposal responsibility is transferred to another procuring entity under sub-regulation (1) (b), the accounting officers of the two procuring entities shall agree on -</p> <p>(a) any function that may be excluded from the transfer arrangement;</p> <p>(b) the mechanism for implementation of the procurement and asset disposal requirement;</p> <p>(c) reporting and monitoring procedures and responsibilities;</p> <p>(d) any limitations or exceptions to the transfer; and</p> <p>(e) any costs to be paid.</p> <p>(4) The agreement for transferring the procuring responsibility under sub-regulation (3) shall be in writing and signed by the accounting officers of the two procuring entities and a copy of the agreement submitted to the Authority.</p>
		PART VI - GENERAL PROCUREMENT AND ASSET DISPOSAL PRINCIPLES
<i>Procurement planning</i>	55.	(1) Pursuant to section 53(2) of the Act, a procuring entity shall prepare a procurement plan for each financial year as part of the

		<p>annual budget preparation process.</p> <p>(2) Annual procurement planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.</p> <p>(3) Where applicable, multi-year procurement plans may be prepared which shall be integrated into the medium term budgetary expenditure framework.</p> <p>(4) A head of user department shall submit an annual departmental procurement plan to the accounting officer prior to the commencement of the year.</p> <p>(5) The consolidated annual procurement plan shall be prepared by the accounting officer of the procuring entity and approved by the Cabinet Secretary, or County Executive Committee Member responsible for that entity or, where applicable, by the board of directors or a similar body.</p> <p>(6) Pursuant to section 53(6) of the Act, the procurement plan shall clearly show a minimum 30% budgetary allocation for enterprises owned by women, youth, persons with disability and other disadvantaged groups in respect of reservation schemes.</p> <p>(7) Pursuant to section 33(2)(g) of the Act, a procuring entity of a county government shall indicate in its procurement plan a minimum 20% budgetary allocation for preferences and reservations for resident tenderers of the county.</p>
<i>Contents of a procurement plan</i>	56.	<p>1. The annual consolidated procurement plan for each procuring entity shall include-</p> <p>(a) a detailed breakdown of the goods, works, or services required;</p> <p>(b) a schedule of the planned delivery, implementation or completion dates for all goods, works, or services required;</p> <p>(c) an indication and justification whether it shall be procured within a single-year period or under a multi-year arrangement;</p> <p>(d) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-user items;</p> <p>(e) an indication of which items shall be packaged into lots;</p> <p>(f) an estimate of the value of each package of goods, works or services required and an indication of the budget available and sources of funding;</p> <p>(g) an indication of the appropriate procurement method for each</p>

		<p>procurement requirement; and</p> <p>(h) the estimated cost for procurement of items which shall include insurance, clearing and forwarding, demurrage charges, warehousing, advertisement and all other incidental costs where applicable.</p> <p>2. where transfer of responsibilities is justified, the optimal period for such transfer shall be established taking into account seasonal price variations, warehousing and distribution capacity, and product shelf life;</p>
<i>Procurement and asset disposal planning formats</i>	57.	<p>(1) Pursuant to section 53(2) and (4) of the Act, the annual procurement asset disposal plan shall be done in accordance with format in part I of the Third Schedule.</p> <p>(2) Pursuant to section 53(7) of the Act the format for the multi-year procurement plans shall be as set out in part II of the Third Schedule.</p>
<i>Procurement pricing and requirement not to Split contracts</i>	58.	<p>(1) Pursuant to section 54(1) of the Act, a procuring entity shall not split or structure its contracts for the purpose of avoiding the use of a procurement procedure except where unbundling is allowed under preference and reservation schemes as per Regulation 197.</p> <p>(2) Pursuant to section 54(3) of the Act the Authority shall prepare a quarterly market price index covering standard goods, works and services with known market prices as a reference guide.</p> <p>(3) Pursuant to section 7(2)(d) of the Act, the National Treasury may assist the Authority execute its function under section 9(1)(m) develop the market price index to obtain value for money for procuring entities and to obtain synergy.</p> <p>(4) In making a procurement decision in relation to the market price index in sub-regulation (2) above, the procuring entities shall take into consideration the following:</p> <ul style="list-style-type: none"> (a) their own market survey prices or results; (b) insurance and demurrages; (c) prevailing inflation rate; and (d) regional price differential.
<i>List of suppliers</i>	59.	<p>(1) Pursuant to section 57(2) of the Act, the suppliers register shall be updated every six months in accordance to section 71 of the Act.</p>

		<p>(2) The list developed under sub-regulation (1) above, shall be for the procurement of alternative procurement methods in accordance with the provisions of the Act and these Regulations.</p> <p>(3) The registration referred under sub-regulation (1) above will be undertaken when suppliers submit their registration documents to confirm their eligibility to the procuring entity.</p> <p>(4) The list of registered suppliers or contractors or consultants referred to in sub-regulation (1) above shall be prepared by the head of procurement function in accordance with section 71 of the Act.</p> <p>(5) When updating the list in sub-regulation (4) above, a procuring entity shall notify the new vendors of their admission into the list.</p> <p>(6) A procuring entity may validate the list after every two years.</p>
<i>Tender Security</i>	60.	<p>(1) Pursuant to section 61(1) of the Act, a tender security shall be in the form of: -</p> <ul style="list-style-type: none"> (a) cash; (b) a bank guarantee; (c) a guarantee by a licensed insurance company in Kenya as provided by the Authority; (d) a letter of credit; or (e) guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund. <p>(2) A candidate or tenderer shall not issue a tender security to guarantee itself.</p>
<i>Tender Securing Declaration form</i>	61.	Pursuant to section 61(5) of the Act, the Tender Securing Declaration form for procurement reserved for small and micro-enterprises or enterprises owned by disadvantaged groups participating in procurement proceedings shall be in the format provided in the Fourth Schedule.
<i>Self-declaration forms</i>	62.	For the avoidance of doubt, a tender or proposal or quotation submitted under section 62 of the Act shall include a self-declaration format provided in the Fifth Schedule.

<i>Termination or cancellation of procurement and asset disposal proceedings</i>	63.	<p>(1) Prior to the cancellation or termination of a procurement and asset disposal proceedings under section 63 of the Act.</p> <p>(2) The report under section 63(2) and (3) shall be made in accordance with the guidelines issued by the Authority.</p>
<i>Forms of communication, electronic procurement and asset disposal</i>	64.	<p>(1) Pursuant to section 7(2)(c) of the Act, the National Treasury shall design and manage an efficient procurement management system in accordance with section 64(2) of the Act which shall be interfaced with the State Portal managed by the Authority in respect to:-</p> <ul style="list-style-type: none"> (a) procurement planning; (b) registration of suppliers; (c) publication of notices; (d) submission and opening of tenders; (e) tender evaluation; (f) requesting for information on tender or disposal process; (g) dissemination of laws, regulations, directives and circulars; (h) digital signatures; (i) publication of tender awards; (j) notification and acceptance of tender awards; (k) administrative review of tender disputes; (l) publication of contract awards; (m) requisition; (n) invoicing; (o) generation of orders; (p) termination or cancellation of procurement proceedings; and (q) any other as may be specified by the Cabinet Secretary <p>(2) The conduct of e-procurement procedures for the supply of goods, works and services shall be carried out by a procuring entity using an e-system which is integrated to the State Portal referred to section 9(1)(k) of the Act.</p> <p>(3) The system in sub-regulation (2) above shall allow electronic exchange of documents between a procuring entity and suppliers.</p> <p>(4) The system in sub-regulation (2) above shall allow the management of the qualification process, the updating of supplier lists and the evaluation of suppliers.</p>
<i>Annual Procurement Plan (APP) Preparation</i>	65.	<p>(1) Where a procuring entity intends to use an e-procurement system, it shall prepare its annual procurement plan through the system and upload it in the State Portal.</p>

<i>and Publication</i>		(2) Subject to sub-regulation (1) above a procuring entity shall configure the approval process for annual procurement plans into the e-procurement system to allow for the preparing and publishing of departments or consolidated procurement plans.
<i>Requisition</i>	66.	Where the e-procurement system is in place, procuring entities shall requisition all the procurement and asset disposal requirements through the approved system in Regulation 64 above through the procurement function.
<i>Tenderer Registration</i>	67.	Tenderers, suppliers and consultants may register as a single entity, joint venture or association with sub-contractors or sub-consultants in compliance with the Act through an application form provided by the system for registration.
<i>Procuring Entity Registration</i>	68.	<p>(1) The National Treasury shall provide a secure electronic dashboard to enable procuring entities create as many internal users as required for the procurement process.</p> <p>(2) The National Treasury shall ensure that all procuring entities are registered into the e-procurement system and that they have their respective facilities to carry out different activities of initiating the procurement process, annual procurement plan preparation, procurement document preparation, evaluation, professional opinion, contract award, contract management, internal procurement process, workflow management, tracking payments, deliverables and many other processes through the available features and modules of the e-procurement system.</p>
<i>Submission of e-tenders</i>	69.	<p>(1) The candidates who are desirous of participating in e-procurement shall submit their bids in the standard formats issued by the Authority.</p> <p>(2) The candidates shall upload copies of all the relevant certificates and documents on the e-procurement system in support of their bids.</p> <p>(3) The candidate shall sign all statements, documents and certificates uploaded by him or her, owning responsibility for their correctness and authenticity.</p> <p>(4) Tenderers shall be allowed to submit modifications to bids or proposals or withdraw previously submitted bids or proposals electronically up to, but not after, the bid submission deadline.</p>

		<p>(5) Receipt of modification or notice of withdrawal including the date and time shall be acknowledged electronically.</p> <p>(6) A bid or proposal submitted online shall be scanned for malware by the system administrator before being uploaded and accepted into the online bid box.</p> <p>(7) Where this scan causes a bid to be rejected, the bidder or consultant shall be notified immediately.</p> <p>(8) A procuring entity shall accept only those bids in electronic format received within the tender submission deadline.</p> <p>(9) Receipt of electronic submissions, including the date and time, shall be acknowledged electronically.</p> <p>(10) Proof of tender security as required by the procuring entity, where applicable, shall be scanned and uploaded along with the bid, and the original physical copy shall be submitted to the procuring entity so as to reach before the date of closing of the bids.</p> <p>(11) Failure to submit the original physical copy of a tender security before the closing of the bid shall lead to the disqualification of the bid.</p> <p>(12) A procuring entity shall not charge any fee for tender documents obtained electronically by candidates.</p> <p>(13) In order to submit the bids electronically, candidates are required to secure a digital signature certificate from a certifying agency licensed by the Communications Authority of Kenya.</p> <p>(14) The bids or proposals submitted online shall be signed electronically with a digital signature to establish the identity of the bidder submitting the bid or proposal online.</p>
<i>Inquiries relating to tender document</i>	70.	<p>(1) Where a candidate or tenderer makes an inquiry relating to the tender documents under section 75(2) of the Act, the procuring entity shall promptly respond in writing.</p> <p>(2) Where the response under sub-regulation (1) above affects the</p>

		<p>requirements of the tender, shall be copied to all candidates and shall include a description of the inquiry but without identifying the source.</p> <p>(3) A procuring entity shall not be bound to respond to inquiries received after the deadline for submitting inquiries stipulated in the tender document.</p>
<i>Opening of e-tenders</i>	71.	<p>(1) Online submissions shall be:-</p> <ul style="list-style-type: none"> (a) received into an electronic tender box; and (b) maintained to high standards of security. <p>(2) The electronic tender box in (1) above shall have:-</p> <ul style="list-style-type: none"> (a) three passwords that are simultaneously time-activated; (b) each password shall be issued to different officers who are members of the tender opening committee; and (c) the e-tender box shall remain closed until the time of tender opening. <p>(3) Without limiting the generality of the foregoing, the tenderer submitting a bid or proposal may encrypt their bid as long as their respective passwords are availed at the tender opening.</p> <p>(4) A tenderer who submits an encrypted tender and fails to avail their respective password or other means of access to the document at the tender opening shall be deemed not to have submitted their bid.</p> <p>(5) A record of the bid opening must be kept in print copy and signed by the tender opening committee.</p> <p>(6) A procuring entity shall ensure that the date and time of an automated closure of an electronic bid deadline is indicated in the invitation notice or tender document in accordance with the local time zones.</p> <p>(7) All tenders shall be opened in the presence of all invited bidders who choose to attend and sign a record of attendance.</p> <p>(8) Notwithstanding sub-regulation (7) above, a procuring entity may allow for online viewing of tender opening proceedings by tenderers.</p> <p>(9) All e-tenders must be readable through open standard interfaces and formats.</p>

		<p>(10) The formation of <i>ad hoc</i> tender opening committee shall be in accordance with section 78(1) of the Act.</p> <p>(11) Information read at the bid opening shall include where applicable and practicable, the name of the tenderer, price, offered discount, tender security and any other pertinent information that may be deemed necessary.</p> <p>(12) The procuring entity shall on request avail a copy of the tender opening register to a tenderer.</p> <p>(13) Bids or proposals in electronic format shall be protected against access by unauthorized persons until the publication of the contract award.</p> <p>(14) A procuring entity shall open bids or proposals in electronic format.</p> <p>(15) A procuring entity shall ensure that financial proposals in electronic format shall only be accessed and opened after the technical evaluation of the proposals where so required in the e-tender documents.</p> <p>(16) Until the price bids are opened, the bid-offers shall be kept confidential.</p> <p>(17) Financial bids for unsuccessful bidders at the technical stage shall not be opened.</p>
<i>e-tender clarifications</i>	72.	The e-procurement system approved in Regulations 64 and 65 above shall be interactive and have the capability to enable bidders participating in a procurement proceeding to request or seek information or clarification.
<i>Evaluation of e-tenders</i>	73.	<p>(1) The appointment of an evaluation committee shall be done in accordance with section 46 of the Act.</p> <p>(2) An accounting officer of a procuring entity shall, upon appointment of any <i>ad hoc</i> evaluation committee, register its members and give them access to the e-procurement system.</p> <p>(3) An evaluation committee shall access the system only in</p>

		<p>specified and restricted time for specific procurement defined by a procuring entity for submitting the evaluation results and reports.</p> <p>(4) The tender evaluation committee shall evaluate the tenders using the evaluation criteria contained in the e-Tender document.</p> <p>(5) The clarifications, particulars, if any, required from the tenderers to assist in evaluation pursuant to section 81 of the Act, shall be obtained electronically.</p> <p>(6) The tender evaluation report shall be submitted and accessed electronically by the head of the procurement function for professional opinion.</p> <p>(7) A procuring entity shall use pre-approved automated evaluation process so long as the evaluation aligns with the criteria established in the bidding documents is consistent with the principles of economy, effectiveness, efficiency, equal opportunity, and transparency.</p>
<i>Digital signature</i>	74.	<p>(1) A digital signature certificate required by a procuring entity shall be obtained from a certifying agency licensed by the Communications Authority of Kenya for accounting officer, head of procurement function, tender opening and evaluation committee as the case may be.`</p> <p>(2) When an officer with a digital signature ceases to work for the procuring entity, the digital signature shall be surrendered to the issuing authority immediately.</p> <p>(3) A bid for a particular tender can be submitted during the online bid submission stage only using the digital certificate that is used to encrypt the data.</p> <p>(4) In the event of a loss of the digital signature certificate by an officer of a procuring entity, for any reason whatsoever including a misplacement, hardware or software malfunctions, operating systems problems and malware, the officer shall immediately report such loss to the accounting officer and the certifying agency simultaneously.</p>
<i>Publication of</i>	75.	All contract awards shall be reported by the procuring entity through

<i>e-tender and contract awards</i>		the e-procurement system to the Authority and the Authority shall upload the information in the State Portal accordingly.
<i>e-Notification and acceptance of e-tender awards</i>	76.	<p>(1) A procuring entity shall notify all bidders participating in the e-tendering process of the outcome of the award simultaneously electronically.</p> <p>(2) The system approved in section 64 of the Act shall be interactive and have the capability to enable bidders participating in a procurement procedure to be notified and accept tender awards electronically.</p> <p>(3) Pursuant to section 87 of the Act, the accounting officer or head of the procurement function shall sign and send a notification to:-</p> <p>(a) the successful tenderer that their bid was successful; and</p> <p>(b) to unsuccessful tenderers that their bids were unsuccessful giving reasons thereof.</p>
<i>e-administrative review of tender disputes</i>	77.	<p>(1) The e-procurement system shall recognize the management of administrative review of all tendering disputes lodged under the Review Board and suspend all affected procurement proceedings until the appeal is heard and determined.</p> <p>(2) Candidates and Tenderers shall lodge appeals and receive responses electronically.</p>
<i>Award of e-tenders</i>	77A	After the award of the contract, the contract agreement shall be prepared and entered into in accordance with Part XI of the Act.
<i>Invoicing and generation of orders</i>	78.	The system approved in section 64 of the Act shall be interactive and have the capability to generate purchase orders and receive invoices from suppliers.
<i>e-documents and e-records management</i>	79.	The system approved in section 64 of the Act, shall have a secure document management system.
<i>Confidentiality declaration form</i>	80.	Pursuant to section 67(2) of the Act the confidentiality declaration form shall be as set out in the Sixth Schedule.
<i>Procurement records</i>	81.	(1) For the purposes of section 68 (2) (d) (iii) of the Act, a format for the summary of proceedings is as provided in the Seventh Schedule.

		<p>(2) For the purposes of section 68 (g) of the Act, the following documents shall be treated as part of the procurement records-</p> <p>(a) where the procurement or the disposal requirement involves feasibility studies and surveys directly carried out or accepted by a procuring entity in order to prepare the tender document, the reports and other documents resulting from these studies and surveys;</p> <p>(b) all receipts for the sale of tender document, request for clarifications and any responses issued by a procuring entity; and</p> <p>(c) records of any negotiations including appointments, terms of negotiations and duly signed negotiation report.</p>
<i>Dissemination of laws, regulations, directives and circulars</i>	82.	The Authority shall disseminate and ensure accessibility of all public procurement and asset disposal laws, directive, manuals, guidelines, circulars, market price indices, standard tender and asset disposal documents, public procurement and asset disposal formats in the State portal envisaged under section 9(1)(k) of the Act.
		PART VII - BASIC PROCUREMENT RULES
<i>Standard tender documents and formats</i>	83.	<p>(1) Standard tender documents for the purpose of sections 9(1)(f) and 70(1) of the Act, shall be developed by the Authority for use by all procuring entities as set out in the Eighth Schedule.</p> <p>(2) The Authority shall issue and publicize the format of procurement documents to be used.</p> <p>(3) The Authority may issue standard forms by which a procuring entity shall carry out specific procurement procedures.</p> <p>(4) The documents used by a procuring entity shall be clear and bear references to the procurement requirement, provision for dates and signatures of authorizing officers.</p> <p>(5) Pursuant to section 70 (4) of the Act, the head of the procurement function shall prepare the bid document clearly indicating the technical and financial evaluation criteria to be applied which shall be quantifiable, measurable and objective in line with the provisions of section 80 (3) of the Act in consultation with the other departments including the user department.</p>

		<p>(6) The bid document may provide for change of scope of works up to twenty per cent and quantity of goods up to fifteen per cent before creation of a procurement contract.</p> <p>(7) The Authority may, from time to time, issue circulars and guidelines only on the content of procurement and disposal documentation.</p> <p>(8) A procuring entity may, pursuant to section 70(5) of the Act, charge a fee not exceeding Kenya shillings one thousand for hard copies of a tender document or as may be set by the Cabinet Secretary from time to time.</p> <p>(9) In determining the fee payable under sub-regulation (6) above, a procuring entity shall only have regard to the costs related to printing, copying, and distributing.</p> <p>(10) A procuring entity shall not charge a fee under sub-regulation (6) above, where the a tender document (s) are –</p> <ul style="list-style-type: none"> (a) obtained electronically; or (b) invitation for expression of interest; (c) registration of suppliers; or (d) prequalification document. <p>(11) Where a procuring entity charges a fee for tender document, the procuring entity shall permit potential tenderers to inspect the documents, prior to paying the fee for the document.</p>
Registration of suppliers	84.	<p>(1) Pursuant to section 71(4) (e) of the Act, a procuring entity may generate a list of suppliers by way of invitation of registration of suppliers.</p> <p>(2) The registration of suppliers by a procuring entity shall be as per regulation 59.</p> <p>(3) Where an accounting officer conducts a registration procedure pursuant to the Act, it shall publish an invitation to candidates to submit applications to be registered.</p> <p>(4) The invitation referred to in sub-regulation (1) above, shall include –</p>

		<ul style="list-style-type: none"> (a) the name, address and contact details of the procuring entity; (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract; (c) statement of the key requirements and criteria to pre-qualify; (d) instructions on obtaining the pre-qualification documents, including any price payable and the language of the documents; and <p>Instructions on location and deadline for submission of applications for registration.</p> <p>(5) For greater certainty, the notice for registration of suppliers shall not apply to the youth, women and persons with disabilities. .</p>
<i>Registration Procedure</i>	84 A	<p>(1). A procuring entity shall promptly issue registration documents to all candidates who request them and shall maintain a record of all candidates to whom documents are issued.</p> <p>(2). The registration document shall contain all information necessary for the potential candidates to prepare and submit applications to be registered.</p> <p>(3). Without prejudice to the generality of sub-regulation (2) above, such information shall include –</p> <ul style="list-style-type: none"> (a) the name, address and contact details of the procuring entity; (b) details of the procurement requirements, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract; (c) instructions on the preparation of applications to register, including any standard forms to be submitted and the documentary evidence and information required from candidates; (d) instructions on the sealing, labeling and submission of applications to pre-qualify, including the location and deadline for submission; and (e) information on how applications will be evaluated.

		<p>(4). The procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be registered;</p> <p>(5). The procuring entity shall promptly respond to all requests for any clarification relating to the registration document where such requests are received before the deadline for submission.</p>
		<p>(6). The procuring entity shall, in writing, record the results of its evaluation of applications for pre-qualification using the evaluation criteria in the</p>
<i>Initiation of procurement</i>	85.	<p>(1) Pursuant to section 73 of the Act, the user department shall initiate the procurement process through a requisition as approved in the procurement plan.</p> <p>(2) The user department shall submit the requisition under sub-regulation (1) above, to the accounting officer for approval which shall be accompanied by the following, as applicable:</p> <ul style="list-style-type: none"> (a) feasibility studies and or surveys and reports; (b) specifications, bills of quantities, technical drawings, or terms of reference; (c) environmental and social impact assessment reports; (d) reasonable expected date of delivery; and (e) any other necessary information pertaining to the procurement. <p>(3) When estimating the value of the goods, works or services, the accounting officer shall ensure that the estimate is realistic and based on up-to-date information on economic and market conditions.</p> <p>(4) Where a contract is complex and or specialized under sub-regulation (2) above, the accounting officer may invite independent experts to undertake a peer review based on this regulation and a report submitted to him.</p> <p>(5) Where a peer review has been undertaken under sub-regulation (4) above, the user department shall take into account the recommendations of the peer review report before submitting their requisition to the Accounting Officer for approval.</p> <p>(6) The procurement requisition shall be approved by the person specified in the Second Schedule, prior to the initiation of procurement proceedings.</p> <p>(7) Approved procurement requisitions shall be submitted to the</p>

		head of the procurement function of a procuring entity to process procurement.
<i>Invitation to tender</i>	86.	<p>(1) Pursuant to section 74(1) (j) of the Act, the tender advertisement invitation shall indicate the mode of submission of tenders by specifying whether it shall be electronically or manually or both.</p> <p>(2) Pursuant to section 74 of the Act, an accounting officer may disclose the available budget in the bid document for procurement of certain goods, works and or services and request the bidders to submit their best bids within the budget provided.</p>
<i>Opening of tenders</i>	87.	<p>(1) Pursuant to section 78 (6)(b) of the Act, the total price of the tender:-</p> <ul style="list-style-type: none"> (a) may not be read out where a tender consists of numerous items that are quoted for separately; or (b) shall not be read out where a tender is preceded by a technical evaluation and such tender is not in technically responsive. <p>(2) For the avoidance of doubt, the total price shall take into account any unconditional discount referred to in section 78 (6)(b) of the Act.</p>
<i>Preliminary evaluation of open tender</i>	88.	<p>(1) Pursuant to section 80 of the Act, upon opening of tenders, the evaluation committee shall first conduct a preliminary evaluation to determine whether –</p> <ul style="list-style-type: none"> (a) a tenderer complies with all the eligibility requirements pursuant to section 55 of the Act; (b) the tender has been submitted in the required format and serialized pursuant to section 74(1)(i) of the Act; (c) any tender security submitted is in the required form, amount and validity period where applicable; (d) the tender has been duly signed by the person lawfully authorised to do so through the power of attorney; (e) the required number of copies of the tender have been submitted; (f) the tender is valid for the period required; (g) any required samples have been submitted; and (h) all required documents and information have been submitted. <p>(2) Pursuant to section 79(2)(b) of the Act, any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price may be considered as a major deviation that affects the substance of the tender and may</p>

		<p>lead to disqualification of the tender as non-responsive.</p> <p>(3) Notwithstanding sub-regulation (2) above, the responsive tender shall be awarded in line with the provisions of section 82 of the Act.</p>
<i>Non responsiveness to tender</i>	89.	<p>(1) A procuring entity shall reject all tenders, which are not in conformity to the requirements of Regulation 88 above and those of section 79 of the Act.</p> <p>(2) The classification of a deviation from the requirements as minor under section 79(2)(a) of the Act shall be applied uniformly and consistently to all tenders received by a procuring entity.</p>
<i>Technical evaluation</i>	90.	<p>(1) Upon completion of the preliminary evaluation under Regulation 88 above, the evaluation committee shall conduct a technical evaluation by comparing each tender to the technical requirements of the goods, works or services in the tender document.</p> <p>(2) The evaluation committee shall reject tenders which do not satisfy the technical requirements under sub-regulation (1) above.</p>
<i>Financial evaluation</i>	91.	<p>(1) Upon completion of the technical evaluation under Regulation 90 above, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.</p> <p>(2) The evaluated price for each bid shall be determined by:-</p> <ul style="list-style-type: none"> (a) taking the bid price in the tender form as read out at the bid opening; (b) taking into account any minor deviation from the requirements accepted by a procuring entity under section 79(2) (a) of the Act; (c) where applicable, converting all tenders to the same currency, using the Central Bank of Kenya exchange rate prevailing at the tender opening date; (d) applying any margin of preference indicated in the tender document. <p>(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be in accordance with section 86 of the Act.</p>
<i>Evaluation report</i>	92.	<p>(1) An evaluation report prepared under section 80(4) of the Act shall include-</p>

		<ul style="list-style-type: none"> (a) a summary of all the tenders received from the head of the procurement function; (b) the results of the preliminary evaluation; (c) the results of the technical evaluation; (d) reason(s) why any tender(s) were rejected; (e) details of any minor deviations accepted under section 79(2)(a) of the Act and the way in which such deviations were quantified and taken into account in the evaluation and comparison of the tenders; (f) the evaluated price of each tender, showing, the price and any conversion to a common currency, if any; (g) the ranking of the tenders each according to its total evaluated price; (h) a recommendation to award the contract to the successful tenderer in accordance with section 86 of the Act; (i) any dissenting opinion and the reasons thereof; and (j) Such other recommendation as may be deemed necessary by the evaluation committee. <p>(2) The evaluation report prepared under sub-regulation (1) above, shall be submitted to the head of procurement function by the chairman of the evaluation committee, who shall analyse it and give a professional opinion to the accounting officer, prior to awarding the contract or taking any other action in relation to the procurement as may be necessary.</p>
<i>Post qualification</i>	93.	<p>(1) Pursuant to section 83 of the Act, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the bid recommended by the evaluation committee, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with section 55 and 86 of the Act.</p> <p>(2) If the bidder determined under sub-regulation (1) above, is not qualified after due diligence in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer:-</p> <ul style="list-style-type: none"> (a) who submitted the next responsive bid for goods, works and/or services as recommended by the evaluation committee; or (b) the tenderer who emerge as the lowest evaluated bidder after re-computing financial and combined score for consultancy services under the Quality Cost Based Selection method.

<i>Professional fees</i>	94.	<p>(1) Pursuant to section 80(2) of the Act, the professional fees and rates chargeable shall be guided by the rates approved by the respective professional bodies.</p> <p>(2) Notwithstanding the provisions of section 86(1)(d) of the Act, procurement of regulated professional services must be based on a quoted fee submitted by a tenderer(s).</p> <p>(3) For non-regulated professional services, the fee shall be based on time, scope and quality of services to be rendered.</p>
<i>Notification of award</i>	95.	<p>(1) Pursuant to section 87(3) of the Act, the notification to the unsuccessful bidder shall be in writing and shall be made at the same time the successful bidder is notified.</p> <p>(2) For greater certainty, the reason to be disclosed to the unsuccessful bidder shall only relate to their respective bids.</p> <p>(3) The notification in sub-regulation (2) above shall include the name of the successful bidder, the contract price and the reason why the bid was successful in accordance with section 86(1) of the Act.</p>
<i>International tendering and competition</i>	96.	For purposes of section 89(c) of the Act, the minimum period of time between the advertisement and deadline for submission of international tenders shall be twenty-one days.
		PART VIII - CLASSIFIED PROCUREMENT METHODS AND PROCEDURES
<i>Classified procurement methods and procedures</i>	97.	<p>(1) Pursuant to section 90(2) and (5) of the Act, an accounting officer of a procuring entity dealing with classified items shall submit a list of the classified to the Cabinet Secretary by 30th July of each financial year which shall include:-</p> <ul style="list-style-type: none"> (a) the description and quantity of each item required; (b) the estimated cost of each item; (c) the budgetary provision; (d) the proposed procurement and disposal methods for each item; and (e) the justification for the use of classified procurement and disposal method(s) for each category. <p>(2) The format of the list referred to in sub regulation 1 above</p>

shall be in the form prescribed under Ninth Schedule.

- (3) National security organs and other procuring entities that deal with the procurement of classified items shall agree with the Cabinet Secretary on the category of classified items and the method of procurement or disposal to be applied by that procuring entity.
- (4) Pursuant to section 90(6) of the Act, the Cabinet Secretary shall submit the classified list of each national security organ and other procuring entities that deal with the procurement of classified items to the Cabinet for approval every financial year.
- (5) Any national security organ or procuring entity that deals with classified items which fails to submit its list shall be deemed to be conducting all its procurements and disposal on the basis of open list and will be subject to the procurement and disposal procedures under the Act and these Regulations.
- (6) The accounting officer of a national security organ or procuring entity that deals with classified items shall appoint a special committee to handle the procurement and disposal of its classified items.
- (7) In establishing the special committee in sub-regulation (6) above, the accounting officer shall submit the names of the nominated members of the special committee to the respective Cabinet Secretary of that procuring entity for approval.
- (8) The head of the procurement function shall be the secretary to the special committee.
- (9) The special committee shall be responsible for:
 - (a) initiating the procurement and asset disposal requirements;
 - (b) conducting market survey of the classified items to be procured;
 - (c) develop the specifications of classified items;
 - (d) conducting the evaluation, inspection, acceptance and negotiations,
 - (e) managing and implementing all contracts of a classified nature;
 - (f) preparing reports and recommendations for the

		<p>procurement and disposal activities; and</p> <p>(g) maintaining and archiving all records and relevant documentation.</p> <p>(10) The accounting officer of the national security organ or procuring entity that deals with classified items shall submit quarterly reports on the procurement and disposal activities of that procuring entity to the Cabinet Secretary and the Authority.</p> <p>(11) Where a procurement or disposal need arises which was not included in the approved list, the accounting officer of the national security organ or procuring entity that deals with classified items shall submit a supplementary classified list to the Cabinet Secretary.</p> <p>(12) All classified procurements shall be monitored by the Authority pursuant to section 9(1)(d) of the Act.</p> <p>(13) In monitoring the classified procurement information pursuant to sub-regulation 11 above, the Director General shall liaise with the Cabinet Secretary to access the classified list.</p>
		PART IX - METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES
		A. Open Tender
<i>Threshold for advertising of open tender</i>	98.	<p>(1) Pursuant to section 96(2) and (5) of the Act, the threshold for national advertising shall be as prescribed in the matrix in the Second Schedule.</p> <p>(2) Without limiting the generality of section 96(3)(a) of the Act, a procuring entity shall advertise tenders in the State Portal.</p> <p>(3) The procedure for open tender method shall be in accordance with sections 96, 97 and 98 of the Act.</p>
<i>Time for preparation of open tenders</i>	99.	<p>The minimum time for preparation of tenders for purposes of section 97(1) of the Act shall be a period of :-</p> <p>(a) fourteen days for national tenders; or</p> <p>(b) fourteen days for county specific tenders; or</p>
		B. Two stage Tendering

<i>Two stage tendering</i>	100.	Two stage tendering shall be done in accordance with section 99 of the Act.
		C. Design Competition
<i>Design Competition</i>	101.	<p>(1). Pursuant to section 101(3) of the Act, the following shall be the procedure for the design competition process:-</p> <ul style="list-style-type: none"> (a) preparation of tender documents; (b) appointment of independent assessors in accordance with section 101(4); (c) notice of invitation of design competition shall be issued; (d) submission of design proposals by the tenderers; (e) opening of bids; (f) constitute an ad-hoc evaluation committee appointed in accordance with section 101 (4) of the Act. (g) evaluation of the design in accordance with section 46 of the Act. (g) submission of design competition report to the head of procurement function for review; (h) the head of the procurement function shall give a professional opinion and submit it to the accounting officer for approval; (i) notification of results to all bidders and declaration of the best three design schemes; and (j) payment of honorarium as shall be indicated in the bid document inviting the design competition.
		(2). For greater clarity of section 101 (7) of the Act, it shall only apply to the best three assessed design schemes provided for in section 101 (5) of the Act.
		D. Restricted Tendering
<i>Restricted tendering</i>	102.	<p>(1) Pursuant to section 102 of the Act, an accounting officer may use restricted tendering ,only if any of the conditions set out in section 102(1) of the Act are satisfied.:-</p> <p>.</p> <p>(2) a procuring entity that conducts procurement using the restricted tendering method shall be subject to the procurement thresholds set out in the Second Schedule.</p> <p>(3) The procedure for restricted tendering shall:-</p> <ul style="list-style-type: none"> (a) for the purposes of section 102(2) of the Act, the procedure for open tendering set out in the Act and these Regulations shall

		<p>apply mutatis mutandis to restricted tendering.</p> <p>(b) a procuring entity shall, for the purpose of identifying pre-qualified contractors pursuant to section 102(1)(a) of the Act, use the pre-qualification procedures set out in sections 93, 94 and 95 of the Act.</p> <p>(c) where restricted tendering is used pursuant to section 102(1)(b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list maintained as provided under section 57 of the Act or otherwise as permitted under section 56 of the Act.</p> <p>(d) where restricted tendering is used pursuant to section 102(1) (c) of the Act, the procuring entity shall invite tenders from all the known suppliers of the goods, works or services .</p> <p>(e) the minimum time for preparation of tenders for the purposes of section 102 of the Act shall be a period of seven days.</p> <p>(4) For greater certainty of section 102 (1)(d) of the Act, any procurement under section 102 (1) (c) of the Act, the procuring entity shall place an advertisement in its website and the state portal regarding their intention to procure through restricted tender for at least three days before inviting tenders and where any bidder outside the known suppliers emerge, he or she shall be invited to bid.</p>
		E. Direct Procurement
<i>Direct procurement</i>	103.	<p>(1) Pursuant to section 103 of the Act, the following shall apply in respect to direct procurement:-</p> <p>(a) a procuring entity shall conduct procurement using the direct procurement method subject to threshold matrix set out in the Second Schedule;</p> <p>(b) where an accounting officer uses direct procurement, the procuring entity shall record the reasons upon which it makes a determination that the relevant condition set out in section 103 of the Act has been satisfied;</p> <p>(c) an accounting officer shall, within fourteen days after the notification of the award of the contract, report any direct procurement of a value exceeding Kenya shillings five hundred thousand to the Authority in a format prescribed by the Authority;</p> <p>(d) an accounting officer shall not enter into a contract under section 104 of the Act unless it is satisfied that the offer-</p> <p>(i) meets the requirements of the procuring entity as specified under sub-regulation (b) above; and</p> <p>(ii) is at the prevailing real market price.</p> <p>(e) a procuring entity shall negotiate with a person for the supply</p>

		<p>of the goods, works or services being procured in accordance with the provisions of this Act and the Regulations thereof; and</p> <p>(f) a procuring entity shall not use direct procurement in a discriminatory manner;</p> <p>(2) Any direct procurement bid shall be evaluated in accordance with the provisions of the Act and these Regulations.</p> <p>(3) The negotiations shall be conducted by the adhoc-evaluation committee appointed in accordance to section 104 (b) of the Act.</p> <p>(4) The <i>ad hoc</i> evaluation committee responsible for negotiation under sub-regulation (2) above, may negotiate on terms that include but are not limited to: -</p> <p>(a) price;</p> <p>(b) terms of contract;</p> <p>(c) terms of delivery;</p> <p>(d) scope of work or service,</p> <p>(5) On completion of negotiations, the committee under sub-regulation (2) above shall prepare a report and submit it to the head of procurement function for professional opinion and submission to the accounting officer for approval and award of the contract.</p> <p>(6) The report prepared under sub-regulation (4) above, the professional opinion, and the agreed terms of negotiations under sub-regulation (3) above, shall form part of the procurement records.</p> <p>(7) Any direct procurement shall require the prior approval of the accounting officer in writing except under urgent need where approval shall be granted in line with section 69 (3) of the Act.</p> <p>(8) For greater certainty the fourteen days window between the notification of award and signing of the contract as provided for under section 135 (3) of the Act shall not apply for direct procurement method.</p> <p>(9) The resulting contract shall be in writing and signed by both</p>
--	--	---

		parties as provided for under section 104 (d) of the Act.
		F. Request for Quotations
<i>Request for quotations</i>	104.	<p>(1) A procuring entity that procures using the request for quotations method pursuant to section 105 of the Act, shall be subject to the procurement threshold in the Second Schedule.</p> <p>(2) The opening ad-hoc committee shall be appointed by the head of procurement function in consultation with the head of user department.</p> <p>(3) Before any decision to award procurement under a request for quotation, the head of procurement function shall attach a report on market survey, duly signed by the officer(s) who conducted the market survey including his or her name, personal number and designation.</p> <p>(4) An accounting officer shall ensure a fair and equitable rotation amongst the persons on the list under sections 57, 71 and 106 of the Act and these Regulations.</p> <p>(5) For the purpose of implementing section 157 (5) and (10) of the Act, on preferences and reservations under women, youth and persons living with disability, a procuring entity shall maximize the use of the request for quotations as applicable.</p>
		G. Electronic Reverse Auction
<i>Electronic reverse auction</i>	104A	<p>(1) Pursuant to section 110 of the Act, a procuring entity may request for approval from the Authority to use the electronic reverse auction system.</p> <p>(2) Pursuant to section 112(b) and (c) of the Act, the procuring entity shall ensure that the reverse auction bidding is completed within a period of five hours.</p> <p>(3) The automatically generated report shall be submitted to the head of the procurement function for a professional opinion.</p> <p>(4) The report and the professional opinion referred to in sub-regulation 3 above shall be submitted to the accounting officer.</p>

		<p>(5) The accounting officer shall notify in writing the successful bidder that his bid has been accepted in accordance to section 87 of the Act.</p> <p>(6) In the event that the successful bidder under section 113 of the Act declines the offer, the next lowest bidder shall be offered the bid subject to the reserve price.</p>
		H. Low Value Procurement
<i>Low value procurement</i>	105.	<p>A procuring entity may use low value procurement method pursuant to Section 107(b) of the Act, where :-</p> <ul style="list-style-type: none"> (a) the procurement is planned by the relevant user department and approved by the accounting officer; (b) the estimated cost of the goods, works or services being procured per item per financial year is less than or equal to the maximum value of Kenya shillings fifty thousand; (c) where no benefit would accrue to a procuring entity in terms of time or cost implications if a procuring entity uses requests for quotations or any other procurement method; (d) where the procedure is not being used for the purpose of avoiding competition; or (e) where the procedure has been recommended and set out in the procurement plan of a procuring entity by the head of procurement function after conducting a market survey.
<i>Procedure for low value procurement</i>	106.	<p>(1) A procuring entity that procures using low value procurement method, pursuant to sections 107 (b) of the Act, shall be subject to procurement thresholds set out in the Second Schedule.</p> <p>(2) Pursuant to section 108 of the Act, the following procedure shall apply in respect to low value procurement;</p> <ul style="list-style-type: none"> (a) where the accounting officer finds it necessary to use low value procurement method, that accounting officer may only delegate that function to the head of procurement function to procure the goods, works or services from a reputable outlet or provider through direct shopping or using credit cards or direct funds transfer to that outlet. (b) any procurement under sub-regulation (a) above, shall be supported by the original invoice and Kenya Revenue Authority Electronic Tax Receipt (KRA ETR Receipt) duly signed by the person undertaking the low value procurement

		<p>of goods, works or services.</p> <p>(c) the goods procured shall be taken on charge by the officer responsible for the stores after the user department has confirmed the quantity and quality of the goods, works or services, before they are issued to the respective user department.</p>
		I. Force Account
<i>Force account</i>	107.	<p>(1) A procuring entity may use the force account method of procurement where conditions under section 109(2) and (3) of the Act, are satisfied.</p> <p>(2) Pursuant to section 109 (3) of the Act, the limit for force account shall be set out under Second Schedule of the Threshold Matrix.</p>
<i>Procedure for use of force account under section 109 (2) (a) of the Act.</i>	108.	<p>(1) Where a procuring entity uses force account under section 109 (2) (a) of the Act, the following shall be the procedure:-</p> <ul style="list-style-type: none"> a) a procuring entity shall identify and include the activity in the annual procurement plan; b) an accounting officer shall grant approval for use of force account. c) the approval granted under sub-regulation (b) above, shall supported by a report on such approval which shall include an assessment and availability of a state's or public officer's capacity including public assets, equipment and labour, d) preparation of relevant bills of quantities, cost estimates and technical drawings where applicable; e) the procurement of the materials/services to be used as inputs under force account method shall be in accordance with the provisions of the Act and these regulations. f) a procuring entity must satisfy itself that it is uneconomical to outsource the good or works or services; g) a procuring entity shall establish that the cost of the items to be procured are at the prevailing competitive market price;
<i>Procedure for use of force account under section 109 (2) (b) of the Act.</i>	109.	<p>(1) Where a procuring entity uses force account under section 109 (2) (b) of the Act, the following shall be the procedure:-</p> <ul style="list-style-type: none"> a) a procuring entity shall establish that the work/services is urgent and may be carried out without any interruptions on ongoing operations using available state or public officers skills, equipment , materials and labour; b) an accounting officer shall grant approval for use of force

		<p>account.</p> <p>c) the approval granted under sub-regulation (b) above, shall supported by a report on such approval which shall include an assessment and availability of a state's or public officer's capacity including public assets, equipment and labour,</p> <p>d) preparation of relevant bills of quantities, cost estimates and technical drawings where applicable; and</p> <p>e) the procurement of the materials/services to be used as inputs under force account method shall be in accordance with the provisions of the Act and these regulations.</p>
<i>Procedure for use of force account under section 109 (2) (c) of the Act.</i>	110.	<p>(1) Where a procuring entity uses force account under section 109 (2) (c) of the Act, the following shall be the procedure:-</p> <p>a) an accounting officer shall grant approval for use of force account;</p> <p>b) The approval granted under sub-regulation (a) above, shall be supported by a report on such approval which shall include an assessment and availability of a state's or public officer's capacity including public assets, equipment and labour;</p> <p>c) preparation of relevant bills of quantities, cost estimates and technical drawings, where applicable; and</p> <p>d) the procurement of the materials/services to be used as inputs under force account method shall be in accordance with the provisions of the Act and these regulations;</p> <p>(2) A procuring entity may use force account to complete the works where the contractors either abandoned or delayed completion of works/services and the cost of retendering is uneconomical; or</p> <p>(3) Where force account is used, pursuant to section 109(2)(c), a procuring entity shall terminate the existing contract in accordance with section 153 of the Act.</p>
<i>Procedure for use of force account under section 109 (4) of the Act.</i>		<p>Pursuant to section 109 (4) of the Act, the procedure for application of force account shall be as follows:</p> <p>(a) the user department shall prepare a detailed proposal on the following:-</p> <p>i. scope of works or services;</p> <p>ii. status of the project;</p> <p>iii. justification for use of force account method;</p> <p>iv. list of materials and bills of quantities to be procured;</p> <p>v. available state or public officers capacity and competencies to undertake the assignment; and</p> <p>vi. cost analysis of fees/rates using approved government rates</p>

		<p>(b) the proposal shall be submitted to the head of procurement function for review and recommendation to accounting officer for approval.</p> <p>(c) upon approval, the user department and procurement function shall commence implementation in accordance with the Act.</p> <p>(d) The head of user department shall be accounting officer's representative in the project.</p>
		J. Competitive Negotiations
<i>Competitive negotiations</i>	111.	<p>(1) Pursuant to section 92(j) of the Act, an accounting officer of a procuring entity may use competitive negotiations for procurement of goods, works and non- consultancy services where:</p> <ol style="list-style-type: none"> the subject of procurement is of complex or specialized nature and is restricted; or there is an urgent need that can be met by several known suppliers; or the lowest evaluated price is in excess of available budget without compromising the quality of the subject of procurement; or there are a few known vendors globally. <p>(2) In using competitive negotiations, an accounting officer shall apply the procedure set forth in section 132 of the Act.</p> <p>(3) A procuring entity prior to applying the procedure set forth in sub-regulation (2) above, shall invite the concerned vendors for the first round for the submission of bids before identifying the top ranked three for competitive negotiations.</p>
<i>Procedure for competitive negotiations</i>	112.	<ol style="list-style-type: none"> An accounting officer of a procuring entity shall appoint an ad hoc negotiation committee comprising of at least five senior and technical officers of a procuring entity to negotiate with the bidder with the highest score on the recommendation of the head of the procurement function. The members of staff conducting the negotiation under sub-regulation (1) above shall prepare a report of the negotiation and submit it to the head of procurement function for professional opinion and onward submission to the accounting officer for approval.

		<p>3. The report prepared under sub-regulation (2) above shall form part of the procurement records.</p> <p>4. The revised prices shall not compromise the quality or specifications of the original tender.</p> <p>5. Tenders shall be evaluated by the negotiation committee constituted in the initial phase of the proceedings.</p> <p>6. The accounting officer of a procuring entity shall request the identified vendors to revise their bids by submitting the best and final offer within a period not exceeding seven days.</p>
		K. Framework Agreement Method
<i>Framework agreement method</i>	113.	<p>1. Pursuant to section 114 of the Act, a procuring entity may enter into a framework agreement as provided by the Act and these Regulations through open tender which shall specify that:-</p> <ul style="list-style-type: none"> (a) the intention is to establish a framework agreement; (b) the framework agreement is with single or multiple suppliers, and if later, the number of suppliers. ; (c) the duration of the framework agreement; and (d) the estimate of the total volume or scope of work or quantity of purchases expected to be made for the duration of the framework agreement, as appropriate. <p>2. A procuring entity shall apply the evaluation criteria set out in the bid document before entering to any framework agreement for goods, works or non-consultancy services: -</p> <ul style="list-style-type: none"> a. A procuring entity shall, in awarding a framework agreement on the basis of the tender that is most economically advantageous to it, adopt criteria linked to the subject matter of the contract. b. Except as provided by sub-regulation (2)(a), a procuring entity shall award a framework agreement on the basis of the lowest evaluated price. c. For the purpose of sub-regulation (2) above, the criteria may include but not limited to— <ul style="list-style-type: none"> i. quality, ii. price, iii. technical merit, iv. aesthetic and functional characteristics,

		<ul style="list-style-type: none"> v. environmental characteristics, vi. running costs, vii. cost-effectiveness, viii. after-sales service and technical assistance, and ix. delivery date and delivery period or period of completion. <p>d. A procuring entity shall specify in the relevant tender notice or framework contract document or in the relevant tender document, the relative weighting that it gives to each of the criteria chosen to determine the most economically advantageous tender. That weighting can be expressed by providing for a range within an appropriate maximum spread.</p> <p>e. If weighting is not possible for reasons that the procuring entity can demonstrate that entity shall specify in the relevant tender notice or framework documents in the relevant tender document, the criteria in descending order of importance.</p>
		<p>3. A procuring entity that proposes to award a framework agreement shall award the contract in accordance with the procedures specified in section 84 of the Act and Regulations 46 and 47.</p> <p>4. Those procedures are applicable only between the procuring entity and the suppliers or contractors that were originally parties to the agreement.</p>
		<p>5. In awarding a contract on the basis of a framework agreement, the parties may not make substantial amendments to the terms specified in the framework agreement, in particular in the case referred to in Regulations 114 and 115.</p>
		<p>6. The duration of a framework agreement shall not exceed three years.</p>
		<p>7. A procuring entity may not use framework agreements in such a way as to prevent, restrict or distort competition.</p>
		<p>8. Pursuant to section 114 (2) of the Act, an accounting officer may enter into a framework agreement subject to annual assessment evidenced by a report, where that accounting officer establishes that the framework agreement did not have value for money and is not competitive, he or she shall terminate that framework</p>

		agreement.
		9. Where a framework agreement is for a period of less than three years, an accounting officer may amend the framework agreement by extending the framework agreement period pursuant to section 139 (1) (a) of the Act, after taking into account an assessment report on value for money and competitiveness, and such extension shall take into consideration the initial framework agreement period and the total agreement period shall not exceed the three years set out in section 114 (2) of the Act.
		10. An accounting officer shall enter into a framework agreement with suppliers or contractors that meet the evaluation criteria set out in the tender document using a standard bid document prescribed by the Authority.
<i>Framework agreement entered into with a single supplier or contractor</i>	114.	(1) Pursuant to section 114 (3) (a) of the Act, a procuring entity may award a contract under the framework agreement with a single supplier or contractor, where the price (s) has been determined in the framework agreement entered into, within the limits of the terms specified in the agreement.
		(2) In deciding whether to award a contract under such framework agreement to a single supplier or contractor, the procuring entity may in writing request the supplier or contractor to supplement its tender to such extent as it requires.
		(3) An accounting officer may negotiate with the successful bidder before awarding any contract under the framework agreement.
		(4) The procuring entity may decide not to award the contract under the framework agreement on the ground that the supplier or contractor has failed to comply with such a request to that procuring entity's satisfaction.
		(5) An accounting officer may from time to time, make a call-off order for goods, works or services based on the procuring entity's needs.

<i>Framework agreement entered into with multiple suppliers or contractors</i>	115.	(1) Pursuant to section 114 (3) (b) of the Act, a procuring entity may enter into a framework agreement with several suppliers or contractors, but in that case the number of suppliers or contractors shall not be less than seven.
		<p>(2) A procuring entity may award a contract based on a framework agreement entered into with several suppliers or contractors either—</p> <ul style="list-style-type: none"> (a) through call-off orders by applying the terms specified in the agreement without reopening competition , or (b) if not all the terms are specified in the agreement, when the parties are again in competition on the basis of the same terms, which may, if necessary, be more precisely formulated, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the appropriate procedure.
		<p>(3) For the purposes of sub-regulation (2)(b) above, the appropriate procedure is as follows:</p> <ul style="list-style-type: none"> (a) for each contract to be awarded, the procuring entity shall invite in writing the suppliers or contractors that have entered into the framework agreement capable of performing the contract; (b) the procuring entity shall give a minimum of seven days for bidders to submit their documents and shall take into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; (c) suppliers or contractors must submit their tenders in writing; (d) the procuring entity shall keep the content of the tenders confidential until the deadline for receiving tenders has expired; (e) the procuring entity shall award the contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

		(4) An accounting officer may from time to time, make a call-off order for goods, works or services from the successful supplier or bidder based on the procuring entity's needs.
<i>Framework Agreements</i>	116.	<p>(1) Pursuant to section 114(1)(a) of the Act, the thresholds shall be as set out in the in the Second Schedule.</p> <p>(2) A procuring entity may implement section 114(3)(b) of the Act through:</p> <p>(a) Inviting bidders to submit their financial bids to facilitate price comparison;</p> <p>electronic reverse auction subject to section 110 of the Act.</p>
<i>Types of framework agreements</i>	117.	<p>A procuring entity may use any of the following framework agreements:</p> <p>(i) definite-quantity indefinite-delivery framework agreements,</p> <p>(ii) requirements framework agreements, or</p> <p>(iii) indefinite-quantity framework agreements; or</p> <p>(iv) any other framework agreement as may be appropriate.</p>
<i>Conditions for use indefinite-delivery Framework Agreement</i>	118.	<p>(2) The appropriate type of indefinite-delivery framework agreement may be used to:-</p> <p>(i) acquire goods and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award;</p> <p>(ii) permit stocks to be maintained at minimum levels; and</p> <p>(iii) acquire goods and services on "as-and-when-required" basis.</p> <p>(3) The requirement for framework agreements shall be stated in the tender document.</p>
<i>Indexing prices</i>	119.	For goods or services whose prices are volatile, framework agreements shall include an indexing mechanism to adjust prices based on prevailing Central Bank's monthly rate of inflation, or the consumer price index of the Kenya National Bureau of Statistics.
<i>Multiple award decisions</i>	120.	Where a procuring entity intends to make multiple awards, it shall state so in the invitation notice and in the tender document.
<i>Acceptability of</i>	121.	11 or similar goods or services are delivered or provided by multiple

<i>differing prices for identical or similar goods and services</i>		procuring entity at the same point, the procuring entity will pay lowest bids received subject to agreement by all bidders who had quoted higher
<i>Conditions for use of multiple awards</i>	122.	<p>A procuring entity shall use the multiple award where any of following conditions are satisfied:-</p> <ul style="list-style-type: none"> (a) where there are numerous contractors capable of providing the level of quality required of goods or services to encourage socio-economic advancement; (b) where awarding a contract to one firm shall expose a procuring entity to unnecessary risks; (c) where there are multiple geographical locations of delivery; or (d) where the requirements of a procuring entity may not be met by a single supplier.
<i>Approval by the accounting officer of prices changes.</i>	123.	Approval of a procuring entity's accounting officer is required for acceptance of any price changes included in framework agreements and the accounting officer shall take into account the professional opinion from the head of the procurement function.
<i>Provisions for ordering</i>	124.	<ul style="list-style-type: none"> (1) A procuring entity is not required to advertise or invite quotations for orders issued under framework agreements. (2) Individual orders shall clearly describe all services to be performed or goods to be delivered so that the full cost or price for the performance of the work can be established when the order is placed. (3) Orders shall be within the specific requirements, issued within the period of performance in a format provided by the Authority. (4) Orders may be placed by using electronic means or as specified in the agreement. (5) A procuring entity must ensure the price for all the orders does not exceed the ceiling amount of the agreement. (6) Orders placed under framework agreements must contain the following information: - <ul style="list-style-type: none"> (a) date of order; (b) agreement number and order number; (c) for goods and services, contract item number and

		<p>description, quantity, and unit price;</p> <p>(d) delivery or performance schedule;</p> <p>(e) place of delivery or performance (including consignee);</p> <p>(f) any packaging, packing, and shipping instructions;</p> <p>(g) method of payment and payment office, if not specified in the agreement; and</p> <p>(h) any other information as may be deemed necessary from time to time by the Authority.</p> <p>(7) Subject to section 142 of the Act, performance securities may be required at the discretion of a procuring entity. Where required, the performance security shall be determined by a procuring entity in accordance with value of the orders made</p>
<i>Maintenance of framework agreements records</i>	125.	A procuring entity shall maintain records relating to framework agreements pursuant to section 68 of the Act and Regulations 79 and 81.
<i>When to use definite quantity framework agreements</i>	126.	<p>A definite-quantity framework agreement may be used when it can be determined in advance that—</p> <p>(a) a definite quantity of goods or services will be required during the agreement period;</p> <p>(b) the goods or services are regularly available or will be available after a short lead time; and</p> <p>(c) for works the bills of quantities should be determined</p>
<i>When requirements framework agreements may be used</i>	127.	<p>(1) A requirements framework agreement may be appropriate for acquiring any goods or services when a procuring entity anticipates recurring requirements but cannot predetermine the precise quantities of goods, works or services that a procuring entity's activities will need, during a specified agreement period, with deliveries or performance to be scheduled by placing orders with the vendor.</p> <p>(2) A procuring entity shall not initiate procurement process for the specified goods, works or services in the agreement except where there is evidence demonstrating that:-</p> <p>(a) the prices of the framework agreement bids are above market prices;</p> <p>(b) material governance issues have been detected; or</p> <p>(c) the contractor(s) is unable to meet the requirements.</p> <p>(3) For greater certainty, no procuring entity shall use a framework agreement of another procuring entity except for those under</p>

		institutional frameworks provided for under sections 7(3) and 33(3) of the Act.
<i>Procedure of requirements framework agreements</i>	128.	The agreement shall state, if feasible, the maximum limit of the vendor's obligation to deliver or perform and a procuring entity's obligation to order.
<i>Public assets furnished for repair.</i>	129.	When a requirements framework agreement is used to acquire works on existing public assets, equipment or stores, a procuring entity shall specify in the agreement, all the details including but not limited to quantities involved, the specific specifications for the repair, modifications of overhaul for purposes of determining the price.
<i>Conditions for use of indefinite-quantity framework agreement.</i>	130.	A Procuring entity may use indefinite-quantity framework agreements when:- (a) the precise quantities of goods, works or services that will be required during the agreement period cannot be predetermined above a specified minimum; (b) there is no intention to commit itself for a minimum quantity to be delivered; and/or (c) a recurring need is anticipated and delivery times are not specific.
		<i>Community Participation</i>
<i>Community Participation method</i>	131.	(1) Pursuant to section 92 (m) of the Act, a procuring entity may involve a beneficiary community to participate in the delivery of services if it is established that it will contribute to:- (a) the economy; (b) value for money; (c) project sustainability; and (d) socio-economic objectives such as creation of employment
		(2) Community participation method may involve two approaches, namely: (a) direct community participation; or (b) organized community participation through the appointment of community service providers.
<i>Conditions for use of community participation</i>	132.	(1) Where a procuring entity intends to use community participation as a method of procurement, that procuring entity shall ensure:-

<i>method</i>		
		(a) the project is aligned to the procuring entity's mandate and strategic plan;
		(b) the project has positive social outcomes with the community as its main beneficiary;
		(c) the project requires community involvement in part or in whole for its success and its continued implementation; and
		(d) the project is included in the annual procurement plan for that procuring entity.
		(2) Where a procuring entity intends to use community participation method it shall prepare a project proposal in line with its strategic plan which shall include:-
		(i) setting out the key result areas and the specific roles of the target community; and
		(ii) the objectives, estimated budget and the target community beneficiaries
<i>Procedure for use of community participation method</i>	133.	(1) A procuring entity may organize for community participation where:
		a. the procuring entity organises a meeting of the beneficiary community whereby the latter is informed of the activity, the scope of their participation and the benefit to the community in return;
		b. during the meeting, the representative of the procuring entity shall explain to the community the document containing obligations of both sides, the appropriate payment, the period after which participants shall be paid, payment modalities and any other details related to goods, works or non-consultancy services execution;
		c. after the meeting, a procuring entity shall establish a list of community members committed to participate in the procurement proceedings and everyone affixes the signature or fingerprint;
		d. a procuring entity shall require the community to elect or nominate their representative in all communication and transaction processes and that procuring entity shall identify a contact person;

		e. where there is a change to the representatives under paragraph (d) above, each party shall communicate the change to the other.
		f. a procuring entity shall avail technical equipment needed for the execution and shall inform the community of any equipment they shall bring for the execution of the community project, where applicable;
		g. for the supervision of works execution, the procuring entity shall use its public officers and may hire a consultant to technically assist the community, if needed;
		h. with help of supervisors, every participant shall sign on daily basis in the register or on a card prepared for that purpose, as appropriate;
		i. a procuring entity shall before execution of the community project require every participant to provide his/ her full identification and if necessary her/his bank account where the payment may be deposited, where applicable;
		j. in case a procuring entity is unable to organize the community participation, it shall delegate to another public entity capable of managing that activity.
		(2) There shall be a project management committee composed of at least five volunteer members elected or nominated by the beneficiary community who shall: <ul style="list-style-type: none"> (a) participate in the preparation, management and implementation of the project; (b) monitor the implementation of the project; (c) report to the accounting officer of the procuring entity;
		(3) The accounting officer shall ensure that a person is appointed as project supervisor, who may be the head of the user department, or a consultant where a procuring entity does not have the internal capacity to supervise the project.
		(4) For the avoidance of doubt, Regulations 132 and 133 shall apply for both approaches of community participation method.
<i>Direct community participation</i>	134.	(1) Where a procuring entity intends to use direct community participation approach, that procuring entity shall transfer the

		project funds in tranches to the community project management and implementation committee.
		(2) The community project management and implementation committee under sub-regulation (1) above, shall
		a. procure goods , works or non-consultancy services at the prevailing market prices; and
		b. negotiate for goods, works or non-consultancy services to get value for money
		(3) In addition, the community project management and implementation committee under sub-regulation (1) above may also procure goods, works or non-consultancy services through a competitive process within market prices.
		(4) a procuring entity shall be represented in the community project management and implementation committee by the head of the user department, who shall also be the secretary of the committee.
		(5) The project funds transferred under sub-regulation (1) above, shall be transferred to a bank account opened in the name of the community project and the bank signatories shall be the elected or nominated officials who shall be
		a. chairperson;
		b. treasurer; and
		c. secretary, ex-officio who shall be the representative of the accounting officer
		(6). The bank account opened under sub-regulation (5) above, shall be operated by the three signatories and the secretary shall be a mandatory signatory.
		(8) The community project management and implementation committee shall prepare monthly reports during project implementation and a final report after the completion of the project, to the procuring entity.
<i>Community based service provider</i>	135.	(1) Where a procuring entity intends to use the services of a community based service provider, that procuring entity shall prepare a request for quotation or proposal or tender to source and identify the service provider, indicating a brief description of goods, works or non-consultancy services, technical specifications or scope of work, deadline for submission of bids, the terms and conditions of the contract and any other necessary

		information.
		(2) Where a procuring entity has opted to use a community service provider, it shall ensure Regulations 131 and 132 have been complied with before any award of the contract.
		(3) The notice for the quotations or request for proposals or tender under sub-regulation (1) above, shall also be posted in at least two conspicuous public places as well as on the notice board of the procuring entity, within the community project implementation area.
		(4) A procuring entity may also use a predetermined rates approach in which the community service providers shall ballot for the goods, works or non-consultancy services to determine the successful bidder, where the goods, works or non-consultancy services are simple.
		(5) A community based service provider under sub-regulation (1) above, shall be
		(a) registered in Kenya;
		(b) have an office or members are residents, within the community where the community project is being implemented;
		(c) have a bank account opened in their name; and
		(d) have a physical address.
		(7) The community based service provider shall prepare a monthly report during project implementation and a final report after the completion of the project, to the procuring entity.
		(8). For purposes of this Regulation, “ a community based service provider” is composed of organized community members intending to act as a service provider or contractor for a project or its component (s) and this includes, but is not limited to community service organization (s) (CSO’s), community based organization (s) (CBO’s) or registered organized community groups.
		PART X – PROCUREMENT OF CONSULTANCY SERVICES
<i>Request for proposals</i>	136.	(1) A procuring entity that conducts procurement using the request for proposal method pursuant to section 116(2) of the Act, shall be subject to the procurement thresholds set out in the Second Schedule.

		(2) The notice inviting expression of interest prepared by a procuring entity pursuant to section 119 of the Act, shall give a minimum period of seven days for tenderers to submit their expressions of interest.
<i>Expression of interest</i>	137.	In addition to the requirements provided for under section 119(4) of the Act, a county government and its entities shall advertise Expression of Interest for county-specific procurements in its notice boards.
<i>Opening of expression of interest.</i>	138.	The opening of proposals shall be as carried out accordance with section 78 of the Act and Regulations 36 and 87.
<i>Standard bidding documents</i>	139.	Pursuant to section 123(2)(c) of the Act, the instructions for the submission of technical and financial proposals shall be as specified in the request for proposal document.
<i>Regulated professional services</i>	140.	<p>(1) Pursuant to section 121(2) of the Act, the professional fees and rates chargeable shall be guided by the rates approved by the respective professional bodies, where applicable.</p> <p>(2) Notwithstanding the provisions of section 86(1)(d) of the Act, the procurement of regulated professional services shall be based on quoted fees or charges submitted by the tenderer</p> <p>(3) Such quoted fees/charges sub-regulation (2) above shall be guided by provisions of section 124(7)(d) of the Act.</p> <p>(4) A procuring entity shall provide a basis or an estimate to facilitate a bidder to comply with the provisions of this Regulation.</p>
<i>Evaluation of proposals</i>	141.	<p>(1) For the purposes of section 126(2) of the Act, the criteria for evaluation of tenders shall be as per section 80(3) of the Act.</p> <p>(2) For purposes of section 126(3) of the Act, an accounting officer of a procuring entity may reduce the evaluation period after taking into account the following circumstances:-</p> <ul style="list-style-type: none"> a. when the scope of the assignment is not complex; b. when the assignment can be done by individual consultants; c. when the budget is fixed; d. when the selection is done through single sourcing.

		(3). Where the above conditions (a) (b) (c) or (d) apply, the evaluation period may not be more than fourteen days.
<i>Time for preparation of request proposal</i>	142.	Pursuant to sections 125 and 97 of the Act, the time for preparation of proposal shall be a minimum period of fourteen days.
<i>Opening of proposals</i>	143.	<p>1) Pursuant to section 120 of the Act, technical proposals shall be opened first before the opening of financial proposals, where the tender document requires submission of separate technical and financial bids.</p> <p>2) For purposes of section 78(6)(b) of the Act, no announcement for the prices shall be required at the opening of technical proposal, where the tender document requires submission of separate technical and financial bids</p> <p>3) Where a tender security is required, the bidders shall submit a bid security equivalent to the amount specified in the tender document and shall not exceed two per cent of the tender value in line with provisions of the section 61 (2) (c) of the Act.</p>
<i>Terms of reference</i>	144.	<p>For purposes of section 117(b) of the Act, the terms of reference prepared by a procuring entity shall set out-</p> <p>(a) the background including the reasons necessitating the procurement ;</p> <p>(b) the objects to be achieved by the procurement;</p> <p>(c) the output and deliverables expected from the person to be awarded the tender;</p> <p>(d) the qualifications necessary for a person to be awarded the tender;</p> <p>(e) duration of the assignment; and</p> <p>(f) any other relevant information as may be required in the tender document.</p>
<i>Procedure for quality and cost based selection method</i>	145.	<p>1. Pursuant to section 124(2) and (4) of the Act, the quality and cost based selection method shall be conducted as follows-</p> <p>a. both the quality and the cost of bids shall be taken into account in a process under which technical bids are evaluated without accessing the financial bids; and</p> <p>b. the relative weight to be given to the quality and cost</p>

		components of the evaluation shall depend on the nature of the assignment and shall be stated in the request for proposals.
		<p>(2) A bid submitted under the quality and cost based selection method shall be submitted under the two envelopes submission method and evaluated to determine the-</p> <p>(a) quality, with regard to a technical bid, in accordance with-</p> <ol style="list-style-type: none"> i. an evaluation against set criteria on a merit point system to determine the total technical score for the technical bid received; and ii. the total scores determined compared to the minimum technical score. <p>(b) Only bids which have attained the minimum technical score shall proceed to the opening of the financial bid which shall be conducted as follows -</p> <ol style="list-style-type: none"> i. bidders who shall not have attained the minimum technical score shall be informed and thereafter their financial bids shall be returned to them unopened; ii. the bidders who shall have attained the minimum technical score shall be invited to attend the opening of the financial bids; iii. during the opening of the financial bids, the procuring entity shall read out the technical score to all bidders who attained the minimum technical scores; iv. an evaluation shall be done against a set criteria on a merit point system to determine the total financial score for the financial bid, and v. the total scores determined compared to the minimum financial score; <p>(c) the total weighted cost score, with regard to a financial bid, where the bidder attained the minimum technical score; and</p> <p>(d) the bidder obtaining the highest combined score based on the formula provided in the request for proposal document, shall be recommended for the award of contract.</p>
		(3). Pursuant to section 124 (4) of the Act, the evaluation criteria

		<p>provided in the request for proposal tender document shall take into account the following among others:-</p> <ol style="list-style-type: none"> specific experience methodology proposed including key deliverables; key personnel; transfer of knowledge; and participation of nationals.
<i>Procedure for quality-based selection evaluation method</i>	146.	<p>(1) 1. Pursuant to section 124(7) of the Act, a quality-based selection method shall be conducted as follows:</p> <ol style="list-style-type: none"> a technical bid shall be conducted against the set criteria on a merit point system to determine the best technical bid without accessing the financial bids; the quality of a bid shall be the primary factor to be considered; and the best technical bid shall take priority in the first instance. .
		<p>(2) The procedure for the quality-based selection method of a technical bid shall be conducted in three stages.</p> <p>(3) The Preliminary Examination shall be done following the opening of a technical bid, to determine; whether a bidder has qualified, on the basis of having passed or failed the selection, for the bid; and the responsiveness of bids to the terms of the bidding document.</p> <p>(4) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.</p> <p>(5) The technical Evaluation Criteria shall be conducted to</p> <ol style="list-style-type: none"> evaluate each technical bid against the technical evaluation criteria; and the same method of evaluation as that utilised for the QCBS method. <p>(6) The Evaluation Committee shall prepare a technical evaluation</p>

		<p>report of the technical bids received, which shall-</p> <ul style="list-style-type: none"> (a) substantiate the results of the evaluation; (b) describe the relative strengths and weaknesses of the bids; and (c) indicate which bid is recommended to proceed to the Financial Evaluation. <p>(7) A financial evaluation shall be conducted of the bidder:-</p> <ul style="list-style-type: none"> (a) who submitted the best evaluated technical bid being invited to submit a financial bid, where only technical bids were submitted; or (b) of the financial bid of the bidder who submitted the best evaluated technical bid, where both technical and financial bids were submitted under the dual envelope method. <p>(8) The financial bid shall be negotiated by the procuring entity in accordance with the provisions of these Regulations.</p>
		<p>(9) In this regulation quality-based selection means an evaluation method that uses quality as the primary factor in a process under which technical bids are evaluated without accessing the financial bids and a financial evaluation is undertaken only for the best technical bid.</p>
<i>Procedure for evaluation of fixed budget selection</i>	147.	<p>1) Pursuant to section 124(9) of the Act, a procuring entity may use fixed budget selection where:-</p> <ul style="list-style-type: none"> (a) under the fixed budget selection evaluation method, the procuring entity shall indicate its available budget in the tender document, and evaluation shall be considered as follows- <ul style="list-style-type: none"> (i) a bidder shall be required to provide, within the stated budget, the best possible technical and financial bids, in separate envelopes; and

		(ii) the bidder with the evaluated technical bid of the highest quality, which is within the stated budget, shall be recommended for the award of the contract.
		(b) The schedule of requirements or the terms of reference prepared by the procuring entity shall contain all the necessary detail to portray the sufficiency of the budget for the performance, by a bidder, of the expected tasks as shall be contained in the contract.
		<p>2) The procedure for the fixed budget selection evaluation method of a technical and financial bid shall be conducted in three stages.</p> <p>3) . Following the opening of a technical bid, a preliminary examination shall be conducted to determine-</p> <p>(a) Whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and</p> <p>(b) the responsiveness of bids to the terms of the bidding document.</p> <p>4) . A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be rejected.</p> <p>5) A technical evaluation of a bid shall be conducted-</p> <p>(a) to evaluate each technical bid against the technical evaluation criteria; and</p> <p>(b) following the same method of evaluation as that utilised for the Quality Cost Based Selection method.</p> <p>6) An evaluation committee shall prepare a technical evaluation report of the technical bids received, which shall-</p> <p>(a) substantiate the results of the evaluation;</p> <p>(b) describe the relative strengths and weaknesses of the bids; and</p> <p>(c) indicate which bid is recommended to proceed to the financial evaluation.</p> <p>7) The evaluation committee shall prepare and approve a technical evaluation report prior to the commencement of a financial evaluation.</p>

		<p>8) 4. A bidder who has qualified on the technical criteria shall be notified of the date and time set for the opening of the financial bids and financial bids shall be opened publicly and at the public opening there shall be publicly read out the-</p> <p>(a) name of the bidder;</p> <p>(b) technical score; and</p> <p>(c) bid price.</p> <p>9) A financial evaluation shall be conducted, and any bid that exceeds the budget shall be rejected.</p> <p>10) Subject to any negotiations that may need to be held, the bidder who has submitted the highest ranked technical bid, of bids submitted within the budget, shall be recommended for the award of contract.</p> <p>11) Negotiations shall be carried out in accordance with the provisions of these Regulations.</p> <p>12) The evaluation committee shall prepare an evaluation report for submission to the accounting officer through the head of procurement function and shall be accompanied by the professional opinion.</p>
<i>Procedure for evaluation of least cost selection</i>	148.	<p>1) Pursuant to section 124(8) of the Act, a procuring entity may use a least cost selection method to identify the lowest priced bid, which meets all the commercial and technical requirements.</p> <p>2) The least cost selection method shall require the use of separate sealed envelopes for submission of technical and financial bids.</p> <p>3) The procedure for the least cost selection method evaluation of a technical bid shall be conducted in three stages.</p> <p>4) A preliminary examination shall be conducted to determine-</p>

		<p>(a) whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and</p> <p>(b) the responsiveness of bids to the terms of the bidding document.</p> <p>5) A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be rejected.</p> <p>6) A technical evaluation of a bid shall be conducted-</p> <p>(a) to evaluate each technical bid against the technical evaluation criteria; and</p> <p>(b) following the same method of evaluation as that utilised for the QCBS selection.</p> <p>7) A bidder who does not secure the minimum qualifying score shall be rejected.</p> <p>8) The evaluation committee shall prepare a technical evaluation report prior to the financial evaluation.</p> <p>9) Bidder(s) who have secured the minimum qualifying mark shall be notified of the date and time set for the opening of the financial bids.</p> <p>10) The opening date of the financial bids shall be as specified in the request for proposal documents. .</p> <p>11) Financial bids shall be opened publicly, and, at the public opening, there shall be publicly read out the-</p> <p>(a) name of the bidder;</p> <p>(b) technical score; and</p> <p>(c) bid price.</p>
--	--	--

		<p>12) A financial evaluation shall be conducted by reviewing the conversion of bids to a single currency as stated in the invitation to bid.</p> <p>13) For the purposes of evaluation, cost shall include local taxes, and other reimbursable expenses, such as travel, translation, printing of the report or secretarial expenses, where applicable.</p> <p>14) Subject to any negotiations that may need to be held, the bidder who has submitted the highest ranked technical bid, of bids submitted within the budget, shall be recommended for the award of contract.</p> <p>15) Negotiations shall be carried out in accordance with the provisions of these Regulations.</p> <p>16) The evaluation committee shall prepare an evaluation report for submission to the accounting officer through the head of procurement function and shall be accompanied by the professional opinion.</p>
<i>Procedure for consultants' qualification selection Method</i>	149.	<p>1) Pursuant to section 124(6) (c) of the Act, consultants' qualification selection method shall be used for small assignments, of which the need for preparing and evaluating competitive bids is not justified.</p>
		<p>2) The procuring entity, for the purpose of soliciting bidders under the qualification selection method shall-</p> <p>(a) follow a two stage process;</p> <p>(b) prepare the terms of reference;</p> <p>(c) request bidders to supply expressions of interest and information concerning their experience and competence relevant to the assignment; and</p> <p>(d) establish a short-list.</p>

		<p>3) The procedure to be followed for the qualification selection evaluation method shall be conducted in two stages.</p> <p>4) The procuring entity shall-</p> <p>(a) evaluate the expressions of interest together and with any supporting information; and</p> <p>(b) select a bidder with the most appropriate qualifications and references, to whom the contract is to be awarded.</p> <p>5) The Evaluation Committee shall-</p> <p>(a) prepare a technical evaluation report of the expressions of interest received; and</p> <p>(b) submit the technical evaluation report to the accounting officer for his or her approval through the head of the procurement function, which shall be accompanied by the professional opinion.</p> <p>6) The procuring entity shall not proceed to Stage Two of the evaluation procedure before obtaining the approval of the Accounting Officer.</p> <p>7) The procuring entity shall request the successful bidder to negotiate the terms of the contract for the provision of the services.</p> <p>8) Negotiations shall be carried out in accordance with the provisions of these Regulations.</p>
<i>Negotiations with successful tenderers</i>	150.	For the purpose of section 128 (1) of the Act, where so provided in the tender document, the accounting officer of a procuring entity may delegate negotiations to the evaluation committee appointed for the subject procurement under section 46 of the Act.
<i>Procedure for</i>	151.	(1) A procuring entity shall not enter into any negotiations pursuant

<i>negotiations</i>		<p>to section 128 of the Act, until:-</p> <p>(a) the accounting officer has approved the successful proposal in line with section 127 of the Act; and</p> <p>(b) the accounting officer has notified the successful and unsuccessful bidders pursuant to section 126 (4) of the Act and Regulation 95.</p> <p>(2) For greater certainty, where negotiations are to be conducted the notification to the successful bidder shall specify that entering into a contract shall be subject to the successful negotiations.</p> <p>(3) The evaluation committee conducting negotiations under sub-regulation (1) and this Regulation, shall prepare a report of the negotiations and submit it to the head of procurement function for onward submission to the accounting officer.</p> <p>(4) The evaluation report under sub-regulation (2) above, shall be accompanied by the professional opinion of the head of the procurement function to the accounting officer for decision making and approval</p> <p>(5) The report and the professional opinion prepared under sub-regulations (2) and (3) above shall form part of the records of the procurement proceedings.</p>
		PART XI – PROCUREMENT CONTRACTS
<i>Procurement contracts</i>	152.	<p>(1) Pursuant to section 138 of the Act, an accounting officer of a procuring entity shall publish and publicize all procurement contracts at its notice boards and websites within fourteen days after signing the contract.</p> <p>(2) Pursuant to section 138(2) of the Act, an accounting officer of a procuring entity shall report all signed contracts to the Authority within 14 days after the end of a quarter in a format provided by the Authority</p> <p>(3) Pursuant to section 138(4) of the Act, the Authority shall issue a reporting format for contract awards requiring accounting officers to submit information that is not limited to the following</p> <p>(a) name of contractor/supplier;</p> <p>(b) subject of procurement;</p> <p>(c) date of commencement/signing;</p>

		(d) date of contract expiry/completion; and (e) contract price
<i>Amendments or variations to contracts</i>	153.	<p>1. Pursuant to section 139 of the Act:- (a) “contract amendment” means a change to the terms and conditions of an awarded contract; and (b) “contract variation” means a change to the price, completion date or statement of requirements of a contract to facilitate adaptations to anticipated events or changes in requirements.</p> <p>2. Pursuant to section 139(1)(b) of the Act, contract variations or amendments for goods, works and services may either emanate from procuring entity on its own volition or from the contractor because of circumstances that were not foreseen during project design.</p> <p>3. Such variation request shall be reviewed by the contract implementation team as set out under section 151 of the Act, for complex and specialized contracts or an evaluation committee set out under section 139(2) of the Act, for other contracts, before they are submitted to accounting officer through the head of a procurement function for approval respectively.</p> <p>4. Pursuant to section 139(2)(a) of the Act, the extension of contract period where delivery is delayed shall not have a financial implication.</p> <p>5. Pursuant to section 139(1)(a) of the Act, any additional funding required for a variation of contract shall be secured and committed.</p>
<i>Interest on overdue amounts and liquidated damages</i>	154.	<p>) Pursuant to section 140(d) of the Act, any ascertained liquidated damages shall be deducted from:- (a) the amount of approved invoices due for payment; or (b) the performance security</p> <p>) Damages may emanate from delayed completion of activities or poorly executed activities or both.</p> <p>) If the liquidated damages exceed the value of the performance security, the contract shall automatically be cancelled and the contractor shall be held responsible.</p>

<i>Conditions for use of indefinite quantity framework</i>	155.	<p>A procuring entity shall prepare tender documents for framework agreements for an indefinite quantity specifying the following—</p> <ul style="list-style-type: none"> (a) the period of the agreement, including the number of options, if any, and the period for which a procuring entity may extend the contract under each option; (b) include a statement of work, specifications, or other description, that reasonably describes the specific requirements, nature, complexity, and purpose of the goods, works or services, a procuring entity will acquire under agreement in a manner that will enable a prospective firm or individual to decide whether to submit a tender; and (c) state the procedure that a procuring entity may use to issue orders either electronically or manually.
<i>Framework contracting</i>	156.	<p>Pursuant to section 141 of the Act, an accounting officer of a procuring entity:-</p> <ul style="list-style-type: none"> (a) shall use open tendering method to develop a list of contractors or suppliers for an award of indefinite delivery contract or multiple awards of indefinite quantity contracts for procurement. (b) a procuring entity shall for the purpose of efficiency of procurement process and reduction of procurement transaction costs engage in closed or open framework contracts where it is determined that:- <ul style="list-style-type: none"> (i) the need for the subject matter of procurement is expected to arise on a repeated basis during a given period of time; or (ii) by virtue of the nature of the subject matter of procurement, the need for it may arise on urgent basis during a given period of time; or (iii) other grounds and circumstances that justify recourse to a framework contracting arrangement.
<i>Record for multiple award decision</i>	157.	<p>A procuring entity shall state the procedure and selection criteria when issuing multiple awards and document the decision whether or not to use multiple awards in both the tender document and the relevant procurement records.</p>
<i>Planning the acquisition</i>	158.	<p>(1) As part of the procurement plan, a procuring entity shall determine whether multiple awards are appropriate.</p> <p>(2) A procuring entity shall, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity framework contracts under a single tender for the same or similar</p>

		<p>goods or services to two or more suppliers.</p> <p>(3) A procuring entity shall avoid situations in which vendors specialize exclusively in one or a few areas within the schedule of requirements, thus creating the likelihood that orders in those areas will be awarded on a sole-supplier basis; however, each vendor need not be capable of performing every requirement as well as any other vendor under the contracts.</p> <p>(4) A procuring entity shall consider the following when determining the number of contracts to be awarded:-</p> <ul style="list-style-type: none"> (a) the complexity and duration of the contract requirement; (b) the expected duration and frequency of task or delivery order; (c) the mix of resources a contractor shall have to perform expected task or delivery order requirements; and (d) the ability to maintain competition among the vendors throughout the contracts' period of performance.
<i>Acceptability of differing prices for identical or similar items</i>	159.	Where identical or similar goods or works or services are delivered or provided by multiple vendors to the procuring entity at the same point, a procuring entity may negotiate with suppliers who are above the lowest to match the lowest price.
<i>Limitations for use of multiple awards</i>	160.	<p>A procuring entity shall not use the multiple award approach if—</p> <ul style="list-style-type: none"> (a) only one contractor is capable of providing performance at the level of quality required because the goods or services are unique or highly specialized; (b) based on the procuring entity's knowledge of the market, more favourable terms and conditions, including pricing, will be provided if a single award is made; (c) the expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards; (d) the projected service orders are so integrally related that only a single contractor can reasonably perform the work; (e) the ceiling of the contract is less than the request for quotations threshold found in the Second Schedule of these regulations; or

		(f) multiple awards would not be in the best interests of the procuring entity.
<i>Provisions for multi-year framework contracts</i>	161.	<p>A procuring entity may award multi-year framework contracts, provided that: -</p> <p>(a) the contract is in its annual procurement plan in accordance to section 53(7) of the Act;</p> <p>(b) all options periods are priced, and the price can be indexed as appropriate; and</p> <p>(c) the framework contract, including all option periods, does not exceed three years.</p>
<i>Approval by accounting officer of price changes under framework contracts.</i>	162.	Approval of a procuring entity's accounting officer shall be required for price changes included in framework contracts except for those applied by indices or formulae specified in the original contract.
<i>Provisions for ordering</i>	163.	<p>(1) A procuring entity shall not be required to advertise or invite quotations for orders issued under framework contracts.</p> <p>(2) Individual orders shall clearly describe all services to be performed or goods to be delivered so that the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the specific requirements, issued within the period of performance, and be within the ceiling of the contract</p> <p>(3) In conformity with Section 60(3)(a) of the Act, performance-based acquisition methods shall be used to the maximum extent practicable</p> <p>(4) Orders may be placed by using any means, including electronic, as may be specified in the contract.</p> <p>(5) A procuring entity shall ensure that the price of all the orders does not exceed the ceiling amount of the contract</p> <p>(6) Orders placed under framework contracts shall contain the</p>

		<p>following information:</p> <ul style="list-style-type: none"> (a) date of order; (b) contract number and order number; (c) for goods and services, contract item number and description, quantity, and unit price or estimated cost; (d) delivery or performance schedule; (e) place of delivery or performance (including consignee); (f) any packaging, packing, and shipping instructions; and (g) method of payment and payment office, if not specified in the agreements. <p>) A Procuring entity shall not be exempted from the requirement of preparing procurement plans even when ordering under a framework contract.</p> <p>) Performance securities may be required at the discretion of the procuring entity. Where required, the performance security shall be determined by the procuring entity in accordance with value of the orders made.</p>
<i>Equal opportunity</i>	164.	<p>(1) A procuring entity shall provide each vendor issued under multiple delivery order framework contracts or multiple service order framework contracts a fair opportunity to be considered for award for each order.</p> <p>(2) Specifically, a procuring entity shall</p> <ul style="list-style-type: none"> (a) develop procedures that will provide each vendor an equal opportunity to be considered for each order and that reflect the requirement and other aspects of the procurement environment; (b) not to use any method that would not result in fair consideration being given to all vendors prior to placing each order; (c) include the procedures in the tender and the contract document; and (d) consider price or cost under each order as one of the factors in the selection decision. <p>(3) A procuring entity shall consider the following when developing placement procedures: -</p> <ul style="list-style-type: none"> (a) past performance on earlier orders under the contract, including quality and timeliness; (b) potential impact on other orders placed with the contractor; (c) minimum order requirements; and

		<p>(d) the amount of time suppliers need to make informed business decisions whether to respond to potential orders.</p> <p>(4) Formal evaluation plans or scoring of quotes or offers are not required.</p> <p>(5) Small orders may be rotated between or among contractors, but larger one should be made competitive, time permitting.</p>
<i>Exceptions to the equal opportunity process</i>	165.	<p>A procuring entity shall give every vendor an equal opportunity to be considered for a delivery-order or service-order unless:</p> <p>(a) a procuring entity's need for the goods or services is so urgent that providing an equal opportunity may result in unacceptable delays.</p> <p>(b) only one vendor is capable of providing the goods or services required at the level of quality required because the goods or services ordered are unique or highly specialized.</p> <p>(c) the order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all vendors were given a fair opportunity to be considered for the original order.</p> <p>(d) it is necessary to place an order to satisfy a minimum guarantee.</p>
<i>Documentation of decision for orders.</i>	166.	<p>(1) A procuring entity shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any non-cost considerations in making the award decision.</p> <p>(2) The record shall also identify the basis for using an exception to the fair opportunity process</p> <p>(3) If a procuring entity uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical.</p>
<i>When definite-quantity framework contract may be used</i>	167.	<p>A definite-quantity framework contract may be used when it can be determined in advance that—</p> <p>(a) a definite quantity of goods or services will be required during the contract period; and</p> <p>(b) the goods or services are regularly available or will be available after a short lead time.</p>

<i>When Requirements framework contract may be used</i>	168.	<p>(1) A requirements framework contract may be appropriate for acquiring any goods or services when a procuring entity anticipates recurring requirements but cannot predetermine the precise quantities of goods or services that the procuring entity's activities will need during a definite period.</p> <p>(2) For the information to tenderers and resultant contractors, the procuring entity shall state a realistic estimated total quantity in the tender and resulting contract. This estimate is not a representation to a bidder or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal</p> <p>(3) A procuring entity may derive the estimate from records of previous requirements and consumption, or by other means including market research, and should base the estimate on the most current information available.</p> <p>(4) The contract shall provide that all purchases by the procuring entity for the specified goods or services may be made under the contract.</p>
<i>Procedure of requirements for framework contracts</i>	169.	The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver or perform and a procuring entity's obligation to order. The contract may also specify maximum or minimum quantities that a procuring entity may order under each individual order and the maximum that it may order within a specified period of time.
<i>Public assets furnished for repair.</i>	170.	When a requirements framework contract is used to acquire works on existing public assets, equipment or stores, a procuring entity shall specify in the contract that failure of a procuring entity to furnish such items in the amounts or quantities described in the contract as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price.
<i>Application.</i>	171.	(1) A procuring entity may use an indefinite-quantity framework contract when a procuring entity cannot predetermine, above a specified minimum, the precise quantities of goods or services that will be required during the contract period, and it is inadvisable for the procuring entity to commit itself for more than a minimum quantity.

		(2) A procuring entity shall use an indefinite-quantity framework contract only when a recurring need is anticipated.
<i>Framework contracting Documents</i>	172.	<p>(1) An indefinite-quantity framework contract shall provide for an indefinite quantity, within stated limits, of goods or services during a fixed period. A procuring entity then places orders for individual requirements. Quantity limits may be stated as number of units or as shilling values.</p> <p>(2) The contract shall require a procuring entity to order and the contractor to furnish at least a stated minimum quantity of goods or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum.</p> <p>(3) A procuring entity shall establish a reasonable maximum quantity based on market research, trends in recent contracts for similar goods or services, survey of potential users, consumption records, or any other rational basis.</p> <p>(4) To ensure that the contract is binding, the minimum quantity shall be more than a nominal quantity, but it shall not exceed the amount that a procuring entity is fairly certain to order</p> <p>(5) The contract shall also specify the maximum and minimum quantities that a procuring entity may order under each task or delivery order.</p>
<i>Performance Security</i>	173.	<p>(1) For the purposes of section 142(3) of the Act, the threshold for providing performance security for goods, works and non-consultancy services shall be for contracts above Kenya shillings five million.</p> <p>(2) Consultants shall provide professional indemnity cover as appropriate.</p> <p>(3) Where, performance security for goods, works and non-consultancy services for women, youth and persons with disabilities and other disadvantaged groups, is required the performance security shall not exceed one per cent of the contract sum.</p>

		<p>(4) The head of procurement function shall be the custodian of the tender security, performance security, security for advance payment, and professional indemnity certificate and shall monitor its application.</p> <p>(5) Notwithstanding the provisions of sub-regulation (4) above, the security for advanced payment may be under the custody of the head of the accounting unit of a procuring entity.</p>
<i>Advance payment</i>	174.	<p>(1) Pursuant to section 147(2) of the Act, the amount of advance payment allowed shall be specified in the bid document.</p> <p>(2) The total amount specified in sub-regulation (1) above shall not exceed twenty per cent of the contract sum.</p> <p>(3) The advance payment shall not be paid unless the successful tenderer provides an equivalent advance payment guarantee from a reputable bank or financial institution, recognized by the Central Bank of Kenya</p> <p>(4) Where a successful tenderer is foreign, such tenderer shall provide an advance payment guarantee issued by a corresponding local bank or authorized financial institution in Kenya recognized by the Central Bank of Kenya</p> <p>(5) Where an advance payment has been done pursuant to section 146 and 147 of the Act, the head of procurement function shall ensure that:-</p> <ul style="list-style-type: none"> (a) the bank guarantee has been authenticated by the issuing bank in writing to the accounting officer; (b) the bank guarantee shall be on demand; (c) the bank guarantee shall not be allowed to lapse unless the contractor has done a commensurate work or has supplied goods of equivalent value to the guarantee; and (d) any payments made to the contractor shall be done in a manner to reduce the advance payment progressively. <p>(6) Where the advance payment has not been fully paid and the contract is terminated or frustrated, the outstanding advance payment shall be paid by the contractor.</p> <p>(7) The contractor shall confirm in writing that the advance payment shall only be used for purposes of the contract.</p>

		(8) Where it has been confirmed by a procuring entity that the advance payment has been used contrary to sub-regulation (7) above, the advance payment shall be recovered from the bank guarantee.
<i>Contract Administration</i>	175.	<p>(1) Pursuant to section 150(2) and (3) of the Act, the head of the user department shall be responsible for managing and monitoring the implementation of procurement contracts on a daily basis.</p> <p>(2) The head of the procurement function shall monitor the contract management by the user department.</p>
<i>Complex and specialized</i>	176.	<p>(1) Pursuant to section 151 of the Act, in respect to complex and specialized contracts:</p> <ul style="list-style-type: none"> (a) the accounting officer of a procuring entity shall have in place a contract implementation team in order to ensure the right quality and quantity of goods, works and services are procured; (b) the contract shall have a commencement date; (c) contract implementation shall be as per the project implementation plan agreed upon by the contractor and the procuring entity; (d) the plan referred to under sub-regulation (c) above shall include:- <ul style="list-style-type: none"> (i) the list of activities planned to be carried out; (ii) the dateline for each activity; (iii) monthly cash planning forecast; and (iv) any other information as required by a procuring entity. (e) The requirements of the contract shall be closely monitored to ensure that there are no deviations or risks and those identified dealt with in time.
<i>Contract review reports</i>	177.	<p>(1) The project implementation team shall have a contract management plan that will provide for review meetings.</p> <p>(2) Review meetings in sub-regulation (1) above shall be held periodically as deemed necessary for the purpose of contract performance review, charting the way forward and preparing status reports.</p> <p>(3) The contract review shall consider the following:-</p> <ul style="list-style-type: none"> (a) the timeliness of contract performance, (b) cost and quality performance; (c) risks analysis; (d) operational effectiveness;

		<p>(e) appropriateness of the procedure of delivery; and (f) any other relevant information.</p> <p>(4) In reference to sub-regulation (3) (c) above a risks register shall be maintained to monitor all identified contract risks.</p> <p>(5) The common contract risks to be monitored shall include but not limited to :-</p> <ul style="list-style-type: none"> (a) incomplete or incorrect specifications; (b) poor communication; (c) supplier lacking sufficient resources; (d) production problems; (e) quality problems including technology; (f) shipment details; (g) underestimation of costs by supplier; (h) inflation trends; and (i) unexpected events. <p>(6) Any risks identified shall be isolated and addressed within a reasonable time.</p> <p>(7) After every review meeting, a status report shall be prepared to be shared by the parties and shall include:-</p> <ul style="list-style-type: none"> (a) executive summary; (b) report on performance of activities and budget; and (c) any other issues relevant to the contract such as environmental and general observation including the performance rating. <p>(8) The contract manager shall report to the accounting officer the outcome of such a contract review meeting.</p>
<i>Payments to contractor</i>	178.	<p>(1) The contractor shall satisfactorily perform its contractual obligations prior to any payment by a procuring entity.</p> <p>(2) A procuring entity shall make prompt and timely payments to a contractor that meets its contractual obligations.</p> <p>(3) Payments shall only be made after an invoice or fee note is accurately raised and submitted in accordance with the provisions of the contract.</p> <p>Unless the contract provides otherwise, a procuring entity shall</p>

		<p>pay interest on the overdue amounts</p> <p>(5) The interest to be paid under sub-regulation (4) above, shall be in accordance with the prevailing commercial bank rates.</p> <p>(6) A procuring entity shall plan its procurement and cash/fund flows to ensure that contractors are paid promptly as per the terms of contract.</p> <p>(7) On receipt of an invoice or a fee note, a procuring entity shall make payment on first come first paid basis.</p>
<i>Contract monitoring</i>	179.	<p>) Pursuant to section 152 of the Act, the head of procurement function shall prepare a monthly progress report of all procurement contract to the accounting officer.</p> <p>) The report in sub-regulation 1 above shall include but not limited to:</p> <ul style="list-style-type: none"> (a) contract description; (b) contract number; (c) value of contract; (d) commencement date; and (e) current status.
<i>Contract Termination</i>	180.	<p>(1) Pursuant to section 153 of the Act, a contract shall specify the grounds and the procedure for termination.</p> <p>(2) An accounting officer of a procuring entity may approve the termination of a contract upon request by the head of procurement function</p> <p>(3) The request for approval shall clearly state the reasons for termination, the contractual grounds for termination and the cost of terminating the contract.</p> <p>(4) An accounting officer of a procuring entity shall be required to terminate a contract within a reasonable time when it becomes apparent that a contract is frustrated based on the evidence from the contract implementation team pursuant to section 151(2) (a) and (g) of the Act.</p> <p>(5) A procuring entity shall seek legal advice from the Office of the Attorney General before terminating a contract.</p> <p>(6) All terminated contracts shall be reported to the Authority on a</p>

		<p>quarterly basis.</p> <p>(7) A procuring entity dealing with contracts under section 134 of the Act, shall seek clearance from the Attorney General before termination.</p>
<i>Handover and acceptance of goods, works and services</i>	181.	<p>(1) Pursuant to section 151 (2) (f) of the Act, a procuring entity may provide in its contract for:-</p> <ul style="list-style-type: none"> (a) partial provisional acceptance by taking possession and utilizing part of the goods, works and services accepted. (b) that the contractor shall be responsible for the repairs resulting from defects of poor workmanship and make the corrections pointed out in the partial provisional acceptance report; or (c) provisional acceptance where the entire subject matter of procurement is dealt with in the same manner and have the same consequences as the partial provisional acceptance in sub clause (a) above. <p>(2) The final official acceptance of all goods, works or services shall take place:-</p> <ul style="list-style-type: none"> (a) within the period of guarantee for the provisional acceptance or the last period of guarantee for provisional acceptance if there has been partial acceptances; or (b) within 60 days following the date on which all defects, poor workmanship and any other snags pointed out in the minute of acceptance are corrected.
		PART XII PREFERENCES AND RESERVATION IN PROCUREMENT
<i>Requirement for preference and reservations</i>	182.	Pursuant to Article 227(2) of the Constitution of Kenya, 2010 and Sections 155 and 157 of the Act, candidates shall participate in the procurement proceedings without discrimination except where participation is limited in accordance with the Act and these Regulations.
<i>Transfer of skills and technology</i>	183.	<p>(1) Pursuant to section 155(5)(b) of the Act, an accounting officer shall ensure that a procuring entity's tender document contain a mandatory requirement specifying that the successful bidder shall :-</p> <ul style="list-style-type: none"> (a) transfer technology, skills and knowledge through training, mentoring and participation of Kenyan citizens; and (b) reserve at least 40% employment opportunities for Kenyan citizens for works, consultancy services and non-consultancy

		<p>services, of which not less than 15% shall be reserved for Kenyan professionals at management level.</p> <p>(2) In complying with the requirements of sub-regulation (1) above, an accounting officer shall ensure that the procuring entity's tender document contains a mandatory requirement specifying that all tenderers include in their tenders a local content plan for the transfer of technology.</p> <p>(3) The local content plan shall include but not limited to:-</p> <ul style="list-style-type: none"> (a) positions reserved for employment of local citizens; (b) capacity building and competence development programme for local citizens ; (c) timeframes within which to provide employment opportunities; (d) demonstrable efforts for accelerated capacity building of Kenyan citizens; (e) succession planning and management. <p>(4) In circumstances, where international tendering and competition does not meet the requirement of sub-regulation (1) above, an accounting officer shall cause a report to be prepared detailing evidence of the inability to meet this provision and measures to be undertaken to ensure compliance with this Regulation, and submit the report to the National Treasury to grant a waiver of the requirement.</p>
<i>Eligibility criteria</i>	184.	<p>(1) Pursuant to section 156 of the Act, a person shall be qualified to benefit from preference and reservation scheme, if the person meets the requirements of section 55 of the Act.</p> <p>(2) A person shall not be qualified to benefit from a preference and reservation scheme:-</p> <ul style="list-style-type: none"> (a) as a contracting firm, unless that person is qualified as a local contractor or a citizen contractor; or (b) as a micro enterprise or an enterprise owned by a disadvantaged group unless the person is registered by the National Treasury as such upon application. <p>(3) All small and micro-enterprise groups or disadvantaged groups that have been registered by the National Treasury shall automatically be included in the list of registered suppliers of a</p>

		procuring entity upon submission of the National Treasury Registration certificate.
<i>Registration of enterprises and groups</i>	185.	<p>(1) A small or micro enterprise or a disadvantaged group wishing to participate in public procurement shall apply for registration with the National Treasury in the form set out in the Tenth Schedule.</p> <p>(2) All lists of registered enterprises from the national and county levels / treasury shall be submitted to the Authority for consolidation ,publication and updating in the State Portal.</p>
<i>Qualifications of contractors</i>	186.	<p>(1) A firm shall be qualified as-</p> <p>(a) a local contractor if it is registered in Kenya and has above fifty-one per cent Kenyan shareholding; or</p> <p>(b) a citizen contractor if wholly owned and controlled by persons who are Kenyan citizens.</p> <p>(2) Notwithstanding the provisions of sub-regulation 1(b) above, a citizen contractor registered outside the Republic of Kenya shall only be eligible to benefit from the preferences and reservations scheme, when bidding in international tendering and competition.</p>
<i>Application by foreign contractors.</i>	187.	<p>(1) Notwithstanding Regulation 186 above, and pursuant to Section 157 (2) of the Act, a foreign contractor may benefit from a preference and reservation scheme, where it enters into a joint venture or subcontracting arrangements, as evidenced by written agreement, with a firm that is registered in Kenya and where Kenyan citizens have majority shares.</p> <p>(2) Where a citizen contractor (s) have entered into contractual arrangements with foreign contractor(s) pursuant to sub-regulation (1) above, a ten percent margin of preference in the evaluated price of the tender shall be applied.</p>
<i>Participation of candidates</i>	188.	Pursuant to section 157(4)(e) of the Act, enterprises owned by

<i>in preference and reservations</i>		elderly persons aged sixty years and above shall be considered as a disadvantaged category under preferences and reservations scheme.
<i>Reservation of budget</i>	189.	Pursuant to section 157(5) of the Act, an accounting officer of a procuring entity shall allocate at least thirty percent of its procurement budget for the purposes of procuring goods, works and services from micro and small enterprises owned by youth, women and persons with disability.
<i>Prompt payment for performed contracts</i>	190.	<p>) For the purpose of ensuring sustained growth for enterprises owned by youth, women or persons with disabilities, a procuring entity shall make prompt payments for all performed contracts and shall not delay payment beyond sixty days from the date of invoice.</p> <p>) Where delay of payments for goods, works and services performed are likely to happen, a procuring entity may facilitate invoice discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises stated in sub-regulation (1) above.</p> <p>) For the purpose of implementing sub-regulation (1) above, a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices and contract awards.</p>
<i>Regions where exclusive preference shall apply</i>	191.	<p>(1) For purposes of sections 157(4)(d) and 33(2)(g) of the Act, the regions preference and reservations schemes applied shall be –</p> <p>(a) counties;</p> <p>(b) sub-counties;</p> <p>(c) constituencies; and</p> <p>(d) wards.</p> <p>(2) Local preference and reservations shall be applicable in the counties, sub-counties, constituencies and wards, where citizen contractors are based and operate.</p> <p>(3) Citizen contractors who are based and operate in the regions specified in sub-regulation (1) above, shall be given exclusive preference when participating in procurements using funds from the county government or any devolved Fund except where it is established that local capacity is not available.</p>
<i>National Reservations</i>	192.	<p>For purposes of section 157(4)(c) of the Act, a procuring entity shall grant exclusive preference to citizen contractors offering -</p> <p>(a) motor vehicles, plant and equipment which are assembled in</p>

		<p>Kenya;</p> <p>(b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather agro-processing, sanitary products, and other goods made in Kenya; or</p> <p>(c) goods manufactured, mined, extracted or grown in Kenya.</p>
<i>Single preference to tenderers</i>	193.	(1) A candidate shall be entitled to one preference and reservation scheme at a time in a procurement proceeding pursuant to section 156 of the Act.
<i>Unbundling of procurements</i>	194.	<p>(1) Pursuant to section 54(1) of the Act, a procuring entity may for the purpose of ensuring maximum participation of citizen contractors, disadvantaged groups, small and micro- enterprises in public procurement, unbundle goods, works and services in practicable quantities.</p> <p>(2) For greater certainty, a procuring entity in unbundling procurements in sub-regulation (1) above, may lot goods, works or services in quantities that are affordable to specific target groups participating in public procurement proceedings</p> <p>(3) For greater certainty, unbundled procurement proceedings shall be restricted to disadvantaged groups, small and micro-enterprises.</p>
<i>Tender security</i>	195.	<p>(1) No tender security shall be required from small and micro-enterprises or enterprises owned by disadvantaged groups participating in reserved procurement proceedings.</p> <p>(2) Notwithstanding sub-regulation (1) above, target groups shall be required to complete and sign the Tender Securing Declaration Form set out in Fourth Schedule</p> <p>(3) Any bidder from the target group who fails to adhere to the terms of the Tender Securing Declaration Form shall be liable for debarment pursuant to section 41 of the Act.</p>
<i>Preference and reservations term limit</i>	196.	An enterprise registered by the National Treasury in a target group benefitting from the preference and reservation scheme shall be entitled to such benefits for a period of two years, which may be renewed to a maximum period of ten years.
<i>Open tender</i>	197.	An advertisement relating to an open tender under a preference and

<i>advertisement</i>		reservations scheme shall state that such tender is open to small and micro enterprises, and to disadvantaged groups registered with the National Treasury, or regions, as appropriate.
<i>Procurement to be competitive</i>	198.	Pursuant to section 157(3)(b) of the Act, procurement of goods, works and services under these Regulations shall be competitive.
<i>Framework contracts with target groups</i>	199.	A procuring entity shall make use of existing framework contracts with disadvantaged groups, small and micro enterprises to provide an efficient, cost effective and flexible means to procure goods, works and services that are required repeatedly or continuously over a set period of time.
<i>Monitoring and evaluation</i>	200.	(1) Pursuant to sections 9(1)(e), 157(3)(c) and 157(17)(d) of the Act, the application of the preference and reservation scheme by procuring entities shall be monitored by the National Treasury and the Authority. (2) Any report prepared pursuant to section 157 (17) (d) of the Act, by the National Treasury on the implementation of the preference and reservation scheme shall be shared with the Authority.
<i>Reports to the Authority</i>	201.	Pursuant to sections 157(12) and 158 (3) of the Act, the Authority shall issue guidelines for preparation of reports prescribe under these sections.
<i>Register of contractors</i>	202.	1). Pursuant to section 157(7) of the Act, the Authority shall issue guidelines on the reporting requirements relating to contractors' workload and performance.
<i>Preference to disadvantaged groups</i>	203.	For the purpose of section 157(8)(a)(ii) and (iii) of the Act, the threshold below which exclusive preference shall be given to citizen contractors is as follows:- (a) Kenya shillings one billion for procurements in respect of works, construction materials and other materials used in transmission and conduction of electricity of which the material is made in Kenya; and (b) five hundred million shillings for procurements in respect of goods and services.
<i>Margin of preference for international tendering and</i>	204.	1). For purposes of section 157(8) (b) of the Act, the margin of preference for international tendering and competition pursuant to section 89 of the Act, shall be – (a) a twenty percent margin of preference of the evaluated price of

<i>competition</i>		<p>the tender shall be given to candidates offering goods manufactured, mined, extracted, grown, assembled or semi-processed in Kenya.</p> <p>(b) an eight percent margin of preference of the evaluated price of the tender, where percentage of shareholding of Kenyan citizens is above five percent and less than twenty percent;</p> <p>(c) ten percent of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent but above twenty percent; and</p> <p>(d) fifteen percent of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is more than fifty percent.</p> <p>2) where goods are assembled or semi-processed under sub-regulation (1) above in Kenya, the percentage of local content assembled or semi-processed shall not be less than forty percent.</p>
<i>Sourcing supplies from citizen contractors by international tenderers.</i>	205.	For greater certainty, supplies under section 157 (9) of the Act shall include goods, works, non-consulting and consulting services.
		PART-XIII - INVENTORY CONTROL, ASSET AND STORES MANAGEMENT AND DISTRIBUTION
<i>Receipt and recording of goods, stores and works</i>	206.	<p>) Pursuant to section 159 (2) of the Act, an accounting officer of a procuring entity shall only receive works, goods or services based on a purchase order, service order or signed contract and ensure that inventory of the same is maintained.</p> <p>) An accounting officer of a procuring entity, shall ensure that stores are inspected and a report prepared on item suitability and conformity to specifications as provided under sections 48 and 150 of the Act.</p> <p>) Pursuant to section 162 of the Act, the accounting officer shall ensure that the stores received under sub-regulation (2) above, are taken on charge.</p> <p>) For effective, economic, efficient, and transparent use of government inventory, stores and assets at all levels, an accounting officer of a procuring entity shall take full responsibility of the management or control of inventory and assets and shall ensure that:-</p>

		<p>(a) preventive measures are put in place to eliminate theft, security and safety threats, losses, wastage and misuse;</p> <p>(b) the movement and condition of assets can be tracked;</p> <p>(c) stock levels are at optimum and economical level;</p> <p>(d) systems, processes and procedures both in electronic and manual form are in place.</p> <p>) An accounting officer shall ensure officers deployed in the stores are provided with appropriate protective gear.</p>
<i>Assets and inventory management</i>	207.	<p>(1) The National Treasury shall provide guidelines on asset management pursuant to Section 7(2)(k) of the Act.</p> <p>(2) The guidelines shall include the date of acquisition, value and lifecycle of assets and any other information deemed necessary.</p> <p>(3) Pursuant to section 53 (3) of the Act, an accounting officer of a procuring entity shall ensure that funds are not tied up in inventory, stores and assets by procuring excessive items beyond the procuring entity's consumption capacity to avoid storage costs.</p> <p>(4) An accounting officer of a procuring entity shall be responsible for custody, care, control and use of government inventories under him or her.</p> <p>(5) An accounting officer of a procuring entity shall ensure that there is adequate, safe and secure storage space and facilities commensurate with the needs of a procuring entity.</p> <p>(6) An accounting officer of a procuring entity shall be responsible for the management of inventory, stores and assets in compliance with the guidelines issued by the Authority and the National Treasury.</p> <p>(7) An accounting officer of a procuring entity shall in the event of any loss of stores conduct an investigation to establish the losses and take appropriate action in line with the prevailing Government regulations and any written law.</p> <p>(8) An accounting officer of a procuring entity may introduce and maintain an information communication technology inventory management system, which shall comply with requirements of the Act and these Regulations.</p>

<i>Objectives of inventory control, assets and stores management and distribution</i>	208.	<p>An accounting officer of a procuring entity shall ensure proper management and distribution of inventory, stores and assets by ensuring that :-</p> <ul style="list-style-type: none"> (a) they are received and taken on charge; (b) they are consumed in the course of public business and a record of the same is maintained; (c) any inventory, stores and assets worn out in the course of public business are removed from the stores records through a disposal process; (d) items lost, stolen, destroyed, damaged or rendered unserviceable other than by fair, wear and tear have been removed from the stores record through a loss adjustment report.
<i>Transfer of inventory, stores and management systems</i>	209.	<p>(1) When assets or liabilities of a procuring entity are transferred to another government entity or other institution by operation of law or reorganization of government functions, an accounting officer for the transferring procuring entity shall be required to :-</p> <ul style="list-style-type: none"> (a) identify an inventory list of such assets and liabilities; (b) provide the accounting officer for the receiving procuring entity or other institution with the necessary records; and (c) both the accounting officer of transferring procuring entity and a receiving procuring entity or public entity, shall sign the inventory when the transfer takes place. <p>) An accounting officer of the transferring procuring entity shall maintain a record under sub-regulation (1) above and file a copy of the signed inventory with the respective National Treasury and the County Treasury within fourteen days of the transfer.</p>
<i>Inventory for Assets and liabilities.</i>	210.	<p>1) An accounting officer of a procuring entity shall be responsible for maintaining a register of assets under his or her control or possession.</p> <p>2) A register of land and buildings shall record each parcel of land and each building and:-</p> <ul style="list-style-type: none"> (a) the terms on which it is held; (b) reference to the conveyance; (c) address; (d) area; (e) dates of acquisition; (f) disposal or major change in use; (g) any capital expenditure;

		<p>(h) freehold / lease hold terms; (i) maintenance contracts; and (j) other pertinent management details.</p> <p>3) All movable and non-movable assets including but not limited to furniture and equipment issued for government quarters or office, large tools for government works, plant, equipment, vehicles or launches (large motor boats) shall be recorded in a register.</p> <p>4) All acquisitions or assignment of immovable property shall be notified to the National Treasury and all county treasuries respectively.</p> <p>5) All acquisitions or assignment of building or public land with or without buildings shall be notified to the National Treasury or relevant County Treasury, as appropriate.</p> <p>6) The National Treasury and a County Treasury shall maintain a consolidated asset register of all moveable and immovable inventory and assets within their jurisdictions, as appropriate.</p> <p>7) Pursuant to section 162(5) of the Act, the lifespan of assets shall be in accordance with the policy issued by the Cabinet Secretary.</p>
<i>Responsibilities of head of procurement function</i>	211.	<p>(1) The head of the procurement function of a procuring entity shall ensure that:-</p> <p>(a) a qualified officer in supply chain management is designated to be in charge of stores;</p> <p>(b) all stores purchased are received and taken on charge, and shall arrange for occasional visits of inspection to the stores, at least twice in each calendar year, by himself or by a representative in order to ensure that storekeepers carry out their duties as provided by the Act;</p> <p>(c) stores are not allowed to suffer deterioration from any preventable cause;</p> <p>(d) conduct quarterly and annual stock taking pursuant to section 162(2) of the Act;</p> <p>(e) certify the invoices and payment vouchers to suppliers;</p> <p>(f) verify that the available stock levels warrant initiating a procurement process;</p> <p>(g) all stores requisitions and issues shall be approved by the head of the procurement function pursuant to section 162(4) of the Act;</p> <p>(h) adequate safety and fire-fighting appliances as approved by the relevant authorities are installed in the store premises, are</p>

		<p>maintained in good working order and are readily available for emergencies; and</p> <p>(i) security personnel and staff are trained in the use of the safety and fire-fighting appliances in sub-regulation (h) above.</p> <p>(2) An accounting officer of a procuring entity shall ensure full compliance with the occupational health and safety laws.</p>
<i>Responsibilities of officer in charge of stores</i>	212.	<p>The officer in charge of stores of a procuring entity shall –</p> <p>(a) ensure that the store-room(s) are kept clean, properly ventilated and in good condition and that the stores are well arranged and easy to access;</p> <p>(b) inspect the store-room(s) regularly and report to the head of the procurement function in case of any loss, leakage, damage or deterioration;</p> <p>(c) report half-yearly in writing to the head of the procurement function of any obsolete or unserviceable stores;</p> <p>(d) examine frequently the lock(s) of door(s) and fastenings of windows and ensure that the store-room(s) do not remain unattended when open for any purpose and shall 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;</p> <p>(e) ensure the stocks 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 be placed on the floor and fluids contained in tins or drums should, whenever possible, be stored off the ground to enable leakage to be readily detected;</p> <p>(f) apply good storage and preservation practices for all store items;</p> <p>(g) ensure damaged and expired stores for condemnation are kept separately from undamaged and unexpired stores;</p> <p>(h) ensure all stores of a highly inflammable or explosive nature are kept in a separate store-room;</p> <p>(i) ensure issues are made on first in first out basis.;</p> <p>(j) ensure that stores are not allowed to expire through a lapse of the shelf life;</p> <p>(k) ensure bin cards are properly kept for each item of stores and placed on or near the respective item;</p> <p>(l) ensure notices prohibiting smoking are prominently exhibited within the store premises;</p> <p>(m) ensure access to the stores shall be restricted; and</p> <p>(n) be responsible for the safe custody of all empty cases, drums, tins and packing materials that may be of any value, Quantity records in respect of such items should be kept.</p>

		PART XIV –DISPOSAL OF ASSETS
<i>Annual assets disposal plan</i>	213.	<p>) An accounting officer of a procuring entity shall ensure that an annual assets disposal plan is prepared of items declared unserviceable, surplus or obsolete as set out under section 53(4) of the Act.</p> <p>) Pursuant to section 53(2) and (4) of the Act, the disposal plan in sub-regulation (1) above shall be done in accordance with the format in part III of the Third Schedule.</p> <p>) An annual disposal plan format shall include but not limited to the following:-</p> <ul style="list-style-type: none"> (a) item description for boarding; (b) quantity; (c) unit of issue; (d) date of purchase; (e) purchase price; (f) estimated current value; (g) justification for disposal; (h) lifespan of item for boarding; (i) reference number to the assets register or records of the stores; (j) envisaged disposal method; (k) time schedule; (l) an indication whether the disposal will be managed by the procuring entity or any special agency or hired expert; and (m) the cost of managing the disposal process. <p>) The disposal plan shall be flexible to accommodate emerging issues in the disposal process</p> <p>) An annual disposal plan of procuring entities shall be submitted to the National Treasury or County Treasury, with a copy to the Authority for publication in the State Portal</p> <p>) An accounting officer of a procuring entity shall submit an annual disposal report to the National Treasury or County Treasury, as the case may be, with a copy to the Authority</p>

<i>Constitution of the disposal committee</i>	214.	<p>Pursuant to section 163 of the Act, an accounting officer, shall constitute an ad-hoc disposal committee which shall comprise of:</p> <ul style="list-style-type: none"> (a) the chairperson who shall be a head of department; (b) head of finance function; (c) at least three heads of user departments, of whom one shall be the head of the user department disposing off the stores or equipment; (d) head of the procurement function as secretary or his or her designate. <p>(2) Where necessary, the disposal committee may co-opt a relevant technical expert.</p>
<i>Quorum for disposal committee</i>	215.	The quorum for the disposal committee shall be three members including the chairperson
<i>Functions of a disposal committee</i>	216.	<p>Pursuant to section 163(2) of the Act, the disposal committee shall perform the following functions:-</p> <ul style="list-style-type: none"> (a) conduct board of a survey of items for disposal; (b) verify the condition and the location of the items identified for disposal; (c) determine the current market value of the items for disposal; (d) set up a reserve price based on paragraph (c) above, where a technical advice is not required; (e) verify the justification and procedure for disposal; (f) seek technical expertise where necessary to ascertain the value and the condition of the items; and (g) prepare a disposal report and submit it to accounting officer, with specific recommendations on the items to be disposed or those not to be disposed and the reasons thereof.
<i>Procedure for disposal</i>	217.	<ul style="list-style-type: none"> (1) An accounting officer shall be primarily responsible for ensuring that the procuring entity fulfills its asset disposal obligations. (2) The user department of a procuring entity shall be responsible for identification of items due for disposal and capture them in the annual departmental disposal plan. (3) The head of user department shall submit the disposal plan prepared under sub-regulation (2) above to the head of the procurement function thirty (30) days after the close of the financial year for consolidation. (4) The consolidated annual disposal plan under sub-regulation (3) above, shall be submitted through the accounting officer to the

		<p>cabinet secretary for the state department or county executive committee member for the procuring entity, as the case may be, for approval respectively.</p> <p>(5) The consolidated annual disposal plan under sub-regulation (3) above for state corporations under the national government or county corporations under the county government, shall be submitted to the accounting officer of that entity.</p> <p>(6) Once the consolidated disposal plan has been approved under sub-regulations (4) or (5) above, the head of the procurement function shall process the disposal through the disposal committee of the procuring entity.</p> <p>(7) The disposal committee shall consider the proposed items and recommend the reserve price where a technical advice is not required and recommend the appropriate disposal method to the accounting officer.</p> <p>(8) An accounting officer of a procuring entity shall consider and take into account the recommendations of the disposal committee and approve or reject it within fourteen (14) days after receiving the recommendation of the disposal committee.</p> <p>(9) If the accounting officer approves the recommendations of the disposal committee, the head of procurement function shall initiate the disposal process.</p> <p>(10) If an accounting officer rejects the recommendations of the disposal committee, he or she shall return the report to the disposal committee with his or her recommendations for further consideration.</p> <p>(11) For the disposal of a building or land, a procuring entity shall obtain the approval of the National Treasury or County Treasury respectively.</p>
<i>Methods of disposal</i>	218.	<p>(1) A procuring entity shall ensure that the disposal method is approved by the accounting officer.</p> <p>(2) Pursuant to section 165(1) of the Act, an accounting officer of a procuring entity may use additional methods as may be gazetted by the Cabinet Secretary from time to time.</p>
<i>Transfer to another public entity</i>	219.	<p>(1) An accounting officer may on the recommendation of the disposal committee transfer assets, equipment or stores to another public entity with or without financial adjustments.</p> <p>(2) The recommendation of the disposal committee shall include a justification for the transfer of assets, equipment or stores to another procuring entity.</p>

		<p>(3) The transfer documents shall be endorsed by the accounting officers of both the transferring procuring entity and receiving procuring entity.</p> <p>(4) An accounting officer of a procuring entity may as a result of a request from the receiving procuring entity or a proposal by the procuring entity on its own volition transfer assets, stores and equipment based on the recommendation of the disposal committee.</p> <p>(5) An accounting officer of a procuring entity that is receiving the items may pay an agreed amount of money to the transferring procuring entity or may receive the items free of charge.</p> <p>(6) Both procuring entities shall maintain records of the items transferred.</p>
<i>Sale by public tender</i>	220.	<p>(1) An accounting officer of a procuring entity may dispose of items that have become unserviceable, obsolete, or surplus by public tender.</p> <p>(2) Sale by public tender shall be conducted in accordance with the rules and procedures of open tender envisaged under sections 74 to 87 of the Act.</p> <p>(3) Where an accounting officer has advertised for disposal through an open tender method and has not attracted successful bidders, that accounting officer shall dispose-off the items within six months through a public auction.</p>
<i>Disposal documents</i>	221.	<p>(1) A procuring entity shall use standard asset disposal documents and formats issued by the Authority pursuant to section 70(1) of the Act.</p> <p>(2) An accounting officer of a procuring entity shall ensure the disposal document prepared contains sufficient information to allow fair competition among those who may wish to submit tenders.</p> <p>(3) A procuring entity shall allow a potential bidder to inspect the disposal document, prior to obtaining the document.</p> <p>(4) A procuring entity may charge a fee for obtaining the disposal document not exceeding Kenya Shillings one thousand or as</p>

		<p>may be prescribed by the cabinet secretary from time to time.</p> <p>(5) A procuring entity shall not charge a fee where disposal document is obtained electronically.</p> <p>(6) A procuring entity may require bid deposits as specified in the bid document paid by the bidder which shall be deemed as a bid security.</p> <p>(7) For successful bidders, the deposit shall form part of sale price and those who decline the award shall forfeit deposit paid.</p> <p>(8) For unsuccessful bidders, the deposit shall be refunded to in line with the provisions of the bid document.</p> <p>(9) The value of any required bid deposit shall be expressed as a fixed amount and not as a percentage.</p> <p>(10) The disposal document shall set out the following:-</p> <ul style="list-style-type: none"> (a) a statement of any key technical requirements; (b) qualification requirements and evaluation criteria; (c) asset(s) or equipment(s) with implication on public health and safety, and environmental protection; (d) application of a margin of preference and reservations; (e) instructions on obtaining the disposal bidding document, including any price payable and the language of the document; (f) instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value; (g) instructions on the location; and (h) deadline for submission of bids.
<i>Tender notice for public tenders</i>	222.	<p>(1) A public tender notice shall be advertised in accordance with section 96 of the Act.</p> <p>(2) For international public tenders the notice shall be published in a media of wide international circulation or on widely read internet sites, in the English language.</p> <p>(3) Where a procuring entity establishes it is necessary to ensure wider competition, it may also send the notice directly to potential bidders</p>

		(4) A procuring entity shall keep record of any bidders to whom the notice is sent directly, which shall form part of the disposal record.
<i>Site Visit for the public</i>	223.	A procuring entity shall organize site visit to enable bidders to gain access to the unserviceable stores or surplus or obsolete assets or equipment to make their own assessment of the item(s).
<i>Sale by public auction</i>	224.	<p>(1) An accounting officer of a procuring entity shall ensure the procurement of services of a registered auctioneer through a competitive process in accordance with Part X of the Act.</p> <p>(2) For greater certainty, only registered auctioneers having valid licenses shall conduct public auctions.</p>
<i>Inviting bids under the public auction sale method</i>	225.	<p>(1) A procuring entity shall invite bids through the publication of an announcement of auction sale as per Regulation 228.</p> <p>(2) A procuring entity shall publish an announcement of auction sale, inviting all potential bidders to participate in the sale.</p> <p>(3) Auction notice shall include but not limited to the following:-</p> <ul style="list-style-type: none"> (a) the name, address and contact details of a procuring entity; (b) the nature of the disposal requirement, including the description and quantity of stores, assets and equipment; (c) the location and timetable for disposing of the stores, assets and equipment; (d) a statement of any key eligibility requirements to participate in the auction sale, such as official identification paper for individuals, company registration, cash or bank draft, evidence of qualification to dispose of the stores, assets or equipment in the context of public health and safety and environmental protection; (e) instructions on the location and time of the auction; and (f) name and address of the auctioneer contracted.
<i>Eligibility criteria for the public auction sale method</i>	226.	<p>) Bidders participating in the public auction shall be required to produce evidence of having paid the required deposit.</p> <p>) Disposal of items with potential environmental, health and safety or security concerns shall be in accordance with the applicable Acts of Parliament.</p>
<i>Notice period for the public</i>	227.	(1) The notice period for sale by public auction method shall be a minimum of fourteen days.

<i>auction sale method</i>		<p>(2) In determining the appropriate notice period for each requirement, a procuring entity shall take into account, in addition to the minimum bidding period:-</p> <p>(a) the time required for all potential bidders to access the stores, assets and equipment; and</p> <p>(b) any restrictions relating to the time the stores, assets and equipment can be inspected by the potential bidders.</p>
<i>Public auction notices, sale, administration and awards</i>	228.	<p>(1) A public auction shall be conducted by a registered auctioneer appointed in accordance with Regulation 224.</p> <p>(2) Bidders who provided auction deposits shall be given auction bidding numbers which they shall be stating when announcing their bids.</p> <p>(3) A public auction shall be conducted professionally with all the participating bidders being given fair chances to bid up to the time the highest bidder is determined.</p> <p>(4) The participating bidders shall obtain copies of the public auction list.</p> <p>(5) The deposit shall be placed for each item or lot of the auction.</p> <p>(6) The auction deposit shall not exceed ten per cent of the total cost of the estimated value of the auction item or lot.</p> <p>(7) The auctioneer shall have staff who shall keep the record of the winning bidders and shall register the second highest bidder per item or lot.</p> <p>(8) A procuring entity shall also have its own staff who shall also keep the same record of the winning bidders and shall register the second highest bidder per item or lot.</p> <p>(9) At the end of the public auction the two lists of winners shall be tallied and signed by the representatives of the auctioneer and the procuring entity.</p>
<i>Payment for and collection of Items</i>	229.	<p>(1) The successful bidders in the public auction shall be given a period of at least fourteen days from the date of the public auction to pay for the items and take possession of them and remove them from the procuring entity's premises.</p>

		(2) Where the successful bidder fails to meet the requirements in sub-regulation (1) above, the bidder shall forfeit the bid deposit and the items may be offered to the second highest bidder.
<i>Use of waste disposal management</i>	230.	<p>(1) An accounting officer of a procuring entity shall comply with the procedure under Regulation 227 on public notice, while using waste disposal management method.</p> <p>(2) The documents, procedures and approvals required for waste disposal management shall be obtained from the relevant public agencies allowing a procuring entity to dispose those items that are harmful and unfriendly to the environment.</p>
<i>Assessment of waste disposal management</i>	231.	<p>(1) The user department of a procuring entity shall conduct an assessment to determine if a procuring entity is capable of disposing of the stores, assets or equipment itself or if it should seek the assistance of competent agencies.</p> <p>(2) Subject to the approval of the Authority, an accounting officer of a procuring entity may transfer an asset disposal proceeding to another procuring entity with necessary competence and capacity to carry out the disposal process on its behalf where</p> <ul style="list-style-type: none"> (a) it demonstrates a lack of internal capacity; and (b) there exists another public entity with that capacity. <p>(3) Where an accounting officer has transferred the disposal process under sub-regulation (2) above, the other procuring entity shall provide evidence that the disposal was done in accordance with the relevant laws and provisions of the Act.</p> <p>(4) Where an accounting officer has transferred the disposal responsibility to another accounting officer, the two accounting officers shall sign an agreement spelling out each other entity's responsibilities.</p>
<i>Justification for waste disposal management</i>	232.	The disposal committee shall give justification and recommendations to dispose-of the stores, assets or equipment or the use of the waste disposal management method to the accounting officer of a procuring entity.
<i>Destruction certificate</i>	233.	Upon execution of waste disposal management, an accounting officer shall obtain a certificate duly signed and issued by the disposing public entity or disposal agent.

<i>Use of trade-in method of disposal</i>	234.	<p>(1) An accounting officer of a procuring entity may use trade-in as a method of disposal of unserviceable, obsolete or obsolescence or surplus stores, assets and equipment.</p> <p>(2) Prior to initiating trade-in disposal procedure, the accounting officer of a procuring entity shall ensure compliance with the Act and these Regulations.</p>
<i>Justification for the trade-in</i>	235.	<p>(1) The user department shall justify the use of the trade-in disposal procedure and submit its recommendations to the accounting officer for approval through the head of procurement function.</p> <p>(2) Any justification for the use of trade-in method applied by a procuring entity shall arise from a combination of the need to procure and the need to dispose the stores, assets and equipment.</p> <p>(3) The disposal of stores, assets and equipment shall be a means of a procuring entity of obtaining discount as part of a disposal requirement.</p> <p>(4) A cost-benefit analysis shall be used to demonstrate the transfer advantage compared to other methods of disposal.</p> <p>(5) A disposal requirement executed using the trade-in method shall be linked directly to a procurement requirement as reflected in the procurement plan of a procuring entity.</p>
<i>Procedure for trade-in</i>	236.	<p>(1) A procuring entity may use any appropriate procurement method under PART IX of the Act when undertaking disposal through trade-in method.</p> <p>(2) A trade-in may be initiated and negotiated with a selected bidder of a procurement requirement through a direct procurement subject to justification and approval by an accounting officer.</p> <p>(3) Where direct procurement is used by a procuring entity, the value of the item to be traded-in shall be negotiated by the parties.</p> <p>(4) A procuring entity may also open a trade-in procedure to all bidders participating in the procurement in which case the bidders shall quote the value of the items to be traded-in.</p> <p>(5) Upon receipt of bid(s), a disposal committee shall conduct an</p>

		<p>assessment on the cost and benefits of the trade-in method to establish the following:-</p> <ul style="list-style-type: none"> (a) costs of trade-in if different from procurement requirement transaction costs; (b) transaction costs without trade-in, such as sales or destruction; (c) comparison of the estimated sale value of the stores, assets or equipment with the estimated discount as part of the procurement requirement; or (d) any other considerations that may inform the decision of the disposal committee to ensure value for money.
<i>Evaluation Report and Recommendations</i>	237.	<ul style="list-style-type: none"> (1) The disposal committee shall prepare an evaluation report for submission to the accounting officer through the head of the procurement function. (2) The evaluation report shall include:- <ul style="list-style-type: none"> (a) a summary of the cost benefit analysis; (b) the results of the evaluation; (c) a recommendation on the trade-in or other disposal method to be used; (d) the current condition of the asset; (e) reserve price to be applied as part of the procurement process; and (f) any other relevant information.
<i>Reserve price</i>	238.	<ul style="list-style-type: none"> (1) The disposal committee of a procuring entity shall establish a reserve price in the case of trade-in below which the stores, assets or equipment will not be disposed of. (2) The reserve price, if applicable, shall be disclosed to the bidder(s). (3) A procuring entity may negotiate with the selected bidder of the procurement proceedings where the reserve price is not accepted. (4) The negotiations under sub-regulation (3) above, shall not affect the reserve price. (5) Where the negotiations do not result in an agreement, a procuring entity shall cancel all disposal proceedings, subject to approval by the accounting officer.

		(6) The disposal committee conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the disposal and shall obtain the other party written agreement that they are a true and accurate record of the negotiations held.
<i>Disposal to employees</i>	239.	<p>(1) A procuring entity pursuant to section 166(1) of the Act, may dispose of unserviceable, obsolete stores, assets and equipment to an employee of a procuring entity, or a member of a board or committee of a public entity where:-</p> <p>(a) the time and cost required to dispose to any other person would be disproportionate to the value of the unserviceable, obsolete stores and equipment to be disposed or;</p> <p>(b) the employee is in possession of the stores or equipment to be disposed and may be given the first priority to purchase the same.</p> <p>(c) assets, stores and equipment shall be disposed of by taking into consideration the net book value or minimum acceptable price set by the technical expert under section 164(3) of the Act, where applicable, at the time of disposal based on government policy.</p> <p>(2) The disposal committee of a procuring entity shall set the reserve price for each item to be disposed under these Regulations based on criteria under sub-regulation (1)(c) above.</p> <p>(3) For greater certainty, employees of a public entity are allowed to participate in disposal processes through public tender and auction provided the employee is not directly involved in the disposal proceeding.</p> <p>(4) Every disposal made by a procuring entity under sub-regulation (1) above, shall be reported by an accounting officer of a procuring entity to the Authority within thirty days of the disposal.</p>
		PART XV - ADMINISTRATIVE REVIEW OF PROCUREMENT AND DISPOSAL PROCEEDINGS
<i>Request for a review</i>	240.	<p>(1) Pursuant to section 167(1) of the Act, a request for review under the Act shall be made in Form RB 1 as set out in part I of the Eleventh Schedule.</p> <p>(2) The request referred to in sub-regulation (1) above shall-</p> <p>(a) state the reasons for the complaint, including any alleged</p>

		<p>breach of the constitution, the Act or these Regulations;</p> <p>(b) be accompanied by such statements as the applicant considers necessary in support of its request;</p> <p>(c) be made within fourteen days of-</p> <p>(i) the occurrence of the breach complained of, where the request is made before the making of an award; or</p> <p>(ii) the notification under section 87 of the Act; or</p> <p>(iii) the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder.</p> <p>(d) be submitted in 3 hard bound copies and a soft copy, pages of which shall be sequentially numbered;</p> <p>(e) be accompanied by the fees set out in Part II of the Eleventh Schedule which shall not be refundable.</p> <p>(3) Every request for review shall be filed with the Review Board Secretary upon payment of the requisite fees.</p> <p>(4) The Review Board Secretary shall acknowledge by stamping and signing the request filed for review immediately.</p>
<i>Deposits</i>	241.	<p>(1) Pursuant to section 167(2) of the Act, the filing of a request for review shall be accompanied by a refundable deposit valued at not less than ten percent of the applicant's tender sum which shall be paid into a deposit account.</p> <p>(2) Notwithstanding sub-regulation (1) above, where the tender sum is not determinable at the time of filing of the request for review the amount of deposit shall be Kenya shillings two hundred thousand.</p> <p>(3) Where it is established that the applicant has provided false information on his or her tender sum, the request for review shall be dismissed and the deposit forfeited.</p> <p>(4) The deposit submitted shall be refunded to the applicant, within twenty one days, upon receipt of the signed judgement and original receipt from applicant and shall not accrue any interest.</p>
<i>Notification of the review and suspension of procurement proceedings</i>	242.	<p>(1) Pursuant to section 168 of the Act, the Secretary shall immediately after the filing of the request under Regulation 239 above, serve a notice thereof to the accounting officer of a procuring entity.</p> <p>(2) Pursuant to section 168 of the Act, request for review and</p>

		<p>suspension of procurement proceedings shall be by a written notification by the Review Board Secretary.</p> <p>(3) The notice to the accounting officer of a procuring entity under sub-regulation (1) shall also contain a notification of the pending review and the suspension of the subject procurement proceedings.</p> <p>(4) Upon being served with a notice of a request for review, the accounting officer of a procuring entity shall within five days or such lesser period as may be stated by the secretary in a particular case, submit to the secretary a written memorandum of response to the request for review together with such documents as may be specified.</p> <p>(5) An accounting officer of a procuring entity who fails to submit the document within the stipulated period under sub-regulation (3) above, commits an offence under section 176 (a) and (m) of the Act.</p> <p>(6) The secretary shall, immediately notify all other parties to the review upon receipt of such documents from a procuring entity under sub-regulation (3) above.</p>
<i>Notice of Hearing</i>	243.	<p>(1) The Review Board secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.</p> <p>(2) The notice referred to in sub-regulation (1) shall be in the format shown in Form RB 2 set out in part I of the Eleventh Schedule.</p>
<i>Hearing panels, quorum, and proceedings.</i>	244.	<p>(1) The Review Board secretary in consultation with the chairperson of the Review Board, may constitute a panel of at least three members to hear and determine a request for review and the Review Board chairman shall chair the panel.</p> <p>(2) In the absence of the chairman, each panel shall elect its own chairperson for the purpose of that meeting.</p> <p>(3) The quorum of a Review Board panel established under sub-regulation (1) above, shall be chairman and at least two other members.</p> <p>(4) Decisions of a Review Board panel shall be taken by simple</p>

		majority but in the case of a tie, the proposal supported by the chairman shall prevail.
<i>Representation by person of own choice.</i>	245.	Any party to a request for review filed under Regulation 240 shall, at the hearing thereof, be entitled to be represented by an advocate or a representative of his choice.
<i>Preliminary Objections</i>	246.	<p>(1) A party notified under Regulation 271 may file a preliminary objection to the hearing of the request for review to the secretary of the Review Board within three days from the date of notification.</p> <p>(2) A preliminary objection filed under sub-regulation (1) above, shall set out the grounds upon which it is based on and shall be served to the applicant at least one day before the hearing.</p> <p>(3) The applicant may file a reply to the preliminary objection before the time of the hearing of the request.</p> <p>(4) The Review Board shall hear the preliminary objection and make a determination whether to uphold or dismiss the same and shall record the reasons for the determination</p> <p>(5) If the Review Board dismisses the preliminary objection, it shall soon thereafter proceed to hear the request for review as scheduled.</p> <p>(6) The fees chargeable for filing a preliminary objection shall be as set out in part II of the Eleventh Schedule.</p>
<i>Hearing notice</i>	247.	<p>(1) The Review Board secretary shall, at least three days before the date set for the hearing, invite the members of the Review Board panel to attend the hearing.</p> <p>(2) The invitation under sub-regulation (1) above, shall set out the time, date, and place where the hearing shall take place.</p>
<i>Business hours</i>	248.	The business of the Review Board shall be transacted between 8.00 a.m. and 5.00 p.m. on normal working days unless as otherwise agreed to by the Review Board secretary in consultation with the chairman.
<i>Disclosure of interest</i>	249.	(1) Where any member of the Review Board has a direct or indirect interest in any matter before the Review Board, he or she shall

		<p>declare his or her interest in the matter and shall not participate in the hearing or decision-making process of the Review Board in relation to that particular matter.</p> <p>(2) Such a disclosure shall be recorded in a conflict of interest disclosure register.</p>
<i>Attendance at the hearing</i>	250.	<p>Where on the day set for the hearing of a request for review for which due notification has been given-</p> <p>(a) an applicant appears and a procuring entity fails to appear, the hearing of the request for review shall proceed in the absence of the procuring entity unless the Review Board deems it fit to adjourn the hearing;</p> <p>(b) a procuring entity appears and the applicant does not appear, the request for review shall be dismissed unless the Review Board deems it fit to adjourn the hearing;</p> <p>(c) where both parties fail to appear, the request for review shall be dismissed unless the Board deems it fit to adjourn the hearing.</p>
<i>Procedure at the hearing</i>	251.	<p>At the hearing of the request for review, unless decided otherwise by the Review Board, the applicant shall be given the first opportunity to present the case in support of the request for review and the procuring entity shall be given an opportunity to reply thereto.</p>
<i>Consolidation of the requests</i>	252.	<p>Where two or more requests for review are instituted arising from the same tender or procurement proceeding, the Review Board may consolidate the requests and hear them as if they were one request for review.</p>
<i>Withdrawal of the requests</i>	253.	<p>(1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Review Board Secretary signed by the applicant.</p> <p>(2) Upon such a withdrawal notice under sub-regulation (1) being received by the Review Board Secretary, the request for review shall be deemed to have been withdrawn.</p> <p>(3) When a request for review is withdrawn, the Review Board secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.</p> <p>(4) The withdrawal under sub-regulation (1) above shall be unconditional.</p>

<i>Experts</i>	254.	The Review Board may engage an expert to assist it in any proceedings in which it feels it lacks the necessary expertise, but the opinion of the expert shall not be binding on the Review Board.
<i>Rules of evidence</i>	255.	The Review Board shall not be bound to observe the rules of evidence in the hearing of a request for review under these Regulations.
<i>Proof of documents</i>	256.	An order of the Review Board certified by both the chairman and the secretary to be a true copy thereof shall in any legal proceedings be <i>prima facie</i> evidence of the issuance of that order.
<i>Communication to the Review Board</i>	257.	All communications to the Review Board relating to matters pending before the Review Board shall be through the Review Board secretary.
<i>Powers of the Review Board</i>	258.	Pursuant to section 173 (d) of the Act, the determination of costs between parties to the review shall be in accordance with the scale determined by the Review Board, provided in the prevailing Advocate's Remuneration Order under the Advocates Act.
<i>Security Fee</i>	259.	Pursuant to section 175(2) of the Act, the filing of the judicial review application shall be accompanied by a refundable security fee valued at 3% of applicant's tender sum in a mode of payment determined by the High Court.
		PART XVI - OFFENCES/SANCTIONS
<i>Additional prohibitions and sanctions</i>	260.	<p>(1) Pursuant to section 176 of the Act, a public officer of a procuring entity shall not –</p> <ul style="list-style-type: none"> (a) fail to maintain procurement, inventory and asset disposal records as provided under section 68 of the Act; (b) vary or amend a procurement or asset disposal contract contrary to section 139 of the Act; (c) procure goods, works, or services at unreasonably inflated prices; (d) breach the rules on specific procurement requirements/ skewed/tailored technical specifications as provided under section 60 of the Act; (e) fail to safeguard and manage inventory, stores and assets of a procuring entity as provided under 162 of the Act; or (f) inappropriately dispose of public assets without adhering to Part XIV of the Act.

		<p>(2) A person who contravenes the provisions of sub-regulation (1) above commits an offence and shall be liable for sanctions under section 177 of the Act.</p> <p>(3) Where a person is convicted for any offence under the Act and these Regulations, the assets or resources lost may be recovered.</p>

DRAFT

**FIRST SCHEDULE
FORM FOR FILING A DEBARMENT**

**FORM DC1
REPUBLIC OF KENYA
PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)**

APPLICATION NO.....OF.....20.....

1. To _____ (Director General PPRA)
2. Person recommended for debarment _____ (Name and full address)
3. Reason for debarment including References of sections of the act or regulations that have been breached _____ (State reason)
4. Particulars of the case _____ (Particulars of the procurement and dates attach evidence)

.....
.....
.....
.....
.....

Reporting Procuring Entity or a person requesting debarment _____ (Full address)

Signed (Applicant)

Name of signatory _____

Designation _____

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Director General, Public Procurement Regulatory Authority
on.....day of20.....

Signed/Stamped Receipt

Director General

DRAFT

SECOND SCHEDULE

THRESHOLD MATRIX

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
International Open tender (s 89 of the Act)	No maximum or minimum level of expenditure	No maximum or minimum level of expenditure	No maximum or minimum level of expenditure	Accounting Officer	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
National Open tender (s 96 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
	When using this method the minimum expenditure that requires advertising in line with section 96 (2) and ((3) is KES. 10,000,000/- below which shall advertise using options available in 96(3).	When using this method the minimum expenditure that requires advertising in line with section 96 (2) and ((3) is KES.10,000,000/- below which shall advertise using options available in 96(3).	When using this method the minimum expenditure that requires advertising in line with section 96 (2) and ((3) is KES. 5,000,000/- below which shall advertise using options available in 96(3).	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Restricted tender under sec 102(1)(a) of the Act	No minimum or Maximum.	No minimum or Maximum.	No minimum or Maximum.	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
Restricted tender under sec 102(1)(b) of the Act	The Maximum level of expenditure shall be KES. 20,000,000 above this threshold use open tender	The Maximum level of expenditure shall be KES. 20,000,000 above this threshold use open tender	The Maximum level of expenditure shall be KES. 20,000,000 above this threshold use open tender	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
	No minimum	No minimum	No minimum				

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Restricted tender under section 102(1)(c) of the Act	No minimum or Maximum.	No minimum or Maximum.	No minimum or Maximum.	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Request for proposals (s 116 of the Act)	Applicable where there is a combination of goods and services. No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Applicable where there is a combination of goods and services. No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Direct Procurement under s 103(2) and (3) of the Act	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
Request for quotations(s 105 of the Act)	Maximum level of expenditure under this method is KES. 3,000,000	Maximum level of expenditure under this method is KES. 5,000,000	Maximum level of expenditure under this method is KES. 3,000,000	Head of the User Department	Accounting Officer or delegated person in writing by the Accounting officer	Accounting Officer or delegated person in writing by the Accounting officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Low value procurement(s 107 of the Act)	Maximum level of expenditure under this method is KES. 50,000 per item per financial year	Maximum level of expenditure under this method is KES. 100,000 per item per financial year	Maximum level of expenditure under this method is KES. 50,000 per item per financial year	Head of the User Department	A person delegated in writing by the Accounting officer	A person delegated in writing by the Accounting officer	Officer in charge of stores
	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method				

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Electronic reverse auction (s.110)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
Electronic reverse auction (s.110 of the Act)	Maximum level of expenditure under this method is KES. 3,000,000	Maximum level of expenditure under this method is KES. 5,000,000	Maximum level of expenditure under this method is KES. 3,000,000	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Force account (s.109 of the Act)	No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	No minimum or Maximum. Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Two stage tendering (s.99 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
Design competition (s.100 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

Procurement Method	Maximum or minimum level of expenditure allowed for the use of a particular procurement method			Segregation of duties for different officers and committees in the procurement cycle under Section 45 of Part V of the Act			
	Goods	Works	Services	Person responsible for procurement initiation	Body responsible for the awarding the contract	Person responsible for signing the Contract	Verification of receipt of goods, services or works
Framework agreement (s.114 of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	Head of the User Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee
Community Participation	No Minimum Maximum Kshs 10,000.000.00	No Minimum Maximum Kshs 30,000.000.00	No Minimum Maximum Kshs 5,000.000.00	Head of user Department	Accounting Officer	Accounting Officer	Inspection and acceptance committee

THIRD SCHEDULE
ANNUAL PROCUREMENT AND ASSET DISPOSAL PLAN (Section 1)
(PART I)

ANNUAL PROCUREMENT PLAN

Ministry/Parastatal

Procuring Entity's Name

Project Name (if applicable)

Financial Year

No.	Item description	Unit	Quantity	Procurement Method	Source of Funds	Estimated Cost Kshs. '000	Time Process	Invite/ Advertise Tender	Bid opening	Bid evaluation	Tender award	Notification of Award	Contract Signing	Total time to contract signature	Date for completion of contract
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1.							Planned Days								
							actual Days								
							Variance								
2.							Planned Days								
							actual Days								
							Variance								
3.															
4.															
	Total														

DRAFT

Guidance notes on preparing the procurement plan as per column: -

1. Represents a number at the PE's discretion.
2. Description of the goods being procured. This should be comprehensive but not go to the level of specifications.
3. Unit of purchase or issue.
4. Quantity should be expressed in universally acceptable terms, for instance, number (No.), kilogrammes (Kg), tonnes. Etc.
5. Procurement method – the methods are limited to only open tender, direct, restricted, request for quotation, low value, community participation, design competition, electronic reverse auction, force account, competitive negotiations and request for proposals.
6. Source of funds – could either be from GoK or a donor.
7. Estimated cost – represents the total cost at which the goods are estimated to be procured. The cost should be established through market surveys.
8. Time process – represents the planned dates for execution of the various activities, planned days those activities are expected to take and actual dates taken in each specified activity. The variance should be filled after the activities are concluded (variance = planned days – actual days).
9. Invite/advertise tender – this is the date when tenders are advertised in the newspapers or when bidders are invited to collect tender documents under the restricted procurement method.
10. Tender opening – this is the date when tender documents are opened.
11. Tender evaluation – is the process used to identify the most preferred bidder technically and financially. This process should not take more than 30 calendar days.
12. Accounting officer approval to award – this is the date that either the tender or procurement committee awards the subject procurement.
13. Notification of award – this is the date that notification of award letter is sent to the preferred bidder.
14. Signing of contract – this is the date on which the contract is signed between the PE and the supplier/contractor.
15. Total time to contract signature – this is the number of days taken between issuance on notification of award and signing of the contract.
16. Time for completion of contract – this is the time in days to be taken before the contract is completed.

SECTION 2

DRAFT

PART II

ANNUAL ASSET DISPOSAL PLAN

Financial Year:

Name of the Procuring Entity:

No.	Item Description	Qty	Unit of Issue	Date of purchase	purchase Price	Estimated current value	Justification for disposal	Item Life span	Ref. no to the asset register	Disposal Method	Cost of managing disposal	Dates for completing key disposal activities								
												Disposal Initiation	Bid Documents Prepared	Invitation To Tender/Public Auction	Bid Opening/ Registration of Bidders	Accounting officer Award/ Fall of Auction	Notification of Award/	Contract Signed	Disposal	Notice to PPRA (if Disposal to Employee)
1.																				
2.																				

Prepared by: Head of Procurement: Sign **Date**

Approved by: Accounting Officer: Sign **Date**

FOURTH SCHEDULE

TENDER-SECURING DECLARATION FORM

(r.22) [The Bidder shall complete this Form in accordance with the instructions indicated]

Date: [insert date (as day, month and year) of Bid Submission]

Tender No.: [insert number of bidding process]

To: [insert complete name of Purchaser]

We, the undersigned, declare that:

1. 1 We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
 - (a) our receipt of a copy of your notification of the name of the successful Bidder; or
 - (b) thirty days after the expiration of our Tender.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

Capacity / title (director or partner or sole proprietor e.t.c)

Name:

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on day of, [insert date of signing]

Seal or stamp

FIFTH SCHEDULE

SELF DECLARATION FORMS (r 62)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I,of P. O. Box being a resident of

..... in the Republic of ----- do hereby make a statement as

follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of
..... (insert name of the Company) who is a Bidder in respect of **Tender No.** for(insert
tender title/description) for(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

.....
(Title) (Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION FORMS (r 62)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I,of P. O. Box being a resident of
..... in the Republic of ----- do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of
..... (insert name of the Company) who is a Bidder in respect of **Tender No.** for(insert tender title/description) for(insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of(insert name of the Procuring entity) which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of(name of the procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

.....
(Title) (Signature) (Date)

Bidder's Official Stamp

SIXTH SCHEDULE

CONFIDENTIALITY DECLARATION FORM (r 80)

I, an *employee/agent/member of a board/member of a commission/member of a committee* of[*name of the procuring entity*].....hereby declare that I shall not disclose any information that comes into my possession during or after any procurement proceedings of[*name of the procuring entity*]relating to –

- (1) any procurement whose disclosure would impede law enforcement or whose disclosure would impede law enforcement or whose disclosure would not be in the public interest;
- (2) any procurement whose disclosure would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition;

- (3) information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or
- (4) the contents of tenders, proposals or quotations.

I understand that the disclosure of such information to any unauthorised person(s) or in circumstances not permitted under the Public Procurement and Asset Disposal Act is an offence.

I confirm that the declarations I have made above are correct to the best of my knowledge.

Name:

Signature:

Date:

SEVENTH SCHEDULE

SUMMARY OF PROCUREMENT PROCEEDINGS

Procuring Entity

Financial Year:

Tender/Quotation No.....

Description of the tender.....

Requisition No.

Procurement method.....

	Procurement Stage	Indicators		Information on Indicators (fill as appropriate)	
1.	Invitation and Tender opening	Tender Invitation/advertisement date			
		Tender closing/opening date			
		Number of bidding document issued			
		Number of bids received			
		Names of tender opening committee members			
		Number of bidders present			
2.	Tender evaluation	Evaluation committee	Names of the tender evaluation committee members		
			Specify consultants/ external experts involved in evaluation if any	Name	
				Profession	
				Organization	
		Number of bids evaluated			
		An extract of the evaluation criteria*			
		Number of bids passed preliminary evaluation stage			
		Number of bids passed technical evaluation stage			
		Name of the recommended/successful bidder and the price			
		Date evaluation was concluded			
		Date evaluation report was forwarded/submitted to the head of procurement function			
3.	Procurement professional opinion	Date the professional opinion was issued			
4.	Tender Award	Date of approval / rejection of the award			
5.	Notification of award	Date the notification to award a tender was sent			

		out	
6.	Contract execution	Date the contract was signed	

Prepared by: Head of Procurement Function: Sign Date

*where the evaluation criteria are detailed an extract may be annexed to the summary

DRAFT

EIGHTH SCHEDULE

STANDARD TENDER DOCUMENTS AND FORMS

EIGHTH SCHEDULE

STANDARD TENDER DOCUMENTS AND FORMATS

The standard tender documents include the following-;

1. Standard tender document for procurement of works (buildings and associated civil engineering works);
2. Standard tender document for procurement of works (roads, water bridges etc)
3. Standard tender document for procurement of works (electrical and mechanical)
4. Standard tender document for procurement of small works
5. Standard tender document for procurement of goods
6. Standard tender document request for proposals (selection of consultants)
7. Standard tender document for procurement of non-consultancy services
8. Standard tender document for framework agreements
9. Standard tender document for disposal
10. Standard tender document for insurance services.
11. Standard tender document for information technology
12. Standard tender document for maintenance services.
13. Standard tender document for design and build (turnkey)
14. Standard tender document for supply and Installation
15. Standard tender document for specialized goods and services
16. Standard tender documents for pre-qualification
17. Standard tender documents for preference and reservations
18. Standard tender documents for management contracts
19. Standard tender documents for performance based contract

20. Standard tender documents for leasing
21. Standard tender documents for management contracts
22. Standard tender documents for purchase of immovable assets/ property
23. Request for quotation form.
24. Procurement requisition form.
25. Local procurement order.
26. Order amendment form.
27. Tender opening register.
28. Register of samples.
29. Confidential business questionnaire
30. Board of survey form
31. Disposal certificate
32. Destruction certificate
33. Contract agreement for goods
34. Stores requisition and issue voucher
35. Stores receipt voucher
36. Bin Card, stock verification, issue/receipt
37. Contract agreement for goods (term contracts)
38. Contract agreement for consultancy services
39. Contract agreement for consultancy services (time based)
40. Contract agreement for general services
41. Contract agreement for insurance services
42. Contract agreement for framework agreements and framework contracts

NINTH SCHEDULE

LIST OF CLASSIFIED PROCUREMENTS AND DISPOSALS

NAME OF PROCURING ENTITY.....

S/NO	Item Description	Unit	Quantity	Estimated Cost	Budget Available	Procurement Method	Justification for use of classified procurement method

Name of the Accounting Officer

.....

Sign Date

TENTH SCHEDULE (S-157 (17))

REGISTRATION OF SMALL AND MICRO ENTERPRISES AND TARGET GROUPS

REGISTRATION FORM FOR ENTERPRISES OWNED BY WOMEN, YOUTH AND PERSONS WITH DISABILITY TO SUPPLY GOODS, WORKS AND SERVICES TO PROCURING ENTITIES

AGPO – ACCESS TO GOVERNMENT PROCUREMENT OPPORTUNITIES

The registration of suppliers is aimed at building a profile for each supplier regarding information on general particulars of the company. You are advised that it is a serious offence to give false information on this form.

PART I: DETAILS OF THE APPLICANT

1. Name of Applicant
2. Physical Address
.....
.....
3. Postal Address:4. Postal Code:
.....
5. E-mail: 6. Mobile Phone No
.....
7. Are you applying for youth, women or persons with disabilities?
.....
8. Contact Person

9. Overview of the Enterprise

Type of ownership (please tick one)	<input type="checkbox"/> [Sole Proprietor] <input type="checkbox"/> [Partnership] <input type="checkbox"/> [Limited Company] <input type="checkbox"/> [Others Specify]
Number of employees	<input type="checkbox"/> [0-5] <input type="checkbox"/> [6-25] <input type="checkbox"/> [26-49] <input type="checkbox"/> 50-59 <input type="checkbox"/> [100-250]
Initial Investments (KES)	
Total Annual Sales for the previous year (Turnover KES)	
Experience in the sector in years	

Type of Ownership Details**Part 9 (a) - Sole Proprietor or name of registered business, where applicable**

Name in Full	Age	
Identity/Passport No.		

Part 9 (b) - Partnership Details

NAME	NATIONALITY	ID/PASSPORT NO.	% SHARES

Part 9 (C) – Registered Company

State the nominal and issued capital of company

Nominal Kshs Issued Kshs.....

Directors' Details

Name	Nationality	ID/Passport No.	% Shares

10. **Bank** **Account** **Name:**
.....

11. **Branch** **of** **the** **Bank:**
.....
.....

12. **Bank Account Number:**
.....

13. **VAT** **Registration** **Number:**
.....

14. IFMIS Number, where applicable.....

15. **Type of business:** **SECTOR (TICK ONE)**

AGRIBUSINESS	TRADE	HOSPITALITY& ENTERTAINMENT
MANUFACTURING	SERVICES	ICT
CONSTRUCTION	OTHERS	SPECIFY

Title:

.....

Signature: **Date**

PART II: LIST OF ATTACHMENTS

The following attachments are essential for appraisal and you are required to ensure that they are all attached, failure to which your application may be rejected:

- 1.** Copy of certificate of incorporation/registration;
- 2.** PIN Certificate;
- 3.** VAT Registration Certificate;
- 4.** Valid Tax Compliance/ Exemption Certificate;
- 5.** Original Bank Statement/Bank reference of not more than three months from date of applying;
- 6.** Copy of certificate of registration with relevant regulatory bodies (for persons with disabilities registration with National Council for Persons with Disability);
- 7.** Business/Company profile;
- 8.** Evidence of having paid the non-refundable fee for the Application Form;
- 9.** Copies of Annual Return Forms, filed by Limited Companies, the Business Names for business names (sole trader and partnerships), and a stamped receipt which bears the Accounts Stamp from the Registrar of Companies/Societies; CR12; Partnership Deed;
- 10.** Certificate of Registration in a target group issued by the National Treasury;
- 11.** National IDs/ Passports .

ELEVENTH SCHEDULE

(r.240)

PART I

FORMS FOR REVIEWS

FORM RB 1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity of
.....dated the...day of20.....in the matter of Tender No.....of
.....20.....

REQUEST FOR REVIEW

I/We....., the above named Applicant(s), of address: Physical
address.....P. O. Box No..... Tel. No.....Email, hereby request
the Public Procurement Administrative Review Board to review the whole/part of the above
mentioned decision on the following grounds , namely:

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

SIGNED(Applicant) Dated on.....day of/...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative
Review Board on.....day of20.....

SIGNED

Board Secretary

(r.73(1))

Form RB 2

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

REQUEST NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

..... RESPONDENT (Procuring Entity)

- TO: 1) (Procuring Entity)
2) (Applicant)
3) (Interested Candidate)

HEARING NOTICE

Whereasthe Applicant herein has instituted a complaint against((Procuring Entity) on..... (Date) particulars of which were set out in a Request For Review served upon you on

You are hereby required to appear on the...day of20.....at.....am/pm when the complaint against you will be heard by this Board sitting at

If you fail to appear the Applicant may proceed with the complaint and determination by order of the Board may be made in your absence.

Dated on.....day of.....20.....

Board Secretary

PART II

FEES FOR REVIEWS

1. Administrative fee KES 5,000

2. Upon filing a request for review, the fees payable shall be as follows-

<i>Amount of Tender</i>	<i>Fees</i>
1. <i>Tenders of Ascertainable Value</i>	
(a) Does not exceed KES 2,000,000	10% subject to a minimum of KES 20,000/-
(b) Exceeds KES 2,000,000/- but not over KES 50,000,000/-	The fees for tender sum of KES 2,000,000 plus an additional fee of 0.25% on the amount above KES 2,000,000
(c) Exceeds KES 50,000,000/-	The fees for tender sum of KES. 50,000,000 plus an additional fee of 0.025% on the amount above KES 50,000,000/- subject to a maximum fee of KES 250,000/-
(d) Pre-qualification, EOI and other “	KES 40, 000/-
2. Unquantified Tenders	KES 50,000/-
3. Upon request of an adjournment to a party by the Board	KES 20, 000/-
4. Filing a preliminary objection	KES 5, 000/-
5. The Secretary may demand additional fee if	

the fee paid at the time of filing is less than that ascertained to be chargeable.

DRAFT

..... SCHEDULE

INVENTORY OF ASSETS

ANNUAL CONSOLIDATED INVENTORY OF ASSETS

Name of Public Entity					
Location of Public Entity					
S/No	Department	Asset Description	Location/Site	Quantity/Size	Status

--	--	--	--	--	--

Prepared by Name:.....
Name.....

Approved by

Designation
.....

Designation

Date

Date.....

DRAFT