Procurement in public entities

Introduction to the Public Procurement and Disposal Act

The **Public Procurement and Disposal Act** is a key law in Kenya that governs how government institutions and public entities acquire goods, services, and works. The Act ensures **transparency, efficiency, fairness, and value for money** in the use of public funds.

Purpose of the Act

- The Act was enacted to:
  ✅ Promote **fair, transparent, and accountable** procurement processes.
  ✅ Ensure **efficient use of public resources** and prevent corruption.
  ✅ Provide **equal opportunities** for all qualified suppliers.
  ✅ Encourage **competition** to get the best quality and price.
  ✅ Ensure **proper disposal of public assets** when they are no longer needed.

Procurement Guidelines as Envisaged by the Public Procurement and Disposal (PPD) Act

The **Public Procurement and Disposal Act (PPD Act)** provides a legal framework for public procurement in Kenya, ensuring **transparency, efficiency, accountability, and value for money** in the acquisition of goods, services, and works. The Act outlines clear **guidelines and procedures** that must be followed by public entities.

---

1. Procurement Planning

Public entities must:
✅ Prepare an **Annual Procurement Plan (APP)** based on their budget.
✅ Ensure procurement aligns with **government priorities and financial resources**.
✅ Identify procurement needs and the most suitable **procurement method**.

---

2. Procurement Methods

The PPD Act outlines different procurement methods, including:

a) Open Tendering (Competitive Bidding)

- The **default and preferred method** to ensure fairness and competition.
- All qualified bidders are invited through **public advertisement**.
- Tenders are evaluated based on **pre-set criteria**.

b) Restricted Tendering

- Used when **only a few suppliers** can provide the required goods/services.
- Selection is based on **specialized expertise, confidentiality, or urgency**.

c) Direct Procurement (Single-Sourcing)

- Allowed only in cases of **urgency, uniqueness, or national security**.
- Must be **justified and approved** by relevant authorities.

d) Request for Proposals (RFPs)

- Used for **complex services** requiring technical expertise (e.g., consultancy).
- Evaluates both **technical and financial proposals** before awarding contracts.

e) Request for Quotations (RFQs)

- Used for **low-value procurements** below a set financial threshold.
- Public entities request **at least three quotations** from qualified suppliers.

f) Framework Agreements

- Used for **recurrent procurement** (e.g., stationery, fuel, maintenance).
- Pre-qualified suppliers provide goods/services **on demand**.

---

3. Tendering and Bidding Process

To ensure fairness, the PPD Act requires:
✅ **Advertisement of tenders** in newspapers, websites, or public notice boards.
✅ Clear **specifications and evaluation criteria** in tender documents.
✅ **Bid security** (where applicable) to ensure serious participation.
✅ **Objective bid evaluation** based on price, quality, and technical capacity.
✅ **Award of contract** to the best bidder following set guidelines.

---

4. Contract Management

After awarding a tender, the following must be ensured:
✅ Signing of a **formal contract** outlining terms and conditions.
✅ **Performance monitoring** to ensure goods/services are delivered as agreed.
✅ **Inspection and acceptance** before payments are made.
✅ **Proper documentation** and record-keeping for audits.

---

5. Ethical Procurement Practices

The PPD Act promotes ethical conduct in procurement by:
✅ Prohibiting **corruption, bribery, and fraud**.
✅ Preventing **conflict of interest** among procurement officers.
✅ Ensuring **fair treatment of all bidders** without discrimination.
✅ Establishing a **Procurement Oversight Authority** to monitor compliance.

---

6. Disposal of Public Assets

When disposing of obsolete or surplus goods, the following methods apply:
✅ **Public auction** – Selling to the highest bidder.
✅ **Public tendering** – Inviting bids for disposal.
✅ **Transfer to other government entities**.
✅ **Recycling or destruction** where necessary.

Procurement Process by National, County, and Other Public Entities in Kenya

The procurement process for **national, county, and other public entities** in Kenya follows the guidelines set out in the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)**. This process ensures **transparency, efficiency, and accountability** in the acquisition of goods, services, and works.

---

1. Procurement Planning

Before any procurement is done, public entities must:
✅ Prepare an **Annual Procurement Plan (APP)** aligned with their budget.
✅ Identify needs and determine the **procurement method** to be used.

✅ Ensure funds are available for the procurement.
✅ Get approvals from the relevant authorities.

---

2. Procurement Methods

The method used depends on the value and complexity of the procurement:

a) Open Tendering (Preferred Method)

- Advertised publicly for **fair competition**.
- Allows **all eligible bidders** to participate.
- Evaluated based on **pre-set criteria**.

b) Restricted Tendering

- Used when **only a few suppliers** have the required expertise.
- Entities must provide justification for restricting bidders.

c) Direct Procurement

- Used in **emergency cases** or when only one supplier can provide the required goods/services.
- Must be approved by the relevant authorities.

d) Request for Proposals (RFPs)

- Used for **complex services** requiring expert evaluation (e.g., consultancy).
- Evaluates **both technical and financial proposals**.

e) Request for Quotations (RFQs)

- Used for **low-value procurements** below a set threshold.
- Requires at least **three competitive quotes** from suppliers.

f) Framework Agreements

- Used when procurement is **frequent and repetitive** (e.g., office supplies, fuel).

---

3. Tendering and Bid Submission

Public entities must:
✅ Advertise tenders in newspapers, government websites, and public notice boards.
✅ Issue **clear tender documents** detailing specifications, eligibility, and evaluation criteria.
✅ Allow bidders sufficient time to submit their proposals.
✅ Ensure tender documents include **bid security** where applicable.

---

4. Bid Evaluation and Awarding

After receiving bids, the process follows these steps:

✅ **Preliminary Evaluation** – Checks if the bid meets basic requirements.
✅ **Technical Evaluation** – Assesses the bidder's capacity, experience, and compliance with specifications.
✅ **Financial Evaluation** – Compares price quotes and financial viability.
✅ **Contract Awarding** – The winning bidder is selected based on value for money and compliance.
✅ **Notification of Award** – All bidders are informed of the results.

---

5. Contract Management and Implementation

✅ The winning bidder **signs a formal contract** with clear terms and conditions.
✅ Performance monitoring ensures goods, services, or works are delivered **as per contract**.
✅ **Inspection and acceptance** of goods/services before payment.
✅ **Record-keeping and documentation** for auditing and transparency.

---

6. Disposal of Public Assets

When government assets (e.g., vehicles, equipment) become obsolete, the disposal process follows these methods:
✅ **Public auction** – Selling to the highest bidder.
✅ **Public tendering** – Inviting bids for purchase.
✅ **Transfer to other government entities**.
✅ **Recycling or destruction** where necessary.

Role of the National Treasury in Public Procurement and Disposal

The **National Treasury** plays a key role in overseeing and regulating **public procurement and disposal** in Kenya. Its responsibilities ensure that procurement processes are **efficient, transparent, and aligned with national financial policies**.

---

1. Policy Formulation and Oversight

✅ Develops **national policies and guidelines** on procurement and disposal.
✅ Ensures compliance with the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)**.
✅ Oversees the implementation of procurement laws across **national and county governments**.

---

2. Budgetary Control and Financial Management

✅ Ensures that procurement activities align with **approved government budgets**.
✅ Allocates **funds to procuring entities** for procurement projects.
✅ Monitors procurement spending to prevent **misuse of public funds**.

---

3. Establishment and Supervision of Procurement Institutions

✅ Supports the **Public Procurement Regulatory Authority (PPRA)** in enforcing procurement regulations.
✅ Guides the operations of **Procurement Oversight Bodies** at national and county levels.
✅ Ensures public procurement institutions are **properly funded and functional**.

---

4. Regulation of Public Debt and Procurement Financing

✅ Ensures that **government borrowing** for procurement is sustainable.
✅ Regulates public procurement financing, especially for **large infrastructure projects**.
✅ Monitors Public-Private Partnerships (**PPPs**) to balance private sector involvement in public projects.

---

5. Capacity Building and Training

✅ Provides **training and technical assistance** to procurement officers.
✅ Develops programs to enhance **efficiency and accountability** in procurement.
✅ Works with institutions like the **Kenya School of Government (KSG)** to train procurement officers.

---

6. Disposal of Public Assets

✅ Issues **guidelines on the disposal** of government assets.
✅ Ensures disposal processes are **transparent and cost-effective**.
✅ Oversees the sale, transfer, or destruction of public assets **in line with procurement laws**.

---

7. Monitoring, Evaluation, and Reporting

✅ Conducts audits and reviews procurement processes **to detect irregularities**.
✅ Monitors contract performance to ensure **value for money**.
✅ Reports to Parliament on public procurement efficiency and compliance.

Role of the Public Procurement Regulatory Authority (PPRA)

The **Public Procurement Regulatory Authority (PPRA)** is a key institution in Kenya responsible for **regulating, monitoring, and enforcing** public procurement and asset disposal processes. It ensures that procurement activities across national and county governments comply with the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)**.

---

1. Regulation and Compliance

✅ Ensures public entities **adhere to procurement laws and policies**.
✅ Develops **standards, guidelines, and procedures** for procurement.
✅ Reviews and approves procurement systems used by public institutions.

---

2. Monitoring and Oversight

✅ Conducts **compliance audits** on procurement processes in government institutions.
✅ Investigates cases of **procurement malpractice, fraud, and corruption**.
✅ Recommends corrective actions and **penalties for non-compliance**.

---

3. Capacity Building and Training

✅ Organizes **training programs** for procurement officers in public entities.
✅ Supports the development of **best procurement practices**.
✅ Works with institutions like the **Kenya School of Government (KSG)** to enhance procurement skills.

---

4. Data Management and Reporting

✅ Maintains a **central database** of public procurement information.
✅ Publishes **procurement reports and statistics** on government spending.
✅ Submits **annual reports to Parliament** on procurement performance.

---

5. Advisory and Policy Development

✅ Advises the government on **public procurement policies and reforms**.
✅ Collaborates with the **National Treasury and other agencies** to improve procurement systems.
✅ Provides **guidance to state agencies and county governments** on procurement laws.

---

6. Handling Complaints and Investigations

✅ Investigates and takes action against **procurement irregularities**.
✅ Works with agencies like the **Ethics and Anti-Corruption Commission (EACC)** on corruption cases.
✅ Provides a framework for resolving **procurement disputes and appeals**.

---

7. Promotion of Transparency and Fair Competition

✅ Ensures **fairness and equal opportunities** for all suppliers.
✅ Enforces **open and competitive tendering** processes.
✅ Publishes lists of **blacklisted suppliers** involved in fraudulent activities.

Role of the Public Procurement Administrative Review Board (PPARB

The **Public Procurement Administrative Review Board (PPARB)** is an independent body established under the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)** to handle **complaints and disputes** arising from public procurement processes in Kenya.

It provides a **fair, transparent, and efficient** mechanism for resolving procurement disputes between bidders, suppliers, and public entities.

Key Roles of PPARB

1. Handling Procurement Disputes and Appeals

✅ Reviews **complaints and appeals** from aggrieved bidders or suppliers.
✅ Ensures procurement processes comply with the law.
✅ Provides a **quick and cost-effective** alternative to court proceedings.

2. Investigating Procurement Irregularities

✅ Examines cases of **unfair tendering, bid evaluation, and contract awards**.
✅ Investigates allegations of **bias, corruption, or procedural violations**.
✅ Can request additional information from procurement entities and bidders.

3. Reviewing Decisions Made by Procuring Entities

✅ Can **annul, modify, or uphold** decisions made by procurement bodies.
✅ Ensures **tenders are awarded fairly** and in compliance with procurement laws.
✅ Can direct a procuring entity to **restart the procurement process** if necessary.

4. Protecting the Rights of Bidders and Suppliers

✅ Ensures **equal opportunity** for all bidders.
✅ Prevents discrimination, favoritism, and **unfair disqualification**.
✅ Promotes **fair competition and transparency** in public procurement.

5. Enforcing Procurement Laws and Regulations

✅ Ensures compliance with the **Public Procurement and Asset Disposal Act**.
✅ Recommends penalties for procurement officers violating the law.
✅ Works with other oversight bodies like the **PPRA and EACC** to curb corruption.

6. Providing Legal Interpretation and Guidance

✅ Offers legal opinions on **procurement regulations and disputes**.
✅ Guides public entities and suppliers on their **rights and obligations**.
✅ Helps in setting **precedents for future procurement cases**.

Tendering Process and Selection of Suppliers in the Public Sector (Kenya)

The **tendering process** in the public sector is governed by the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)**. This process ensures **fairness, transparency, and accountability** in acquiring goods, services, and works by public entities.

---

3. Tendering Process

Step 1: Invitation to Tender

✅ Tender is **advertised** to the public through newspapers, online portals, and notice boards.
✅ Tender documents include **specifications, eligibility criteria, and evaluation procedures**.

Step 2: Submission of Bids

✅ Interested bidders prepare and submit their **sealed bid documents** before the deadline.
✅ Must include **bid security** (where required) and all necessary documentation.

Step 3: Opening of Bids

✅ Bids are opened **publicly** to ensure transparency.
✅ The **opening committee records all submissions** for evaluation.

Step 4: Bid Evaluation

✅ Conducted by a **Tender Evaluation Committee** using pre-set criteria:
1️⃣ **Preliminary Evaluation** – Checks compliance with **basic requirements** (e.g., tax compliance, bid security, registration).
2️⃣ **Technical Evaluation** – Assesses **capacity, experience, and specifications**.
3️⃣ **Financial Evaluation** – Compares **prices and cost-effectiveness**.

✅ A **combined technical and financial score** determines the most responsive bidder.

Step 5: Award of Contract

✅ The best-ranked bidder is **awarded the contract**.
✅ Notification letters are sent to **successful and unsuccessful bidders**.
✅ There is a **14-day appeal period** for complaints.

Step 6: Contract Signing and Implementation

✅ The winning bidder **signs a formal contract** with clear deliverables and timelines.
✅ Performance is **monitored** to ensure compliance with contract terms.

---

4. Selection of Suppliers in the Public Sector

The **supplier selection process** considers:
✅ **Legal and Financial Compliance** – Must be a **registered business** with proper documentation.
✅ **Experience and Capacity** – Proven track record in delivering similar goods/services.
✅ **Technical Ability** – Ability to meet specifications and quality standards.
✅ **Competitive Pricing** – Ensures cost-effectiveness.
✅ **Past Performance** – Previous dealings with government agencies (if any).

concept of E-Procurement in the Public Sector in Kenya

1. Introduction to E-Procurement

E-Procurement refers to the **use of digital platforms and electronic systems** to manage public procurement processes. In Kenya, it is part of the government's efforts to enhance **transparency, efficiency, and accountability** in public procurement.

The Public Procurement Regulatory Authority (PPRA) oversees e-procurement implementation in line with the **Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)**.

---

2. Key Features of E-Procurement in Kenya

✅ **Electronic Tendering (E-Tendering)** – Bidders submit tender documents online.
✅ **Supplier Registration** – Suppliers register on the **Integrated Financial Management Information System (IFMIS)**.
✅ **Automated Evaluation and Awarding** – Digital systems help in bid evaluation and contract awarding.
✅ **E-Invoicing and Payment** – Suppliers submit invoices and receive payments electronically.
✅ **Procurement Monitoring** – Government agencies track procurement progress and compliance.

---

3. Platforms Used for E-Procurement

The Government of Kenya has adopted **Integrated Financial Management Information System (IFMIS)** as the primary e-procurement platform.

IFMIS E-Procurement System

🔷 **Automates the entire procurement cycle** (from requisition to payment).
🔷 Ensures **transparency** by allowing public access to tender advertisements.
🔷 Enables real-time monitoring to **prevent fraud and corruption**.
🔷 Integrates procurement with **budgeting and financial reporting**.

---

4. Benefits of E-Procurement

✅ **Increased Transparency** – Reduces corruption and favoritism in tendering.
✅ **Efficiency and Cost Reduction** – Reduces paperwork, speeds up procurement processes.
✅ **Enhanced Accountability** – Ensures procurement aligns with the budget.
✅ **Improved Supplier Access** – Allows more businesses, including SMEs, to participate.
✅ **Data Analytics and Reporting** – Provides real-time procurement insights for better decision-making.

5. Challenges of E-Procurement in Kenya

❌ **System Downtime and Technical Issues** – IFMIS sometimes experiences failures.
❌ **Limited Internet Access** – Affects participation in remote areas.
❌ **Cybersecurity Threats** – Risk of hacking or data manipulation.
❌ **Resistance to Change** – Some procurement officers and suppliers prefer manual processes.
❌ **Capacity Gaps** – Need for continuous training for public officers and suppliers.

6. Future of E-Procurement in Kenya

🔷 **Enhancing IFMIS reliability** to minimize system failures.
🔷 **Improving internet infrastructure** to support nationwide adoption.
🔷 **Strengthening cybersecurity measures** to protect procurement data.
🔷 **Providing more training** to procurement officers and suppliers.
🔷 **Expanding automation** to cover all aspects of public procurement