



REPUBLIC OF KENYA
EXECUTIVE OFFICE OF THE PRESIDENT

**“PUBLIC PROCUREMENT & DISPOSAL IN
STATE CORPORATIONS FOR BOARD OF
STATE CORPORATIONS”**

**PRESENTATION BY
THE STATE CORPORATIONS ADVISORY COMMITTEE**

OUTLINE



Legal framework governing public procurement.

Purpose of the Act

Application of the Act

Conflicts with other Authorities

General Procurement Rules

Outlawed Practice

Responsibility for compliance

Segregated Responsibility

Role of Board of Management

Conclusion

The Legal framework Governing Public Procurement



- ❖ The Constitution-Article 227
- ❖ The Public Procurement Law-PPDA, 2005
- ❖ The Public Procurement Regulations, 2006, 2011,2013 and the amendments in Legal Notices 106 & 114
- ❖ Procurement Manuals & Standard tender Documents
- ❖ Circulars



Public Procurement Provisions-Under the New Constitution



- ❖ Fair, equitable, transparent, competitive & cost-effective - Art. 227(1)
- ❖ Procurement & disposal law to provide - Art. 227(2):
 - ✓ Categories of preference
 - ✓ Protection of persons, groups previously disadvantaged by unfair competition or discrimination
 - ✓ Sanctions against suppliers who have not performed professionally, agreements or law
 - ✓ Sanctions against tax defaulters, corrupt & serious violators of employment laws & practices

PPDA,2005



The PP&D Act,2005 was operationalized on 1st January, 2007.

It established PPOA, PPARB and PPOAB as regulators of the public procurement system.

The threshold Matrix to determine segregation of responsibilities and procurement methods.

Classification of PEs into classes A, B, and C.

Ministries, Counties, State corporations fall under class A.



PURPOSE OF THE ACT

Maximize economy and efficiency

Promote Competition

Promote Integrity and fairness

Increase transparency and accountability

Increase public confidence

Promote local industry and economic development



APPLICATION OF THE ACT

Procurement by public entity

Contract management

Supply chain management, including inventory and distribution

Disposal of stores and equipment

Renting of premises

Consultancy services

Acquiring of real property

CONFLICTS WITH OTHER AUTHORITIES



Acts of Parliament

- Procurement Act and its attendant Regulations shall prevail.
- Statutory expenditure approvals are not powers with respect to procurement proceedings

International Agreements

- Procurement Act prevails except in instances of negotiated grants and loans
- Disposal of resultant assets shall be based on the Act
- Insurance and carriage must be by Kenyan bodies

Donor Conditionalities

- Condition shall prevail
- Shall not prevail if donor is a public body

GENERAL PROCUREMENT RULES



Use of alternative methods:

- Approval of tender committee required
- Justification in writing required.

No order splitting to avoid use of the procurement procedures

Qualifications for contract award;

- ✓ Have necessary qualifications, resources and equipment
- ✓ Have legal capacity to enter into a contract
- ✓ Not be insolvent, in receivership or bankrupt
- ✓ Not be debarred from participating in procurement proceedings

Pre-qualification procedures

- Prequalification results from other procuring entities allowed

Limitations on contracts with employees



Cont....

Participation, no discrimination except as prescribed

Maximum opportunities to SMEs

Corrupt practice – no involvement in corrupt practices

No involvement in fraudulent practices

No collusive practices

No conflict of interest

No disclosure of confidential information

Keeping of proper procurement records

Publication of contract awards by the Authority

Amendments to contracts-variation approved by tender committee.

Inspection and Audit relating to contracts by the DG.



OUTLAWED PRACTICE

Corrupt practice

Fraudulent Practices

Collusive Practices

Conflict of interest

Disclosure of confidential information

Splitting of orders

Procurement contracts with public servants

Inappropriate influence of evaluations

RESPONSIBILITY FOR COMPLIANCE



Head of procuring entity (primary responsibility) - Sec.27 (2)

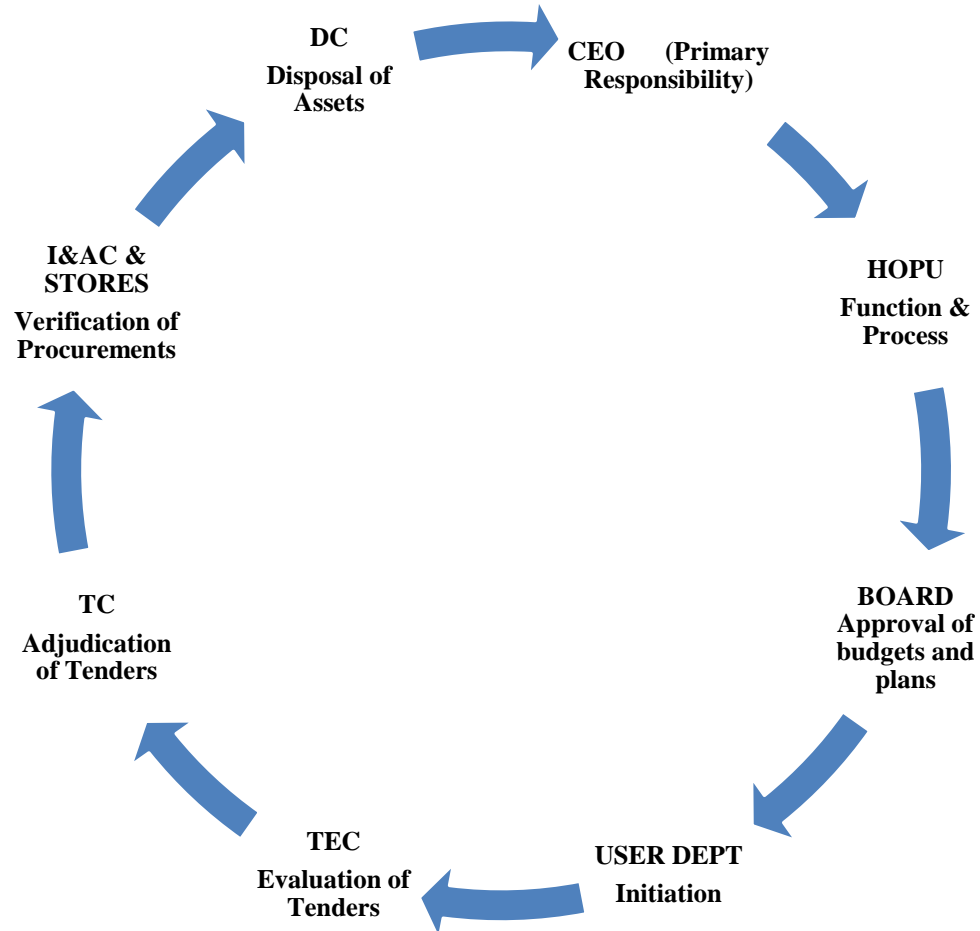
Boards - Sec.27(3)

Committees - Sec.27(3)

Employees - Sec.27(3)

Suppliers and contractors - Sec.27(4)

SEGREGATED RESPONSIBILITY





ROLE OF THE BOARD

Establish a procurement policy that promotes sustainability, high ethical standards and best practices

Establish a procurement function in the organization which is managed by competent & professionally qualified persons

Approve the annual procurement plan which should be aligned to the annual budget

Periodically review the implementation of the annual procurement plan

Receive a quarterly report on the actual expenditure compared to the budget and demand explanations from management on any variances

Ensure that the committee responsible for risk monitors risks in the procurement process

Ensure that there exists a clearly documented audit trail of all procurement activities.



CONCLUSION

The role of the Board is critical to the commencement and overall performance of the procurement and disposal function in the organization.



PP**OA**

The End