

CORRUPTION PREVENTION GUIDELINES IN PUBLIC PROCUREMENT



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

***Kenya Anti Corruption Commission
Directorate of Preventive Services
Department of Prevention
P.O. BOX 61130-00200,
Nairobi.***

***Public Procurement Oversight Authority
National Bank Building
P.O. BOX 58535-00200,
Nairobi.***

March 2009

TABLE OF CONTENTS

LIST OF ACRONYMS..... 3

1.0 INTRODUCTION..... 4

3.0 PROCUREMENT METHODS..... 5

 3.1 OPEN TENDERING..... 5

4.0 THE PROCUREMENT PROCESS..... 6

PROCUREMENT CYCLE 7

 4.1 IDENTIFICATION OF REQUIREMENTS 7

 4.2 PROCUREMENT PLANNING 8

 4.3 DEFINITION OF REQUIREMENTS..... 9

 4.4 DETERMINATION OF SOURCE 10

 4.5 EVALUATION AND SELECTION OF VENDOR 11

 4.6 CONTRACT AWARD..... 13

 4.7 CONTRACT IMPLEMENTATION/ DELIVERY..... 14

 4.8 PAYMENTS..... 15

 4.9 STORES MANAGEMENT 16

 4.10 DISPOSAL OF STORES 17

MANIFESTATIONS OF CORRUPTION IN DISPOSAL..... 17

5. INSTITUTIONALIZING CORRUPTION PREVENTION STRATEGIES 18

 5.1 PROCURING ENTITY..... 18

 5.2 PROCUREMENT POLICY 18

 5.4 ETHICS IN PROCUREMENT 18

 5.5 CONSTITUTION OF COMMITTEES..... 19

 5.6 REGISTRATION OF SUPPLIERS..... 19

6. CONCLUSION..... 20

BIBLIOGRAPHY 21

LIST OF ACRONYMS

BOS	Board of Survey
CRV	Counter Receipt Voucher
DN	Delivery Note
DG	Director General
EOI	Expression of Interest
GDP	Gross Domestic Product
GRN	Goods Receipt Note
LPO	Local Purchase Order
LSO	Local Supply Order
PC	Procurement Committee
PPDA	Public Procurement and Disposal Act 2005
PPDR	Public Procurement and Disposal Regulations 2006
PPOA	Public Procurement Oversight Authority
RF	Requisition Form
RFP	Requisition for Proposal
RQF	Requisition for Quotation Form
SIV	Stores Issue Voucher
TC	Tender Committee
TOR	Terms of Reference
VAT	Value Added Tax

1.0 INTRODUCTION

Procurement refers to the process of contracting for the acquisition or supply of goods, works or services that an individual or organizations need. The Public Procurement and Disposal Act 2005 defines procurement as the “acquisition by purchase, rental, lease, hire, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods including livestock or any combination”.

Public procurement is therefore the main process through which the government operates and spends public money. It is estimated that in Kenya public procurement accounts for over 10% of the Gross Domestic Product (GDP), making it a large market for suppliers and contractors. With this amount of resource public procurement tops the list of sectors with high opportunities for corruption. This therefore means that every effort should be made to erect safeguards to check against corrupt malpractices in public procurement. It is against this background that Kenya Anti-Corruption Commission has partnered with the Public Procurement Oversight Authority (PPOA) to issue Corruption Prevention Guidelines in public procurement as part of its corruption prevention strategies and in line with the wider public financial management reforms that the Kenya Government has been initiating.

2.0 RATIONALE

Examinations and Corruption Risk Assessments carried out by KACC as well as Compliance Assessments carried out by the PPOA have identified several loopholes in the procurement processes of public institutions. KACC is mandated to advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such bodies that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices. Furthermore, the Anti-Corruption and Economic Crimes Act, 2003 Section 12, mandates the Commission to work in co-operation with any other persons or bodies it may think appropriate to fight corruption. It is against this background that KACC has partnered with PPOA to take a leading role in the quest for a corruption free public procurement system.

The issuance of these Guidelines is further anchored in Section 9 (c) (i) and (iv) of the Public Procurement and Disposal Act, 2005 read together with Regulation 30 of the Public

Procurement and Disposal Regulations, 2006. These Guidelines are aimed at assisting public procuring entities in checking against corruption in the procurement processes

The Guidelines emphasize the need for the procuring entities to institute and implement clear and transparent management systems, rules and procedures that enhance ethics, accountability and effective controls in the procurement process. The guidelines highlight procurement methods, the procurement process and various manifestations of corruption and corruption prevention strategies. The Guidelines also discuss how to institutionalize corruption prevention strategies.

3.0 PROCUREMENT METHODS

The choice of the procurement method is vitally important to the success of any procurement decision. A number of different procurement methods exist but the essential ingredients of each and their relative advantages and disadvantages must be analyzed.

To determine which procurement method can be used, an estimation of the total maximum value of the item(s) or services being procured must be undertaken. Procurement must not be split into smaller procurements to circumvent a threshold. Where more than one method of procurement is available, a method that best promotes transparency and avoids favoritism but provides the most value must be chosen.

3.1 Open Tendering

Open tendering is the most preferred method as it brings about desirable competition among bidders and ensures value for money is realized. However, because of the tedious procedure requirements for this method, when certain parameters such as value, time and unforeseen emergencies are taken into account, the open tender method may not be feasible. This leads to the necessity to adopt other methods for prudence and expediency of duty. The alternative procurement methods listed below are available to procurement entities, each with its own merits and demerits;

- i) Request for Quotations
- ii) Request for Proposal
- iii) Restrictive Tendering
- iv) Direct Procurement
- v) Low Value Procurement

vi) Specially permitted procurement procedure

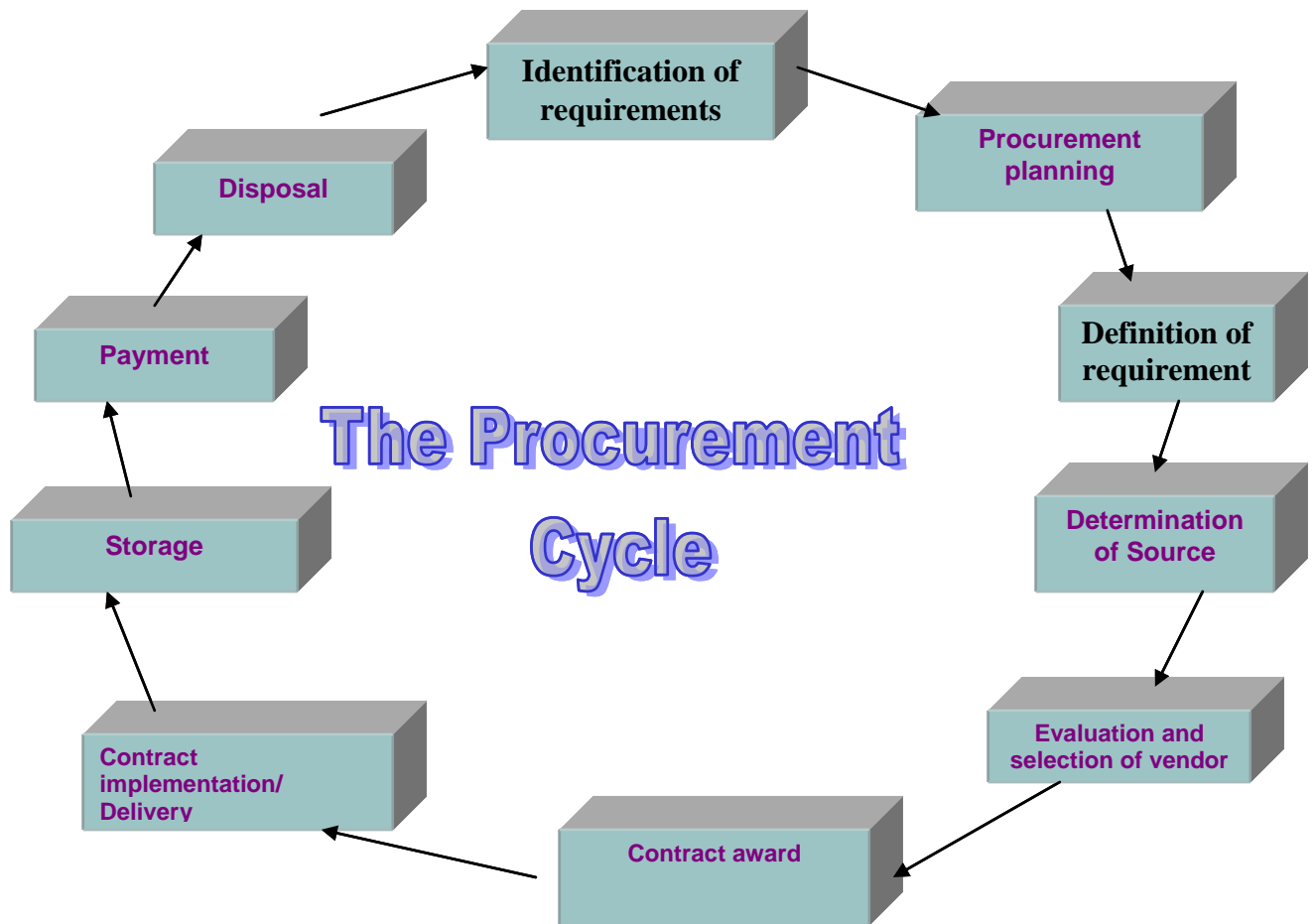
In principle the above procurement methods are open to a procuring entity, none without costs and potential disadvantages. Employing the most appropriate procedure in the particular circumstances will mitigate the disadvantages associated with the method.

4.0 THE PROCUREMENT PROCESS

The procurement process can be illustrated in a cycle which involves;

- Identification of requirements,
- procurement planning,
- definition of requirements,
- determination of source,
- evaluation and selection of vendor,
- contract award,
- contract implementation/delivery,
- storage,
- payment and
- disposal.

Procurement cycle



Corruption and corruption risks can manifest themselves in different forms in each phase of the procurement process. It is vital that corruption prevention measures be instituted to guard against these risks.

4.1 Identification of requirements

The beginning of the procurement process is need realization and identification of the requirements. This is informed by the inventory status, project plans, production schedules, work plans, capital or operational requirements budgets and the procurement plan. After establishing the requirements, it is crucial to conduct a market survey to ascertain aspects such as prices, new products or alternative or substitute products, new sources of supply, nature of competition and environmental aspects that may affect the supply market.

Manifestations of corruption in identification of requirements stage;

- Over estimation of required quantities of goods, services or works
- Economically unjustified or environmentally damaging procurement.
- Proposal to install new capacity while modification or repair of existing facility is sufficient.
- Failure to accurately assess needs resulting into emergency purchases.
- Identified similar goods are not packaged but split at user level.
- Conflict of interest is left unmanaged and decision makers fail to declare their interest.

Corruption prevention strategies

- Establish a stock control section and database of institution's requirements to determine timeliness and quantities
- Computerize stores functions
- Review purchases annually to ascertain indications of order splitting
- Prepare a justification report for installation of new capacity and adhered to it
- Ensure value for money and compliance to the procurement regulations on procurement of emergency requirements by seeking prior tender or procurement committees' approvals.
- Ensure that the responsibility for key functions namely demand assessment, preparation, selection, supervision and procurement control are assigned to separate persons.
- Apply standard office safeguards, such as the use of committees at decision-making points.
- Require staff and decision makers to declare interest.

4.2 Procurement planning

Procurement planning is the process by which the efforts of users or personnel responsible for various aspects and actions of a purchase or a project are coordinated and integrated in a comprehensive manner through an annual plan. The PPDA and Regulations make it mandatory for procuring entities to prepare procurement plans and have them approved by the accounting officer and where applicable the board of directors, or a similar body before engaging in procurement. A procurement plan identifies each requirement, the user, budget, procurement method and schedule of various activities in the procurement process and the timelines. The plan must be integrated in the procuring entity's budget.

Manifestations of corruption in procurement planning

- Lack of a procurement plan
- Unexplained delay in preparing a plan
- Failure to carry out market surveys
- Procurement plans are devoid of all stakeholders and users input leading to urgent purchases.
- Procurement initiated to favour particular suppliers/ contractors
- Resorting to unjustified direct procurement.
- Indiscipline in managing budgets.
- Exaggerated price projections .
- Splitting of contracts for similar goods, works or services in order to circumvent procurement threshold limits instead of consolidating
- Failure to implement the plan as prepared.

Corruption prevention strategies

- Compliance with the PPDA Section 26 and Regulations 20 and 21.
- Involvement of all users and stakeholders in preparation of procurement plans.
- Integrating the process of preparing and approval of procurement plans with the preparation of budgets.
- Conducting periodic market surveys and making reference to PPOA Average Price Lists as appropriate.
- Consolidating contracts for similar goods, services and works.
- Strict adherence to budgets and plans.

4.3 Definition of requirements

This is the phase where the specifications for various requirements, terms of reference, bills of quantities and bid documentation is done.

Manifestations of corruption in preparation of specification;

- Specifications or terms of reference (TORS) are designed to favor a particular provider (lock-out specifications).

- Specifications for goods, works or services is not performance based but brand based
- Non comprehensive and vague specification/ TORS such that contract changes and/or post contract negotiations are inevitable
- Advance release of bid documentation or relevant information to particular supplier(s).
- Giving different information and specifications to different suppliers
- Failure to disclose evaluation criteria or vague criteria which is not objective or quantifiable.
- Vague or unclear pre-qualification requirements.

Corruption prevention strategies

- Adopt a team based approach in preparation of comprehensive specifications, bills of quantities and conditions of contract.
- Draw standard specifications for works, goods and services from national or ratified international standards such as Kenya Bureau of Standards and ISO, and avoid using brand names.
- Adherence strictly to the code of conduct and ethics for procurement staff.
- Disclose an objective and quantifiable evaluation criteria in the bid documents
- Use clear and objective pre-qualification requirements.
- Adhere to PPDA, Regulations and acceptable procurement procedures.
- Specify duties and responsibilities of managers in the procurement manuals.
- Managers leading by showing good example on matters of integrity.

4.4 Determination of source

This is the phase where the procedure for soliciting of the bids and, the choice of the procurement method is determined. Preparation of specifications, bill of quantities and conditions of contract are also addressed.

Manifestations of corruption in sourcing;

- Choice of direct procurement method not justifiable.
- Failure to get prior approvals on use of alternative procurement methods (when applying restricted and direct procurement methods) from the tender/ procurement committees
- Giving different information and specification and bid deadlines to different suppliers

- Restricted advertising or insufficient notice thereby restricting competition.
- Use of non standard tender documents to procure.
- Failure to respond to requests from suppliers/ contractors for clarifications in time. Or where clarification is sought it is not given to all bidders
- Failure to keep accurate minutes of pre-bid meetings, including questions and answers.
- Different location for receiving and opening of bids.
- Accepting bids submitted after the submission deadline.
- Opening bids before submission deadline.
- Not opening bids in public.
- Failure to record bid documents at the time of opening.
- Failure to write minutes of bids opening, where written some vital information is missing.
- Failure to provide secure storage of, and restricted access to bids received.

Corruption prevention strategies

- Seeking prior approval from the tender/ procurement committees use of alternative procurement (restricted and direct procurement) methods.
- Safe custody of bid documents before technical and financial evaluation begins.
- Use of standard tender documents to procure as provided by Public Procurement Oversight Authority.
- Providing or using conspicuous and accessible location for receiving and opening of bids.
- Rejecting bids submitted after deadline
- Opening tenders in public and involving bidders or representatives during such functions.
- Opening bids as stipulated in the tender notice

4.5 Evaluation and selection of vendor

Evaluation of bids and eventual choice of a vendor is executed at this stage.

Manifestations of corruption in evaluation and selection of vendor;

- Constitution of the evaluation committee after the opening of bids.
- Evaluation committee members appointed to favour certain interests
- Bid evaluation committee members do not have the “technical expertise necessary” to properly evaluate bids.

- Failure to constitute evaluation committees in accordance with the PPDA and regulations.
- Failure to document the evaluation process
- Signing the evaluation report at different dates
- Introduction of additional or deletion of criteria during the evaluation process
- Inviting specialists late to the meetings after evaluation has started
- Unreasonable delays in evaluating bids beyond the duration provided in the regulations.
- Failure to get approval on use of direct or restricted procurement
- Skewed evaluation process to give predetermined results
- Unfair disqualification of potential suppliers/ contractors
- Interference from politicians, management, staff, vendor intermediaries and other unauthorized persons during the evaluation process
- Deliberate errors corrected as amendments
- Recommendation to award tenders to companies set up by staff or relatives.
- Unjustifiably high number of contracts awarded to a particular supplier.
- Suppliers and contractors colluding to fix prices
- Suppliers making deliberate errors which are corrected after submitting bids.
- Quotation of successful vendor uncannily close to the budget and estimates when others are way off.
- Lowest quote is very high and the rest of the quotes are ridiculously higher compared to prevailing market rates.
- Breach of confidentiality
- Lack of declaration of conflict of interest

Corruption prevention strategies

- Adherence to PPDA and Regulations on evaluations.
- Constitution of evaluation committee before opening of bids
- Use evaluation criteria as outlined in the bid document
- Having technically competent evaluation committees in their membership
- Rejection of unsolicited communications for attempts to influence evaluation through provision of counter offers such as discounts, longer warranty periods or more superior brands.
- Use market survey price indices as baseline data for price comparison

- Conduct due diligence on firms bidding for the contract.
- Declaration of interest
- Involvement of experts and observers in the evaluation process.

4.6 Contract award

This is the phase where an award is made to a contractor or a supplier and eventual signing of a contract or issuance of purchase or service order.

Manifestations of corruption in contract award;

- Tender committee/ procurement committee rejecting the evaluation committee recommendation without giving valid reasons.
- Tender/ procurement committees doing actual evaluation of bids after rejecting the evaluation committee recommendations without giving reasons.
- Hurried signing of contracts before the expiry of the window period for suppliers/ contractors who may wish to contest award.
- Failure to notify simultaneously all bidders of the bid outcome
- Placing orders for same goods to different suppliers (order splitting).
- Placing orders above tendered prices and quantities.
- Placing orders for completely different goods from the same supplier.
- Award of tenders to same suppliers/ contractors frequently.
- Award of tenders to suppliers/ contractors with pending jobs and poor performance.
- Poor records management, incomplete records and missing significant number of documents.
- Instructions are not given in writing to suppliers/ contractors
- Accepting suppliers / contractors terms of the contract
- Contractual terms conditions tilted to favour supplier/ contractor.
- Failure to maintain proper minutes of the tender/ procurement committees proceedings

Corruption prevention strategies

- Periodic review of orders to check against award of many contracts to same suppliers/ contractors with many pending orders.
- Frequent examination of awards by auditors

- Give written instructions to suppliers/ contractors.
- Stating in the bid documents that tenders will be appraised on the basis of previous performance based on concrete written evidence.
- Proper records management
- Match award, purchase order, receipt and invoice details before payment.
- Segregation of duties.

4.7 Contract implementation/ delivery

This is the final phase in the procurement cycle where actual performance of works and or delivery of goods and services take place.

Manifestations of corruption in contract implementation/ delivery;

- Accept/receive less quantity or quality or type other than what was ordered and claim to be paid for full delivery.
- Falsification of quality standards, documentation and certificates of performance
- Failure to adequately certify quality of goods.
- Paying for goods not received.
- Receipt of goods not done by an Inspection and Acceptance committee
- Failure of Inspection and Acceptance committee to prepare reports.
- Goods delivered at close of day to compromise verification and certification of quality and quantity.
- Inducement of Stores staff by competing suppliers to reject goods from their business rivals
- Delay in acceptance of goods thereby inconveniencing suppliers.
- Goods or services not being used, or being used for purposes inconsistent with intended purposes.
- Diversion of goods for personal use or resale.
- Suppliers and contractors including deliberate errors on bidding documents which are corrected after contract placement.
- Unjustified variations.
- No signed contract document.
- Variations not approved by the tender/procurement committee

- Approved variations over the maximum limits allowed by the PPDA and Regulations
- Evaluation/appraisal of suppliers and contractors performance not recorded.

Corruption prevention strategies

- Variation is subjected to TC/PC committee approved.
- Adherence to PPDA and regulations maximum limits on variation
- Clear delivery instructions, receipt and issuance procedures that is known to suppliers/contractors and staff.
- Ensuring that contracts are properly drafted
- Enforcement of contractual conditions.
- Involvement of independent experts for receipt of complex equipment e.g. Kenya Bureau of Standards.
- Involvement of independent monitors.
- Frequent verification and audit of stores.

4.8 Payments

This is the stage at which the suppliers are paid for goods, services or works contracted to be delivered.

Manifestations of corruption in this phase include

- Unsecured advance payments before delivery.
- Payment before delivery
- Payment for goods, services or works not received.
- Selective payment of suppliers.
- Full payment for partial delivery.
- Delayed payment.
- Deliberate loss of payment records and documents resulting to double payments.
- Payment of false or non-existent claims.
- Excessive number of signatures required to approve progress payments
- Evaluation of suppliers'/contractors' performance not recorded.
- Failure to withhold VAT where the procuring entity is a registered VAT agent.

Corruption prevention strategies

- Formulate a creditors' payment policy.

- Maintain a register of claims or invoices.
- Establish clear payment procedures.
- Automate management of inventory.
- Adherence to procurement regulations
- Train staff and suppliers on ethics.
- Reconcile budget versus stock/work/service stages.

4.9 Stores management

An effective stores and disposal management system is essential to deter corrupt malpractices.

Manifestations of corruption in stores management

- Stocking over and above the safety margins
- Under stocking to justify emergency purchases.
- Lack of proper stores accountable documents.
- Lack of stock control units.
- Poor filing systems of stores documents/records
- Pilferage of stores by staff.
- Failure to update stores records
- Falsification of stock records.
- Falsification of stock verification reports.
- Manipulation of stocktaking reports.
- Failure to secure insurance cover for stores
- Inadequate security for stores.

Corruption prevention strategies

- Have a stock control policy that specifies items classification, desirable stock levels, safety levels, re-order levels, maximum and minimum levels.
- Frequent verification and audit of stores
- Adherence to PPDA and regulations.
- Promptly recording of stores transaction in store records.

- Computerize stores systems and have standard access control for data input and amendment as well as audit trail functions.
- Generate authentic performance reports for goods, services and works from users.
- Staff rotation.
- Constant review of physical security of the store to prevent unauthorized access.

4.10 Disposal of stores

The process of periodic verification and annual stock taking exercises exposes stores items which have become damaged unserviceable, obsolete and surplus which needs to be disposed.

The following methods of disposal are available to a procurement entity:

- Transfer to another procurement entity with or without any financial adjustment.
- Sale by public tender; public auction; destruction, dumping, burying or burning; trade-in; recycling or conversion to another condition and disposal to employees.

Manifestations of corruption in disposal

- Disposal done without involvement of disposal committee
- Unauthorized disposal.
- Disposal before useful life of an asset.
- Disposal at below market prices or valuation.
- Fraudulent cannibalization of items before disposal.
- Writing off items before disposal.
- Delays in disposal such that items deteriorate in value and become an eyesore.
- Disposal to employees contrary to the provisions of the PPDA and Regulations.
- Disposal to employees not reported to PPOA as per the PPDA and Regulations
- Conflict of interest in the disposal process.

Corruption prevention strategies

- Compliance with the PPDA and Regulations
- Constitution of a disposal committee whose duties is to identify items for disposal.
- Employing experts in valuation of items.
- Writing off items after disposal certificate has been issued.
- Timely disposal of items as they become due.

- Routine verification of stores.
- Safe and secure custody of disposal items.
- Declaration of personal interest.

5. INSTITUTIONALIZING CORRUPTION PREVENTION STRATEGIES

5.1 Procuring Entity

A Procurement Unit should be established at an appropriate strategic level (departmental) in the organization capable of influencing decision making and with clearly defined terms of reference. All procurement entities should develop a procurement risk management plan based on identified areas prone to corruption and the mitigating strategies.

5.2 Procurement policy

Procurement entities should have policies which ensure that standards, processes and procedures are consistent and meet the needs of the organization and such policies should clearly be communicated through all levels of an organization. Manuals that communicate information regarding procurement policies, procedures, instructions and guidelines should be put in place. The manuals should be consistent with the PPDA 2005, ACECA 2003, POEA 2003 and any other related Acts.

5.3 Staffing.

- The Procurement unit should be manned by procurement professionals with sufficient training in procurement and stores.
- A schedule of job description for every staff should be prepared
- Segregation of duties must be emphasized in order to provide checks and balances. This is to ensure that incidences of collusion and bid rigging are avoided.
- Procurement and stores officers need to certify that they have complied with all procurement and stores procedures
- Declaration of wealth by staff at commencement of employment and thereafter.

5.4 Ethics in procurement

Strong exposure with contractors and suppliers require procurement staff to act ethically. PPOA should develop codes of conduct and ethics requiring staff to:

- Maintain a high standard of integrity in all business relationship both within and without the organization.
- Foster a high standard of professional competence
- Optimize use of resources by ensuring that there is value for money.
- Complying with the public procurement laws and regulations, established policies and procedures.
- Ensure a level playing ground and equal opportunity is given to all bidders
- Confidential information received in the course of duty should not be used for personal gain.

5.5 Constitution of Committees

Constitution of committees required by the PPDA and prescribed by the Regulations requires people with integrity so as to enhance transparency, accountability in the various activities in the procurement process. A procuring entity should establish the following committees:

- i) Tender committee
- ii) Procurement committee
- iii) Tenders/ Quotation opening committee
- iv) Evaluation committee
- v) Inspections and acceptance committee
- vi) Disposal committee

5.6 Registration of suppliers

Registration of suppliers and contractors is a critical procurement step that requires a lot of vigilance to ensure that suppliers and contractors registered demonstrate technical and financial capabilities in terms of experience, past performance and personnel. To achieve this, vetting and evaluation of applications should be handled with a lot of care. Through this process, the entity selects reliable vendors that will best satisfy the needs of the entity so as to minimize the costs and time required for sourcing of suppliers every time there is need to procure. Deletion from or inclusion in the list should also follow an established procedure. To prevent favoritism in soliciting bids from few suppliers and to ensure that there is transparency in the process, quotation circulation should be solicited from suppliers through a fair share principle (e.g. by rotation). The list of suppliers should also be circulated to all departments in the procuring entity.

6. CONCLUSION

Efforts to prevent corruption in public procurement ought to be seen as the responsibility of both public entities (employers and employees) and bidders/contractors. Prevention of corruption in procurement is an essential element of risk management. The purchasing unit should not be solely responsible for making the organization's purchase decisions. Instead, it should involve individuals from the entire organization. In the various committees, organization personnel can work together in order to achieve the larger goals of the organization's procurement strategy. Prevention efforts should comprise clear and transparent rules as well as clear behavioral rules for all the parties in the procurement process. This Corruption Prevention Guidelines in public procurement will be reviewed periodically.

BIBLIOGRAPHY

1. The Public Procurement and Disposal Act 2005
2. The Public Procurement and Disposal Regulations 2006
3. The Procurement Regulations and Procedures – Kenya Anti- Corruption Commission
4. Examination Report on the Systems, Policies, Procedures and Practices of the City Council of Nairobi; KACC, March 2007
5. Examination Report on the Systems, Policies, Procedures and Practices of the Roads Sub-Sector KACC, May 2007
6. Examination Report on the Systems, Policies, Procedures and Practices of the National Registration Bureau KACC, November 2008
7. Examination Report on the Systems, Policies, Procedures and Practices of the Pensions Department KACC, November 2008
8. Handbook for Curbing Corruption in Public Procurement Transparency International 2005
9. Anti-Corruption and Economics Crimes Act, 2003
10. Best Procurement Practices- Independent Commission Against Corruption, 2003
11. Anti- Corruption Measures in Corporate Procurement. The Chief Executive Role; Richard Mwongo- (Former) Chairman, Public Procurement Complaints, Review and Appeals Board (*A presentation at the KISM Sensitization workshop; Panafri Hotel March 2005*)
12. W. Odhiambo and P. Kamau- Public Procurement: Lessons from Kenya, Tanzania and Uganda; Organization for Economic Co-operation and Development (OECD) 2003.
13. Public Officers Ethics Act, 2003