

# UNIVERSITY OF NAIROBI

COLLEGE OF AGRICULTURE AND VETERINARY  
SCIENCES

LEADERSHIP TRAINING FOR MANAGEMENT STAFF  
TO BE HELD FROM 28<sup>TH</sup> - 29<sup>TH</sup> JUNE, 2012.

TOPIC: PUBLIC PROCUREMENT AND DISPOSAL  
LAW, AND PROCUREMENT AND  
DISPOSAL PROCESS IN THE  
UNIVERSITY OF NAIROBI

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## 1. 0 INTROCUCTION

I am happy to come and talk to you. My main focus will be to highlight the Public Procurement and Disposal Act, 2005, then the Public Procurement and Disposal Regulation, 2006, which operationalises the Act. The above two documents take precedence in public procurement and disposal. Any document that is inconsistent with them is null and void as far as spending of public money is concerned. The exception is where there is a written agreement with donors and such an agreement stipulates how procurement will be carried out.

### FOCUS ON PUBLIC PROCUREMENT

Why is there such great interest in public procurement in the recent past?

Some of the reasons advanced include:

- i. External pressure-donors.
- ii. Democratisation process that began in the 1990's following end of the cold war; multipartyism.
- iii. Competition for the scarce resources (national cake).
- iv. The new constitution, 2010.

The constitution demands the following in the management of public funds

- i. Fair
- ii. Equitable
- iii. Transparency
- iv. Value for money

## 2.0 HISTORICAL EVOLUTION OF PUBLIC PROCUREMENT

### a) Colonial period

- Exploitative arrangements
- No structured arrangement on management of public resources other than to promote and maintain colonial rule
- Implementation through "CROWN AGENT"

b) 1963-1978

- No codified law of policy document

c) 1978-2001

- Main document was the Supplies Manual which was published with the assistance of the "CROWN AGENT".
- Besides the Supplies Manual there were several other documents; Treasury circulars, Office of the President circulars, the Blue Book/Nyachae book.

- Ministry of Public Works also issued several circulars, some through the supplies branch.

#### d) 2001-2005

- The Exchequer and Auditor General (Public Procurement and Disposal Regulations, 2001)
- The Exchequer and auditor General (Public Procurement and Disposal Regulations 2003). The most significant change was that external persons were to preside over Public Tender Committees (UoN Mr. S.K. Macharia).
- Still the above document was not anchored in the Kenya Law-dependend on the goodwill of the Minister for Finance. The minister in 2003 dismissed/dissolved Procurement cadre.

#### e) 2005-2010

- Act, 2005

- Regulations, 2006
- Public Private Partnership, PPP, 2009

f) August 2010, The new constitution

- The main principles as outlined in the new constitution:
  - Economy
  - Competitiveness
  - Fairness
  - Transparency
  - Accountability
  - Value for money
  - Equitability
  - Public confidence
  - Integrity (recently integrity testing was launched in the University)

### 3.0 THE ACT, 2005

The Act is divided into 11 parts and 4 schedules:

- 1 PART I - Preliminary
- 2 PART II - Bodies Involved in the Regulation of Public Procurement
- 3 PART III- Internal Organisation of Public Entities Relating to Procurement
- 4 PART IV - General Procurement Rules
- 5 Part V - Open Tendering
- 6 Part VI - Alternative Procurement Procedures
- 7 Part VII - Administrative Review of Procurement Proceedings
- 8 Part VIII - Authority Powers to Ensure Compliance
- 9 Part IX- Debarment From Participation in Procurement Proceedings

- 10 Part X - Disposal of Stores and Equipment
- 11 Part XI - Miscellaneous
- 12 FIRST SCHEDULE - Members of the Review Board
- 13 SECOND SCHEDULE - Conduct of Business & Affairs  
of the Advisory Board
- 14 THIRD SCHEDULE - Transitional Provisions
- 15 FOURTH SCHEDULE - Consequential Amendments

I would like to comment on:

- a) Hierarchy of the Procurement Law
- b) Bodies involved in Public Procurement
- c) Internal Organisation
- d) Open Tender and Alternative Procurement Procedures
- e) Disposal



a) Hierarchy of the Procurement Law

- Kenyan people
- The New Constitution
- Act, 2005
- Regulations, 2006
- Procurement Manual
- UoN Procurement Manual
- DVC A&F/VC Circulars

b) Bodies involved in Public Procurement

- PPOA
- Advisory Board (PPOA)
- Administrative Review (PPOA)
- High Court

c) Internal Organisation

- Procurement Unit
- Tender Committee

- Procurement Committees (8)
- Technical Evaluation Committees, Ad hoc
- Inspection and Acceptance Committees
- Enforcement of Compliance
- VC
- DVs (4) mainly DVC A&F
- Deans/Directors
- Chairmen/HODs
- Procurement Manager

d) Open Tender

- Preferred method
- Advertisement in two dailies of wide circulation
- Duration 21 days
- Tender opening
- Evaluation
- Award by Tender Committee

- Notification of award by VC
- Signing of contract

e) Alternative Procurement Procedures

- Restricted tendering involving Prequalified Suppliers or when there are only few known suppliers.
- Direct Procurement, also known as Single Sourcing. Where there is only one supplier or in case of emergency when life or property are threatened.
- Request for proposal through Expression of Interest in Consultancy Services-also known as Two Step Tendering.
- Request for Quotation where goods are common in the market-at least 3 quotations are required.

- Low value items,  $\leq 10,000$  where no committee decision is required but must ensure value for money.
- Specially Permitted Method that must receive prior approval from PPOA e.g. in design competition.

f) Disposal

Disposal Committee:

- Inspect and set reserve price and method of disposal.
- Approval of Accounting Officer.
- Disposal to employees must be reported to PPOA by Accounting Officer within 14 days.

Disposal methods

- Sell through open tenders

- Transfer to other departments
- Cannibalisation
- Donation to other public entities
- Trade in
- Destruction/dumping (NEMA)

#### 4.0 PROCUREMENT IN THE UNIVERSITY OF NAIROBI

- Procurement Plan
- Request to procure:
  - Less than ksh.50,000 Chairman/HOD
  - Up to ksh.100,000 Principal
  - Up to ksh.300,000 DVC A&F
  - Over ksh.300,000 VC
- Sourcing-Procurement Unit
- Completion of A.I.E.

- Evaluation (TECs, Ad hoc)
- Award by:
  - Procurement Committee, amounts equal to or less than ksh.500,000
  - Tender Committee, amounts over ksh.500,000
- Notification of awards:
  - Letter of Notification by VC, amounts equal to or over ksh.500,000
  - LPO, amounts less than ksh.500,000
- Signing of contract
- Inspection: Inspection and Acceptance Committees
- Payment

## 5.0 PROCUREMENT PROCESS WITH RESPECT TO GRANTS PROJECTS

Procurement with respect to Grants pose special challenges; on one hand there are the MOU terms and on the other hand there is the Public Procurement and Disposal Act, 2005 and Regulations, 2006.

### Guidelines

- i. Unless the MOU states to the contrary, the Public Procurement and Disposal Act, 2005 and Regulations, 2006 prevail
- ii. Grant funds are regarded as public funds and are treated as such upon receipt by the University.
- iii. Perception that Researches have a big say is misleading. However, this does not reduce their key role and noble contribution.

- iv. Grants normally have strict time lines in their spending and all have to be sensitive to this fact. There is a feeling that there should be particular procurement officers for grants which we also support.
- v. Supplies and equipment procured through Grants are normally specialised and method of procurement, whether through competition or direct procurement, should be known early enough to avoid wasted effort.
- vi. Researchers need to avoid getting personally involved in the procurement to avoid being tied to a particular supplier. Related to this is avoidance of personal interests. We have noted a few cases.
- vii. Initiate the Procurement Process early enough.
- viii. In the overall, we need to ensure accountability, fair competition, transparency and value for money.



## 6.0 CONCLUSION

I hope that this sharing of information has shed more light on the Procurement and Disposal process in the University of Nairobi.

THANK YOU