

UNIVERSITY OF NAIROBI

CAPACITY BUILDING ON CORRUPTION PREVENTION,
ETHICS AND INTEGRITY FOR CENTRAL
ADMINISTRATION HELD ON 8TH JUNE 2016 AT
MAKTABA HALL (JKML)

TOPIC: PUBLIC PROCUREMENT AND ASSET
DISPOSAL ACT, 2015: APPLICATION
IN THE UNIVERSITY OF NAIROBI

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PROCUREMENT MANAGER

1.0 INTRODUCTION

I am happy to come and share my thoughts on this new Act that came into effect on 7 .1. 2016. We are still waiting for a Regulation that will set out in greater details its practical operationalisation and application. I have mostly been involved in the generation and compilation of the Public Procurement Policy and many past Public Procurement Policy documents beginning from 1988 when I was at the Treasury as young Procurement Professional. I was however not involved in the initiation and drafting of the current law.

The university has held one sensitisation workshop on the new law where one of the most promising Lawyer/Procurement expert addressed the University Management Board and Senate. We learned alot from the sensitization and I want to carry on the discussion from that point.

My discussion will be in six fold:

- i. The Content of the PPAD Act, 2015.
- ii. The changes and what the law wants to achieve
- iii. The Offences and Penalties
- iv. Role of Accounting Officer
- v. Professional opinion and recommendation
- vi. Way forward

2.0 CONTENT OF PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015

The Act is divided in the following parts:

- Part 1 - Preliminary
- Part II - Bodies involved in the regulation of public procurement and asset disposal
- Part III - County Government responsibilities with respect to Public Procurement and Asset Disposal
- Part IV - Powers to ensure compliance
- Part V - Internal organisation of procuring entities
- Part VI - General procurement principles
- Part VII - Basic procurement rules
- Part VIII - Classified procurement methods and procedures
- Part IX - Methods of procurement of goods, works and services
- Part X - Procurement of consultancy services
- Part XI - Procurement contracts
- Part XII - Preferences and reservation in procurement

- Part XIII - Inventory control, asset and stores
Management and distribution
- Part XIV - Disposal of assets
- Part XV - Administrative review of procurement and
disposal proceedings
- Part XVI - Offences and sanctions
- Part XVII - Policy operationalization and review
- Part XVIII - Repeal, transition and savings provisions

3.0 CHANGES AND WHAT THE LAW WANTS TO ACHIEVE

You understand the new changes or the new law better when you understand what it wants to achieve. The Public Procurement and Asset Disposal Act, 2015 was enacted to align public procurement to be in line with The Constitution of Kenya 2010, which advocates for a system which is fair, equitable, transparent, competitive and cost effective (Article 227).

The Objective:

In my view, this new law intends to achieve the following:

- i) To clarify, define and allocate Procurement Authority in few officers who can be held accountable and responsible.

- ii) To give back Procurement work to Procurement Officers.
- iii) To clarify the role of the accounting officer (VC).
- iv) To achieve the 30% reservation rule by transferring it from the regulation into the Act thus non-compliance is Punishable.
- v) To streamline procurement functions
- vi) To clarify offences and penalties - entire procurement and disposal processes are criminalised in the new law (Part XVI of the new Act)
- vii) To address and reduce /eliminate corruption
- viii) Bring county Procurement into the Act, 2015
- ix) Promote efficiency, effectiveness and expedite Procurement

New Changes

- i. Dissolution of the Tender and Procurement Committee
The Role to be taken over by the Vice-Chancellor with Professional opinion and recommendation of the Procurement Manager. Also MD UNES and Head of Procurement UNES.
- ii. Dissolution of Procurement Committees
The role to be taken over by DVC, Principals of Colleges, Director SWA. Incharge Procurement to give Professional opinion and recommendation.
- iii. External Observers removed
- iv. Involvement of the National Treasury (Procurement Plan) and Attorney General for contracts over 5 billion.

- v. Formal prequalification of suppliers abolished. Instead Head of Procurement to prepare a list that the Vice - Chancellor will approve. The list needs to be vetted before inclusion in the suppliers' register to be maintained by the Procurement Manager.
- vi. Consolidating Procurement functions
All procurement related functions were brought together - Purchasing, warehousing, inventory management, contract administration, asset inventory, disposal e.t.c. The aim was to implement the supply chain concept. Over time (since 2001) the emphasis has been on procurement thus disregarding important aspect of stores, inventory and use of public resources. The issue of Business Centre, issuance of L.P.O e.t.c need to be relooked and harmonised with the law.
- vii. County Procurement and Pension Schemes are now included in the Procurement Law.

PROCUREMENT PROCESS

New Process in the University

- i) Procurement Plan
- ii) Request by user
- iii) Approval by VC, DVC, Principal of College, Director SWA

iv) Sourcing through any of the following methods :

- a. Open Tender
- b. Two Stage tendering
- c. Design Competition
- d. Restricted Tendering
- e. Direct Procurement
- f. Request for quotations
- g. Electronic reverse auction
- h. Low value procurement
- i. Force account
- j. Competitive negotiations
- k. Request for proposals
- l. Framework agreements

v) Opening of Tender or quotations

vi) Preparation of opening minutes

vii) Evaluation / Analysis

viii) Submission of evaluation report

ix) Submission of professional opinion by Procurement Manager/Procurement Officer to the Accounting Officer

x) Approval of awards

xi) Issue of LPO or Notification letters

xii) Acknowledgement of contract

xiii) Delivery of goods or execution of contract.

xiv) Inspection and Acceptance of goods or contract administration.

xv) Payment

DISPOSAL PROCESS

- i) Preparation of Disposal Plan by heads of Department/ users.
- ii) Consolidation of Disposal reports by the Procurement Manager.
- iii) Approval of Disposal Plan by the Vice- Chancellor
- iv) Submission of disposal reports to Procurement Manager by Disposal Committees
- v) Approval of Disposal Reports by Vice-Chancellor
- vi) Advertisement /quotations of assets to be disposed
- vii) Tender/Quotation opening
- viii) Submission of Professional opinion and recommendation by the Procurement Manager to the Vice-Chancellor
- ix) Approval of award by Vice-Chancellor
- x) Issue of notification to successful and unsuccessful bidders
- xi) Payment
- xii) Collection of items by successful bidder
- xiii) Report by Procurement Manager to Vice Chancellor
- xiv) Closure of process
- xv) Maintenance of Complete records

4.0 OFFENCES AND PENALTIES

A person shall not-

Obstruct or hinder a person carrying out a duty or function or exercising a power under this Act;

- i) Knowingly lie to or mislead a person carrying out a duty or function or exercising a power under this Act;
- ii) Delay without justifiable cause the opening or evaluation of tenders, the awarding of contract beyond the prescribed period or payment of contractors beyond the contractual period and contractual performance obligations;
- iii) Unduly influence or exert pressure on any member of an Opening Committee, Evaluation Committee and Disposal Committee or on any employee or agent of a procuring entity or the accounting officer to take a particular action which favours a particular tenderer;
- iv) Open any sealed tender, including such tenders electronically submitted and any document required to be sealed , or divulge their contents prior to the appointed time for the public opening of the tender or documents except for tenders inadvertently opened under section 76 (6);
- v) Divulge confidential information under section 66;
- vi) Inappropriately influence tender evaluation;
- vii) Split procurements contrary to section 60 of the Act;
- viii) Commit a fraudulent Act;
- ix) Knowingly withholds the notification of award to successful tenderer;
- x) Knowingly withholds the notification of award to unsuccessful tenderer;

- xi) Sign a contract contrary to the requirements of this Act or Regulations made thereunder; or
- xii) contravene a lawful order of the Authority given under Part IV or the Review Board under part XV

conviction: -

- i) If the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for term not exceeding ten years, or both;
- ii) If the person is a body or corporate, to a fine not exceeding ten million shillings
- iii) In addition to the penalty under subsection (2) a state or public officer involved shall be subject to internal disciplinary action while any other person who is not a state or public officer shall be debarred.
- iv) If a person or an employee or an agent of a person contravenes the provisions of this Act, the following shall apply-
 - a) The person shall be disqualified from entering into a contract for procurement; or
 - b) If a contract has already been entered into with the person, the contract shall be voidable at the option of the procuring entity

- v) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.
- vi) The penalties imposed by professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

5.0 ROLE OF THE VICE-CHANCELLOR

He carries overall individual responsibility in the effective and efficient Management of Procurement and Disposal. He among others:

- i) Ensures that procurements of goods, works and services of the University are within approved budget.
- ii) Constitutes all procurements and asset disposal committees in the University in accordance with the Act;
- iii) Ensures procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and subject to subsection (3), submits them to the National Treasury
- iv) Ensures proper documentation of procurement proceedings and safe custody of all procurement records in accordance with Act is carried out;

- v) Ensures compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act,2012;
- vi) Approves and signs all contracts of the University upon professional advice by the Head of Procurement Function.
- vii) Ensures the procurement and asset disposal process of the University complies with the Act;
- viii) Ensures that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;
- ix) Submits to the Authority the procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year is done.
- x) Ensures compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations.

6.0 PROFESSIONAL OPINION AND RECOMMENDATION

The Professional Advice should follow the guidelines listed below:

- i) Items were in the procurement plan.
- ii) Request to procure was approved.

- iii) Quotations/Tenders were competitively sourced and opened by a committee.
- iv) Evaluation Report is objective and the set criteria is followed.
- v) Bidder recommended met the requirements and gave the most competitive price.
- vi) Price compares well with the market and the user was involved.
- vii) Besides the aforementioned, the Procurement Manager/Procurement Officer shall ensure that the other relevant provisions of the Public Procurement and Asset Disposal Act, 2015 were fully complied with.
- viii) Procurement Manager or Procurement Officer incharge of college makes specific opinion and recommendation to Vice-Chancellor and Principal of College respectively.

7.0 WAY FORWARD

From this important workshop the following will take place:

- i. DVC, Principals of Colleges, Director SWA, MD UNES and incharge procurement office (most senior Procurement Officers) will process and approve contracts of goods , works or services upto Kshs. 500,000.00
- ii. Records of Procurement will be maintained under key and lock

- iii. Value for money will strictly be complied with and benchmarks including market price must be used.
- iv. Procurement will be initiated upon Procurement budget, Procurement Plan and approved requests.
- v. Quotations and tenders must be opened by a Committee involving User and Audit and Minutes signed by all members made.
- vi. All staff involved in Procurement must have hard and soft copy of the PPAD Act,2015 and all other relevant laws
- vii. Personal Character, Integrity and Professionalism must be demonstrated both in word and in deed.

It was a pleasure to come and share with you.

Note: The Public Procurement and Asset Disposal Act 2015 Section 82 declare that "The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity".

THANK YOU