



UNITED REPUBLIC OF TANZANIA

PUBLIC PROCUREMENT REGULATORY AUTHORITY

PARTICIPANT'S HANDBOOK

TRAINING MODULE N^o ONE

**USE AND APPLICATION OF PUBLIC PROCUREMENT ACT AND
PUBLIC PROCUREMENT REGULATIONS FOR LOCAL
GOVERNMENT AUTHORITIES**

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FOREWORD

Decentralization has been one of the major policy initiatives of the Government of the United Republic of Tanzania. The most recent policy reform commenced two decades ago and was formulated in 1998 as Decentralisation-by-Devolution (D-by-D). The policy has the main objective to empower citizens, devolve fiscal resources, democratize state power and facilitate effective service delivery in our communities to improving people's welfare. It is also intended to improve transparency and accountability in Local governments, promote good governance and participatory democracy.

Under the decentralization policy, a range of powers, responsibilities and functions are transferred to Local Government Authorities at Council and sub-Council levels. Besides the responsibility of planning, mobilising, allocating and managing fiscal resources, the function of procurement and contracts management was fully transferred to Local Governments as entrenched in the Public Procurement Act (PPA) of 2004 and subsequent revisions made under PPA 2011 and amended in 2016.

In the course of implementing public procurement reform, we have realized that many Local Government Authorities - which constitute around one-third of all Procuring Entities in Tanzania- do not have adequate capacity in several core areas of Procurement and Contract Management. This is partly related to the complex, multi-sectoral organisation and the wide range of services provided by the LGAs at various levels (Council, Ward, Village and Service Delivery Unit). Experience also shows that procurement capacity development is yet to receive the required priority and resources at operational and strategic levels of the LGAs. Hence, there is need to guide LGA staff and officials (i.e. job families) in the use and application of procurement law, regulations, procedures, processes, roles, responsibilities, tools and systems by addressing required hard and soft competences at the individual level to improve their job performance. The aim is to improve compliance and performance of Departments, Units and the Council in the main procurement functions and processes, and ultimately attain Value-for-Money in procurement.

Against this background, the Authority has developed five training modules to enhance the availability of quality, procurement training materials specifically targeting Local Government Authorities, to mention:

| Module | Title |
|------------------|--|
| N ^o 1 | Use and Application of Public Procurement Act and its Regulations for Local Government Authorities (available in both English and Swahili) |
| N ^o 2 | Procurement Planning for Local Government Authorities |

| Module | Title |
|--------|--|
| Nº 3 | Procurement Record Management and Reporting for Local Government Authorities |
| Nº 4 | Contract Administration and Management for Local Government Authorities |
| Nº 5 | Contract Closure, Review and Evaluation of Performance and Outputs |

The modules were developed and introduced as part of Procurement Skills Development Planning in 28 selected LGAs in four regions (Dodoma, Kigoma, Pwani and Tanga) to guide and support LGA procurement capacity development. This training module No 1 provides detailed guidance on **Use and Application of the Public Procurement Act and Public Procurement Regulations for Local Government Authorities**. All Local Governments, stakeholders and training providers are enjoined to use this and other modules whenever they are conducting training in procurement capacity building for LGAs.

The modules comprise Participants Handbook, Trainer’s Guide and additional training materials, which are available in printed version and on-line. The PPRA intends to make the modules available through its e-learning platform in the near future. The modules should, however, be used together with the Constitution, the Public Procurement Act and its Regulations, Local Government Finance Act, and any legislation relevant to a particular subject or topic.

Finally, we wish to express our deep appreciations and gratitude to our partners and collaborators in the invaluable assistance they gave the Authority in developing, roll-out and final production of the training modules. The modules are one of the main outputs of the Enhancement of Procurement Capacity of Local Government Authorities project (EPC-LGAP), which was jointly implemented from 2013 to 2017 by the PPRA and the Belgian Development Agency (BTC) in partnership with the President’s Office - Regional Government and Local Government (PO-RALG).

The Authority invites stakeholders to provide feedback on the use of this and other training module and undertakes to provide any clarification where required to support capacity building and improvement of procurement and contract management in the Local Governments.



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ABBREVIATIONS

| | |
|----------|---|
| AO | Accounting Officer |
| AG | Attorney General |
| APP | Annual Procurement Plan |
| BAA | Budget Approving Authority |
| BOQ | Bill of Quantities |
| BTC | Belgian Development Agency |
| CAG | Controller and Auditor General |
| CMT | Council Management Team |
| CPI | Compliance Performance Indicator |
| CTB | Council Tender Board |
| CUIS | Common Use Items and Services |
| D-by-D | Decentralization by Devolution |
| EC | Evaluation Committee |
| EOI | Expression of Interest |
| EPC-LGAP | Enhancement of Procurement Capacity of Local Government Authorities Project |
| FPC | Finance and Planning Committee |
| GCC | General Conditions of Contract |
| GN | Government Notice |
| GPN | General Procurement Notice |
| GPSA | Government Procurement Services Agency |
| HLG | Higher Local Government |
| HoD | Head of Department |
| IAC | Inspection and Acceptance Committee |
| ICB | International Competitive Bidding |
| ICT | Information and Communication Technology |
| IS | Individual Selection |
| KPI | Key Performance Indicator |
| LLG | Lower Local Government |
| LGA | Local Government Authority |
| LOGWS | List of Goods, Works and Services |
| MSD | Medical Stores Department |
| MTEF | Medium-Term Expenditure Framework |
| NCB | National Competitive Bidding |
| NCS | National Competitive Selection |
| PE | Procuring Entity |
| PMIS | Procurement Management Information System |
| PMU | Procurement Management Unit |

| | |
|--------|---|
| PPA | Public Procurement Act |
| PPAA | Public Procurement Appeals Authority |
| PPP | Public Private Partnership |
| PPPD | Public Procurement Policy Division |
| PPR | Public Procurement Regulations |
| PPRA | Public Procurement Regulatory Authority |
| RS | Regional Secretariat |
| SBD | Standard Bidding Documents |
| SCC | Specific Conditions of Contract |
| SLA | Service Level Agreement |
| SPN | Specific Procurement Notice |
| SSS | Single Source Selection |
| TB | Tender Board |
| TEMESA | Tanzania Electrical, Mechanical and Electronic Engineering Agency |
| TNOA | Training Needs and Organisation Assessment |
| TOR | Terms of Reference |
| UD | User Department |
| URT | United Republic of Tanzania |
| VEO | Village Executive Officer |
| VFM | Value for Money |
| WEO | Wad Executive Officer |

TABLE OF CONTENT

| | |
|--|------|
| FOREWORD | I |
| ABBREVIATIONS | III |
| TABLE OF CONTENT | V |
| | |
| I. MODULE DESCRIPTORS | VIII |
| I.1 Decentralisation and Public Procurement in Tanzania | viii |
| I.2 Target Participants | xi |
| I.3 Training Outcomes | xi |
| I.4 Outline and Duration of the Module | xii |
| I.5 Definitions of Key Terms | xv |
| | |
| SESSION 1: SALIENT FEATURES OF THE PUBLIC PROCUREMENT ACT | 17 |
| UNIT 1.1: PRELIMINARY AND GENERAL PROVISIONS | 17 |
| 1.1.1 Unit Objectives | 17 |
| 1.1.2 Essentials of the Public Procurement Act and its Regulations | 18 |
| 1.1.3 General Procurement Principles and Standards..... | 18 |
| 1.1.4 Value for Money..... | 18 |
| 1.1.5 Prohibitions..... | 19 |
| 1.1.6 Public Procurement Complaints Authority (Complaints and Review) | 20 |
| 1.1.7 Specific Provisions for Local Government Authorities | 20 |
| 1.1.8 Objectives of Public Procurement (Amendment) Act 2016..... | 21 |
| 1.1.9 Institutional Set-Up..... | 24 |
| UNIT 1.2: ROLES AND RESPONSIBILITIES OF KEY ACTORS (LGAS JOB FAMILIES) | 26 |
| 1.2.1 Unit Objectives | 26 |
| 1.2.2 Accounting Officer..... | 27 |
| 1.2.3 Council Tender Board | 28 |
| 1.2.4 Procurement Management Unit | 29 |
| 1.2.5 User Department..... | 30 |
| 1.2.6 Evaluation Committee..... | 30 |
| Exercises | 31 |
| UNIT 1.3:METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE..... | 33 |
| 1.3.1 Unit Objectives | 33 |
| 1.3.2 Methods of Procurement | 33 |
| Exercises | 34 |
| UNIT 1.4: PROHIBITIONS AND GENERAL PROVISIONS..... | 35 |
| 1.4.1 Unit Objectives | 35 |
| 1.4.2 Prohibitions..... | 35 |
| Final Exercise: Session 1 | 36 |
| | |
| SESSION TWO: SALIENT FEATURES OF PUBLIC PROCUREMENT REGULATIONS | 39 |
| UNIT 2.1: COMPULSORY APPROVALS OF PROCUREMENT IN LGAS..... | 39 |
| 2.1.1 Unit Objectives | 39 |

| | | |
|-------|---|--------|
| 2.1.2 | Principles of Economy and Efficiency..... | 39 |
| 2.1.3 | Approvals..... | 40 |
| | Exercises | 41 |
| | UNIT 2.2: PROCEDURES FOR EMERGENCY PROCUREMENT | 42 |
| 2.2.1 | Unit Objectives | 42 |
| 2.2.2 | Emergency Procurement..... | 42 |
| 2.2.3 | Procurement of Life Saving Health Commodities, Supplies and Equipment..... | 42 |
| | UNIT 2.3: PROCUREMENT OF SECTOR SPECIFIC GOODS AND SERVICES | 43 |
| 2.3.1 | Unit Objectives | 43 |
| 2.3.2 | Procurement from Government Procurement Services Agency | 43 |
| 2.3.3 | Procurement of Electrical, Mechanical and Electronics Services | 44 |
| 2.3.4 | Procurement of Computers and other IT Equipment..... | 45 |
| 2.3.5 | Procurement of Medicines and Medical Supplies..... | 45 |
| | UNIT 2.4: PROCEDURES FOR PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIPS | 46 |
| 2.4.1 | Unit Objectives | 46 |
| 2.4.2 | Public Private Partnerships | 46 |
| | SESSION THREE: TENDERING PROCEEDINGS..... | 51 |
| | UNIT 3.1: GENERAL TENDER PROCEEDINGS AND PROCEDURES FOR PROCUREMENT OF GOODS..... | 51 |
| 3.1.1 | Unit Objectives | 51 |
| 3.1.2 | Recap of General Tender Proceedings | 52 |
| 3.1.3 | Key Issues for Procurement of Goods..... | 55 |
| 3.1.4 | Needs Identification | 56 |
| 3.1.5 | Tender Process..... | 56 |
| 3.1.6 | Procurement Methods..... | 57 |
| 3.1.7 | Content of Bidding Documents | 59 |
| 3.1.8 | Evaluation and Comparison of Bids | 60 |
| 3.1.9 | Approvals and Award | 64 |
| | UNIT 3.2: PROCUREMENT OF NON-CONSULTANCY SERVICES | 66 |
| 3.2.1 | Unit Objectives | 66 |
| 3.2.2 | Definition of Non-Consultancy Services | 66 |
| 3.2.3 | Tender Documents for Non-Consultancy Services..... | 66 |
| | Exercises | 69 |
| | UNIT 3.3: PROCUREMENT OF WORKS | 70 |
| 3.3.1 | Unit Objectives | 70 |
| 3.3.2 | Definition of Works | 70 |
| 3.3.3 | Bidding Documents for Works | 71 |
| 3.3.4 | Procurement under Buy - Own - Transfer | 75 |
| 3.3.5 | Community Participation in Works Contracts | 75 |
| 3.3.6 | Consultant Engineer Service | 76 |
| | Exercise | 78 |
| | UNIT 3.4: SELECTION AND EMPLOYMENT OF CONSULTANTS | 78 |
| 3.4.1 | Unit Objectives | 78 |
| 3.4.1 | Defining Proposal | 79 |

3.4.2 Principal Stages79

3.4.3 Contents of Terms of Reference79

3.4.4 Methods of Selection and Employment Consultants.....80

3.4.5 Receipt, Opening and Evaluation of Proposals82

3.4.6 Management of Consultant Contracts82

Exercise83

REFERENCES84

ANNEXES85

Annex 1: Procurement Methods86

Annex 2: Course Evaluation Form.....100

I. MODULE DESCRIPTORS

The procurement training module on Use and Application of the Public Procurement Act and Public Procurement Regulations for Local Government Authorities (LGA) is intended to provide participants with general understanding on the link between decentralisation, the Local Government system in Tanzania and the importance of good procurement and contract management practices. This refers in particular to compliance to the procurement standards as set in the Public Procurement Act and its Regulations in which the Local Government procurement function operates.

Procurement is the process of buying goods, works and services to satisfy the identified needs. Procurement is an important function within a Local Government as it is to the Central Government and private entities as it enables all of them to acquire goods, services and works needed to fulfil their objectives. In order for Local Government Authorities to be able to improve service delivery, they have to acquire goods, services and works of the right quality, at the right time, in the right quantity, from the right source and at the right price.

I.1 Decentralisation and Public Procurement in Tanzania

Decentralisation refers to the transfer of national responsibilities or functions from central government to sub-national levels of government or from central agencies/offices to regional bodies or branch offices, or to non-governmental organisations or private concerns (Miller 2002). This transfer includes the authority to plan, make decisions and manage public affairs including financial resources by agencies other than the central government. According to (Schneider 2003), decentralisation can take on any of the following forms:

- i) **Deconcentration:** the central government transfers responsibility for policy to its offices. At sub-national level. Under this arrangement, the central government retains authority over the field office and exercises that authority through the hierarchical channels of the central government bureaucracy. Deconcentration allows only moderately more autonomy than centralized systems.
- ii) **Delegation:** the central government transfers policy responsibility to local governments or semi-autonomous organisations that are not controlled by the central government, but remain accountable to it. Under this arrangement, the central government exercises its control through a contractual relation that enforces accountability of local government. Delegation represents a slightly

higher level of administrative autonomy for local entities than under deconcentration.

- iii) **Devolution**: the central government allows quasi-autonomous local units of government to exercise power and control over the transferred policy. Compared to the other two types of decentralisation, devolution provides the greatest degree of autonomy for the local unit in terms of administrative powers and fiscal resources. The local unit is only accountable to the central government insofar as the central government can impose its will by threatening to withhold resources or responsibilities from the local unit.
- iv) **Privatisation**: refers to the cases in which decentralisation occurs to organisations outside the government sector.

The Tanzanian local government system is based on political devolution and decentralisation of functions and finances within the framework of a unitary state. The Local Government Reform Policy Paper (URT 1998) puts forward the overall objective of the Decentralisation by Devolution as to making local governments effective centres of self-governance, participation, local decision-making, planning and development. The Policy Paper sets out the policy on decentralisation by devolution (D-by-D), which is expected to contribute to the national drive to reduce poverty by improving service delivery in key areas such as health and education.

Advantages of Decentralisation

There are many potential benefits of decentralisation. The majority of these advantages can be broadly captured as improved efficiency, governance, equality, development and poverty reduction (Smoke 2003):

- i) **Improved efficiency**: sub-national governments are said to be closer to the people, have good access to local information and understand the local context well. If so, they can better identify the mix and level of services that their constituents need than the higher-levels, thus improving allocative efficiency.
- ii) **Improved governance**: decentralised government are able to influence public affairs in ways that directly affect them and empowers people, giving them a sense of control and autonomy.

- iii) *Improved equity*: local governments are familiar with local circumstances, they are thus in a better position to more equitably distribute public resources and target poverty within their own jurisdictions.
- iv) *Improved development and poverty reduction*: local governments are expected to contribute to local economic development in a number of ways. First, they can provide services that serve as production and distribution inputs for local firms and entrepreneurs. Second, they can contribute to a legal and institutional environment that is conducive for development. Third, they can help to coordinate key local public, private and community actors in creating partnerships that promote development.

Disadvantages of Decentralisation

The following arguments may also be put forward against decentralization (Vries 2000):

- i) *Equality problems*: Threatens the principle of equality before the law in equal circumstances. For example, citizens in one community may be required to conform to different environmental standards or tax levels in the local community while not similarly restricted in a neighbouring community.
- ii) *Competition problems*: Puts cities, departments and regions against each other as they attempt to attract profitable business and affluent tax payers to their areas.
- iii) *Management capacity problems*: Small communities are unable and unequipped to handle such inherently complex problems associated with decentralisation and may not attract qualified and skilled staff.
- iv) *Challenge of coordination* between local governments and central government (sector) ministries, departments and agencies.

Importance of Procurement in Local Government Authorities

Local government authorities in Tanzania have been established as key public service delivery centres. The reform under the Public Procurement Act of 2004 (URT 2004) and subsequent enactment of the Public Procurement Act 2011 (URT 2011) restructured procurement to decentralised Procuring Entities (PE) including the LGAs. Procurement enables LGAs to acquire the required goods, services and works needed to fulfil their objectives and identified needs.

The increased responsibilities and resources managed at the level of Local Government Authorities through the Fiscal Decentralisation Framework have also created the need to improve the procurement knowledge and skills of local government staff and officials through enhancing procurement capabilities at all levels in the LGA. This requires a procurement function at Council level that is transparent, allows for equal participation and promotes proper accountability of public resources controlled at the local government level as well as effective control by leaders at lower level, which is a prime objective of decentralization by devolution.

The development of this module is based on the results of Training Needs and Organisational Assessment (TNOA) carried out in various LGAs under the Enhancement of Procurement Capacity of Local Government Authorities Project (EPC-LGAP). This assisted the respective LGAs to identify the key skills gaps based on performance gaps and causes for low performance. The TNOA had led to LGAs develop procurement skills development plans that assists the Council to create appropriate skills of its staff and workers, which are aligned to their structure, systems, strategy, management style and shared values.

I.2 Target Participants

This course is particularly intended for staff and officials of Local Government Authorities e.g. Council Directors, Members of Council Management Team (CMT), Members of Council Tender Boards, staff of Procurement Management Units, other Council staff with major roles and responsibilities in LGA procurement as well as Councillors.

➤ The Kiswahili version of this Training Module is available for training of Councillors.

I.3 Training Outcomes

The module introduces participants to the use and application of the Public Procurement Act (PPA) and Public Procurement Regulations (PPR) for Local Government Authorities targeting Accounting Officers, members of the Council Management Team, User Departments, Procurement Management Units and other LGA job families with major roles and responsibilities in the LGA procurement function.

The overall objective of this module is to enable participants to enhance their understanding and correct application of the legal framework, regulatory provisions and standards set in the Public Procurement Act No. 07 of 2011, Public Procurement

(Amendment) Act of December 2016, Public Procurement Regulations (GN 446) of 2013 and LGAs TB Establishment and Proceedings (GN 330) of 2014.

➤ Whenever reference is made to PPA 2011, it shall mean to include the PPA (Amendment) 2016.

In particular the module aims at ensuring that procurement in LGAs is conducted in a manner that maximizes integrity, competition, accountability, economy, efficiency, transparency and achieve value for money.

Upon successful completion of this training module, participants will be able to:

1. Demonstrate correct understanding and application of the LGA procurement legal and regulatory framework;
2. Explain the application of the procurement methods to be used to achieve Council's objectives;
3. Describe the roles and responsibilities of job families, bodies, actors and institutions in LGA procurement in accordance with the legal framework;
4. Demonstrate correct understanding and application of the legal provisions and standards for tendering process;
5. Comply with the provisions and standards for evaluation of bids, award of contracts and preparation of contract agreements;
6. Ensure application of best practice of procurement in compliance with requirements of the Act and Regulations including any issued guidelines.
7. Implement changes at the work place and sharing of learning with colleagues to enhance use and application of procurement legislation and procedures.

➤ Learners are advised to regularly check the PPRA website for any updates, new forms as well as guidelines, circulars and instructions issued by the Authority on how to use the most current procurement legislation including the amendments of 2016.

I.4 Outline and Duration of the Module

The module has three sessions as follows:

Session one gives an outline of salient features of the Public Procurement Act 2011 in which the participants will be introduced to principles underlying public procurement practice and procedures, key institutions found in the public procurement, their functions, mandate and powers including roles and responsibilities of key actors, bodies and committees in LGA procurement. The session also introduces the participants on methods of procurement and their

conditions for use. *Session two* looks at the salient features of Public Procurement Regulations (GN 446) of 2013 and LGA Tender Board (Establishment and Proceedings) Regulations (GN 330) of 2014. During this session participants will be introduced to tendering proceedings particularly approval levels in procurement decisions, procedures for emergency procurement, procurement of specific sector goods and services, including procedures for procurement under Public Private Partnerships (PPP). *Session three* provides detailed guidance on the tender proceeding and procedures for procurement for Goods, Works and Services up to award of contract. Table 1 below provides the outline of the Training Module.

Table 1. Outline of the Training Module

| Session | Unit | Topics |
|---|--|--|
| Opening and Start-Up | I. Module Descriptors | <ul style="list-style-type: none"> ▪ <i>Participants' expectations</i> ▪ <i>Organisation matters</i> ▪ <i>Background to decentralisation and public procurement</i> ▪ <i>Module objectives</i> ▪ <i>Definition of key terms</i> |
| SESSION ONE: Salient Features of the Public Procurement Act | Unit 1.1: Preliminary and General Provisions | <ul style="list-style-type: none"> ▪ <i>Definitions of Public Procurement Act, 2011 as amended in 2016 and Regulations GN 446 of 2013</i> ▪ <i>Local Government Authorities' Tender Board (Establishment and Proceedings) Regulations GN 330 of 2014</i> ▪ <i>Local Government Finance Act, 1982</i> ▪ <i>Role of External Oversight Bodies and Agencies</i> |
| | Unit 1.2: Roles and Responsibilities of Key Actors (Job Families) in LGA Procurement | <ul style="list-style-type: none"> ▪ <i>Local Government Procurement Cycle</i> ▪ <i>Role and responsibilities of Actors, Committees and Bodies (LGA Job Families) in procurement</i> |
| | Unit 1.3: Methods of Procurement and their Conditions for Use | <ul style="list-style-type: none"> ▪ <i>Principles of economy, efficiency, transparency and value for money</i> ▪ <i>Selection of methods of procurement: ICT, NCT, RT, MV, Micro procurement and Community procurement</i> |
| | Unit 1.4: Prohibitions and Miscellaneous Provisions | <ul style="list-style-type: none"> ▪ <i>Fraud and corruption</i> ▪ <i>Conducts influencing Public Officers</i> ▪ <i>Disclosure of payment made by way of commission, etc.</i> ▪ <i>Conduct of directors, servants / agents</i> ▪ <i>Institution of criminal proceedings</i> |

| Session | Unit | Topics |
|---|--|---|
| SESSION TWO: Salient Features of Public Procurement Regulations | Unit 2.1: Compulsory Approvals of Procurement in LGAs | <ul style="list-style-type: none"> ▪ <i>Basic principles for approvals in procurement</i> ▪ <i>Essential steps in approval process</i> |
| | Unit 2.2: Procedures for Emergency Procurement | <ul style="list-style-type: none"> ▪ <i>Definition of Emergency Procurement</i> ▪ <i>Application of Emergency Procurement</i> ▪ <i>Liability of Accounting Officer</i> |
| | Unit 2.3: Procurement of Sector Specific Goods and Services | <ul style="list-style-type: none"> ▪ <i>Procurement of common use items and services</i> ▪ <i>Obligations of parties to framework arrangements</i> ▪ <i>Maintenance and repair of motor vehicles,</i> ▪ <i>Procurement of ICT equipment</i> ▪ <i>Procurement of medicines and medical supplies</i> |
| | Unit 2.4: Procedures for Procurement under Public Private Partnerships | <ul style="list-style-type: none"> ▪ <i>Procurement of solicited and unsolicited PPPs</i> ▪ <i>Evaluation of proposals and selection process of a private partner</i> |
| SESSION THREE: Tendering Proceedings | Unit 3.1: Procurement of Goods | <ul style="list-style-type: none"> ▪ <i>Procedures for procurement of Goods</i> ▪ <i>Pre-qualification proceedings</i> ▪ <i>Invitation for Tenders</i> ▪ <i>Tender evaluation and contract award</i> |
| | Unit 3.2: Procurement of Non-Consultancy Services | <ul style="list-style-type: none"> ▪ <i>Procedures for procurement of Non-Consultancy Services</i> ▪ <i>Pre-qualification proceedings</i> ▪ <i>Invitation for Tenders</i> ▪ <i>Tender evaluation and contract award</i> |
| | Unit 3.3: Procurement of Works | <ul style="list-style-type: none"> ▪ <i>Procedures for procurement of Works</i> ▪ <i>Pre-qualification proceedings</i> ▪ <i>Invitation for Tenders</i> ▪ <i>Tender evaluation</i> ▪ <i>Contract award</i> |
| | Unit 3.4: Selection and Employment of Consultants | <ul style="list-style-type: none"> ▪ <i>Methods of procurement and types of contracts</i> ▪ <i>Selection Procedures</i> ▪ <i>Preparation of Terms of Reference</i> ▪ <i>Evaluation of proposals</i> ▪ <i>Awards</i> |
| Course Evaluation | | <ul style="list-style-type: none"> ▪ <i>Training evaluation</i> ▪ <i>Qualitative evaluation exercise</i> |

When the units of the module are taken consecutively, the whole module should be completed within five days as per time table divided in two morning and two afternoon sessions.

- Procedures for Procurement at sub-Council level (i.e. Lower Local Government Authorities and Service Delivery Units) will be addressed in a guideline, which is being developed.
- Interested LGAs can in the meantime consult with the Local Government Training Institute, who have developed specific training modules (in Swahili) on Procurement at sub-Council level; these modules have been rolled-out in 2016 to selected Lower Local Governments of 25 Councils.

I.5 Definitions of Key Terms

Below is a synopsis of common terms used in this training module:

“Closed framework agreement” means an agreement with specified terms and conditions including price.

“Consultancy services” means activities of the intellectual and advisory nature that do not lead to measurable physical output and include design, supervision, training, advisory, auditing, software development and similar services.

“Goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves.

“Non-consultancy” means any object of procurement other than goods, works and consultancy services.

“Open framework agreement” means an agreement with specified terms and conditions without an agreed price.

“Works” all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield; including any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing.

“Life-saving health commodities” includes medicines, medical devices and health supplies that effectively address leading avoidable causes of death during pregnancy, childbirth and childhood as may be modified from time to time by the Minister in consultation with the Minister responsible for health by order published in the Gazette”.

“Local firm” means a firm whose majority share capital is owned by citizens of the United Republic.

“Open framework agreement “means an agreement containing specified terms and conditions but does not contain agreed price.

“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a Procuring Entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation, award and management of contracts.

"Procurement process" means the successive stages in the procurement cycle, including planning, choice of procedures, measures to solicit offers from tenderers, examination and evaluation of those offers, award of contract and contract management.

“Terms of reference” means the statement issued by the Procuring Entity giving the definition of the objectives, goals and scope of the services, including where applicable the means to be used.

“Value for money” means the maximum benefit from goods, works or services procured with the resources available worth the cost incurred”.

➤ For other common definitions, participants are advised to check the Public Procurement Act and the Public Procurement Regulations (available on the PPRA website).

SESSION 1: SALIENT FEATURES OF THE PUBLIC PROCUREMENT ACT

The primary aim of this session is to enable participants to enhance their understanding and interpretation of relevant sections of PPA 2011 and its Regulations for procurement in Local Government Authorities.

The session is divided in four units as follows:

- Unit 1.1: Preliminary and General Provisions;
- Unit 1.2: Roles and Responsibilities of Key Actors, Bodies and Committees;
- Unit 1.3: Methods of Procurement and their Conditions for Use; and
- Unit 1.4: Prohibitions and Miscellaneous Provisions.

By the end of the session, the participants will be able to:

1. Identify and explain the salient features of the Public Procurement Act of 2011 as amended in 2016;
2. Interpret the institutional set-up of the various actors, bodies and committees and their roles as outlined in the legal framework;
3. Explain provisions of Local Government Finance Act, 1982 in particular Local Government Authorities' Tender Board (Establishment and Proceedings) Regulations 2014; and
4. Understand the roles and responsibilities of various LGA job families in Council Procurement.

Unit 1.1: Preliminary and General Provisions

Following the enactment of the Public Procurement Act No. 7 of 2011 and subsequent amendment in 2016, there is the need for the Procuring Entities to acquaint themselves with the requirements of the Act and its provisions in their procurement processes.

1.1.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Identify and explain the salient features of the PPA 2011 and its amendments; and
- Interpret and adequately apply various sections in the PPA 2011 and its amendments in procurement operations and decision-making.

1.1.2 Essentials of the Public Procurement Act and its Regulations

Generally, the enactment intends to provide legal and regulatory guidance to Procuring Entities i.e. government ministries, departments, Local Governments and other public bodies including parastatal organizations in the procurement of goods, works and services for which the Minister responsible has issued attendant regulations.

1.1.3 General Procurement Principles and Standards

The Public Procurement Act 2011 requires that the proceeds of any public funded procurement be used with due regard to maximizing integrity, competition, accountability, economy, efficiency and achieving value for money. The responsibility for the execution of the procurement and therefore the award and administration of contracts under the public projects rests with the Procuring Entity, which has to ensure that the proceeds of any public funded procurement are used only for the purposes for which the funds were intended.

The following standards of equity shall be taken into account while undertaking public procurement:

- i) Equality of opportunity to all tenderers;
- ii) Fairness of treatment to all parties; and
- iii) The need to obtain the best value for money.

1.1.4 Value for Money

PPA 2011 as Amended 2016 defines the “value for money” as the maximum benefit from goods, works or services procured with the resources available worth the cost incurred. In other words, this means best value for money in terms of price, quality and delivery and having regard to prescribed specifications and criteria.

Value for Money (VfM) is a term used to assess whether or not an organization has obtained the maximum benefit from the goods and services it both acquires and provides, within the resources available to it. Some elements may be subjective, difficult to measure, intangible and misunderstood. Judgment is therefore required when considering whether VfM has been satisfactorily achieved or not. Value for Money not only measures the cost of goods and services, but also takes account of the mix of quality, cost, use of resources, fitness for purpose, timeliness, and convenience to judge whether or not, together, they constitute good value.

Good practice will often require a well-planned, thorough and clear approach to an activity. The use of good practice is rarely seen as a waste of effort by those who adopt it, provided that it is adapted to their own circumstances. However, procedures by themselves are not necessarily sufficient, since the achievement of VFM requires an attitude and culture that seeks continuous improvement. The main benefits of promoting VfM principles include:

- a) **The clarification of objectives:** Rather than acting on assumptions about what is required, VfM principles will give PEs a proper assessment of the objectives of a procurement activity. This will maximise their chance of achieving the desired ends without unnecessary expenditure and effort. An 'assessment' should also demonstrate that the proposed activity fits in with the organisation's strategies and policies. Where this does not happen, an activity is, by definition, not achieving what the organisation has set out to do. An assessment will also help end-users to get what they need (which may be different from what they want) to do their job properly.
- b) **Planning is an essential part of all well managed processes:** Good planning minimizes the risk of an activity failing to deliver the intended outcome, at the right time and at the right price.
- c) **Openness and transparency of process:** Through properly documented planning and assessment, and the adoption of open processes involving all interested parties, PEs can publicly demonstrate a commitment to achieving propriety as well as VFM. This is important in a world of growing accountability and responsibility.
- d) **Compliance with statutes and regulations.** All organisations need to comply with legal and other associated requirements. By adopting good practice, the risk of failing to identify and comply with such requirements is significantly reduced.
- e) **Risk assessment.** All activities have risks attached. These include, for example, a **reputational risk, control risk, financial risk** (including financial health risk), health and safety risk, and a business risk. Risk assessment is an area that can often be improved. Although it is often not necessary to undertake a full risk assessment for every activity, an inadequate risk assessment, particularly for significant activities, can result in poor value for money.

1.1.5 Prohibitions

The Procurement Act has taken on board the intention of regulating the relations between natural person(s) and the state, and those against the Government interest. The Procurement Act provides punishment for damages to those who have inflicted

some harm against the government or for damages against those who have caused loss to another natural person.

1.1.6 Public Procurement Complaints Authority (Complaints and Review)

Under the Act, PPRA has now been taken off the complaints review process (S95, S96 & S97) to enable it carry out its regulatory and advisory role without potential of any conflict of interest.

Under the new system, the Accounting Officer is required to give a decision in 14 days and is empowered to constitute an independent review panel from within or outside the organization to review the complaint and advise him. Further, the Act has provided sections which make the Public Procurement Complaints Authority (PPAA) independent from the Ministry of Finance (S88).

1.1.7 Specific Provisions for Local Government Authorities

The Public Procurement Act (PPA) is applicable to all public entities with some additional provisions for the Local Government Authorities, including:

- a) Section 31(3) of PPA 2011 relates to the process of appointment of members of the Tender Board of Local Government Authorities and the procedures to be followed by such a Tender Board, as prescribed in Regulations made pursuant to the provisions of the Local Government Finances Act, 1982.
- b) Therefore, the Local Government Authorities are required to comply with all provisions of PPA 2011 and PPR 2013 except Section 31(3) which shall apply in the appointment and proceedings of the Council Tender Board.
- c) It is acknowledged that the operationalization of PPA 2011 has overcome some of the challenges that were observed during the implementation of PPA 2004 and its Regulations. The Regulations made pursuant to subsection (3), inter alia, provides for the procedure under which an LGA through its committee responsible for finance shall perform its oversight function on LGA procurement matters. Furthermore LGA Councillors are now involved in the tender approval process through scrutinising of contracts by the Finance Committee.
- d) Signing of Contracts by Council including Chair/Mayor would be in accordance with the law/legal instrument establishing the LGAs.

1.1.8 Objectives of Public Procurement (Amendment) Act 2016

The objectives of the Amendment 2016 to the Public Procurement Act include the following:

- Prudent use of market prices;
- Reduced procurement process and transaction costs;
- Increased opportunity for participation of special social groups e.g. women, youth, elderly, people with disabilities;
- Promotion of industrial development by emphasizing ‘local content’ and using locally produced raw materials, products and services;
- Establishing and adopting Government approved standards for items and services for Procuring Entities (PE); and
- Making special procedures for commercial oriented entities to procure inputs of production.

Table 2 below provides a summary of the major changes in light of the stated objectives as per Amendment Act of 2016

Table 2: Major Amendments to PPA 2011

| S/n | Amendment | Particulars |
|-----|--------------------------------|---|
| 1. | General Improvements | <ul style="list-style-type: none"> • Prudent use of market prices • Reducing procurement process / transaction costs • Increasing opportunity for participation of special social groups e.g. women, youth, elderly, people with disabilities • Promotion of industrial development using locally produced raw materials, products and services • Establishing and adopting government approved standards • Making special procedures for commercial oriented entities to procure inputs of production, etc |
| 2 | Specific Issues (PPRA related) | <ul style="list-style-type: none"> • PPRA in collaboration with AGO & Professional Bodies preparing, updating and issuing of authorized versions of standard Bidding Documents and other documents • PPRA to build capacity of stakeholders involved in public procurement • PPRA to obtain price information for standardized common items and services from relevant public bodies • Under Sect. 10(3) PPRA may order suspension of proceedings/implementation of any matter under investigation |
| 3 | Powers of PPRA | <ul style="list-style-type: none"> • Section 18(1): Powers of the authority • (e) excludes “tenderers” because of complaints review |

| S/n | Amendment | Particulars |
|-----|--|--|
| | | <p>mechanism already in place</p> <ul style="list-style-type: none"> Section 23(2): Appointment of the CEO (of PPRA) need not be “registered” for professionals as there are other professions without registration |
| 4 | Functions of AO | <ul style="list-style-type: none"> Section 36: Functions of the AO <ul style="list-style-type: none"> (l): emphasizes on submitting “details” and not just a list of procurement contracts awarded and Annual Procurement Plan (APP) for the next Financial Year (FY) (n): emphasizes on the use of Procurement Management Information System (PMIS) and e-procurement |
| 5 | Witnessing on Contract Signing | <ul style="list-style-type: none"> New section 46A: Witnessing on contract signing As per the law or legal instrument establishing the Procuring Entity (PE) , or where not available any person enumerated under the Notaries Public and Commissioner for Oaths Act |
| 6 | Removal of “Closed” Framework Agreements | <ul style="list-style-type: none"> Section 50(1): Removal of “closed” framework agreements within the procurement of Common Used Items and Services (CUIS) (3): Open framework agreement contains specific terms and conditions but does not contain agreed price New sections 55A-55D: Local content Emphasis on local firms with 100% local ownership |
| 7 | Cool off Period Reduced to 7 Working Days | <ul style="list-style-type: none"> Section 60 (3): Cool off period reduced to 7 days Contract is formed when a written acceptance is communicated to the successful tenderer |
| 8 | Procurement Contract Entering Into Force | <ul style="list-style-type: none"> (10): A procurement contract “enters into force” when the formal contract is signed by parties to the contract |
| 9 | Selection of Procurement Methods | <ul style="list-style-type: none"> Section 64: Selection of methods of procurement (2)(c): Includes special groups, e.g. Women, youth, elderly, and persons with disability Instead of “restricting the issue of tenders” PE’s to set aside a specific percentage of the procurement volume to special groups |
| 10 | Procuring directly from Manufacturers, Dealers, Wholesalers or Service Providers | <ul style="list-style-type: none"> Section 65A: Procuring directly from manufacturers, dealers, wholesalers or service providers Certain goods and services Procedure to be prescribed in Regulations |

| S/n | Amendment | Particulars |
|-----|---|--|
| 11 | Emergency Procurement | <ul style="list-style-type: none"> Section 65: Emergency procurement (1)-(2): Emphasis on “emergency “and not “urgent” Former subsection (3) and (4) deleted: GPSA no longer involved in approving emergency procurement |
| 12 | Established and Approved Standards of Items or Services to be Procured for Government Use | <ul style="list-style-type: none"> Section 65B: Established and approved standards of items or services to be procured for Government use: Standards to be issued by relevant Government organs Manner to be prescribed in Regulations Certain goods for Government use may not need approved procurement standards |
| 13 | Fraud, Corruption and Debarment | <ul style="list-style-type: none"> Section 83: Fraud, corruption and debarment (2): PE is expected to conduct due diligence and not investigation; Can only declare a bidder ineligible Corrupt practices can only be established by court of law and not by a PE Emphasizes that debarment can only be declared by the Authority and not by a PE |
| 14 | Establishment of Appeals Authority | <ul style="list-style-type: none"> Section 88: Establishment of Appeals Authority (4): Deleted; to enhance good governance and avoid dual role within the institutional framework Dual roles: resolving disputes and complaints while also serving as governing board (budget approving authority) Section 89: Appointment of Executive Secretary (3): Executive Secretary will not be supervised or directed by Appeals Authority Section 91: Funds of the Appeals Authority (3): deleted as the Appeals Authority is no longer a governing board for approving banks for its accounts Section 93: Annual Management Plan and Budget The authority for approval is now the PS of the ministry responsible for finance, and not the members of PPAA |
| 15 | Right to Review | <ul style="list-style-type: none"> Section 96: Settlement of complaints/ disputes by AO <ul style="list-style-type: none"> (4): Bidder given 14 days instead of 28 days (6): AO given 7 days instead of 14 days Section 97: Review by Appeals Authority <ul style="list-style-type: none"> (2): Bidder given 7 days instead of 14 days (after AO decision or expiry of time given to AO without decision) (3): Bidder given 7 days instead of 14 days (for contract already in force) (5): More remedies: <ul style="list-style-type: none"> (g) Compensation to PE for costs incurred if it wins the case; |

| S/n | Amendment | Particulars |
|-----|--|--|
| | | (h) Set aside, vary or confirm decision by PPRA to blacklist; (i) Any other order or relief as it may deem fit to grant |
| 16 | Review Proceedings and Judicial Review | Section 99: Certain rules applicable to review proceedings (1) & (2): deleted to reduce time and cost of occasioned complaints by unsuccessful bidders Section 101: Judicial review (2)(b): A tenderer who is a public institution or a PE challenging the decision of the Appeals Authority: To state their positions to the AG immediately after the leave has been granted by the High Court (3): AG to state case containing positions of both parties and file a case marked "Case Stated" to the High Court for opinion. |
| 17 | E-procurement | <ul style="list-style-type: none"> • New Section 63: e-procurement • (1): Emphasis on the use of e-procurement including PMIS by PEs • Manual procedures only where electronic facility is not available |

1.1.9 Institutional Set-Up

The following bodies have a direct bearing on the regulatory framework and institutional set-up of the public procurement in the country. These may be seen as 'vehicles' of streamlining the public procurement activities at national as well as individual institution levels and their roles have been added or slightly altered over the years.

Public Procurement Policy Division (PPPD)

PPA 2011 introduced (PPA-S5 and S6) the existence of the Public Procurement Policy Division (PPPD) in the Ministry of Finance with the responsibilities of, among others, developing a national procurement policy, advising the Central Government, Local Government and statutory bodies on issues related to procurement policies, and developing and managing the procurement cadre.

Public Procurement Regulatory Authority

Section 9 of the PPA of 2011 provides that PPRA shall provide oversight services to all procurement matters including among others the following:

- i) Advise Government, local government authorities and statutory bodies on procurement principles and practices;

- ii) Monitor and report on the performance of the public procurement systems in the United Republic of Tanzania and advise on desirable changes;
- iii) In collaboration with the Attorney General's Chamber Prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other attendant documents to procuring entities; Build capacity to Stakeholders involved in procurement issues; and
- iv) Obtain price for standardized common use items from relevant bodies with a view to ensure that they conform to the prevailing market prices.

Attorney General

The PPA of 2011 assigns various roles to the Attorney General in oversight of procurement contract, including:

- i) Vet contracts above the thresholds specified in the regulations arising out of the acceptance of a tender, offer or proposal under the PPA;
- ii) Provide advice to the Legal Officer who seeks for an advice of the Attorney General in respect of the contract required to be vetted by that Legal Officer;
- iii) Approve contract amendments;
- iv) Receive copies of award letters and all contracts are entered into by Procuring Entities; and
- v) Receive information on termination of contract for abandoning works or services and take appropriate action.

President Office Regional Administration and Local Government

It is the responsibilities of the President's Office Regional Administration and Local Government (PO-RALG) to ensure that the procurement in LGAs is done in compliance with the various acts, regulations, guidelines, etc including for public procurement. The roles of PO-RALG roles include amongst others:

- i) Ensuring that LGAs are staffed with sufficient number of qualified personnel in the area of procurement;
- ii) Ensuring that LGAs comply with procurement procedures as provided by laws;
- iii) Ensuring capacity building to procurement staff and other staff with roles and responsibilities in LGA procurement; and
- iv) To take disciplinary actions to those who performs their procurement duties contrary to requirements of law.

Regional Secretariat

The Regional Secretariat provides overall coordination of all LGAs' procurement plans and supervision role on procurement implementation in the region as prescribed in Local Government Financial Memorandum and other guidelines issued by the Ministry responsible for Local Government. The role of the Regional Secretariat through the Local Government Authorities Management Services Section (LGAMSS) is to provide expertise and service in developing good governance in LGAs by performing the following activities:

- i) Advice and facilitate proper use of public finances in LGAs
- ii) Build capacity and promote good governance in procurement; and
- iii) Take part in routine inspections of LGA performance and conducting ad hoc inspections.

Budget Approving Authority (BAA)

PPA 2011 in S-35(4) introduced the requirement for the Accounting Officer to seek approval of the Paymaster General or the respective budgetary approving authority prior to awarding any contract which exceeds the approved budget. This provision is aimed at curbing the current trend where some Accounting Officers proceed to award contracts beyond the approved budget sure that they have adequate funds set aside for execution of the contracts thus causing serious payment delays to contractors and suppliers.

Unit 1.2: Roles and Responsibilities of Key Actors (LGAs Job Families)

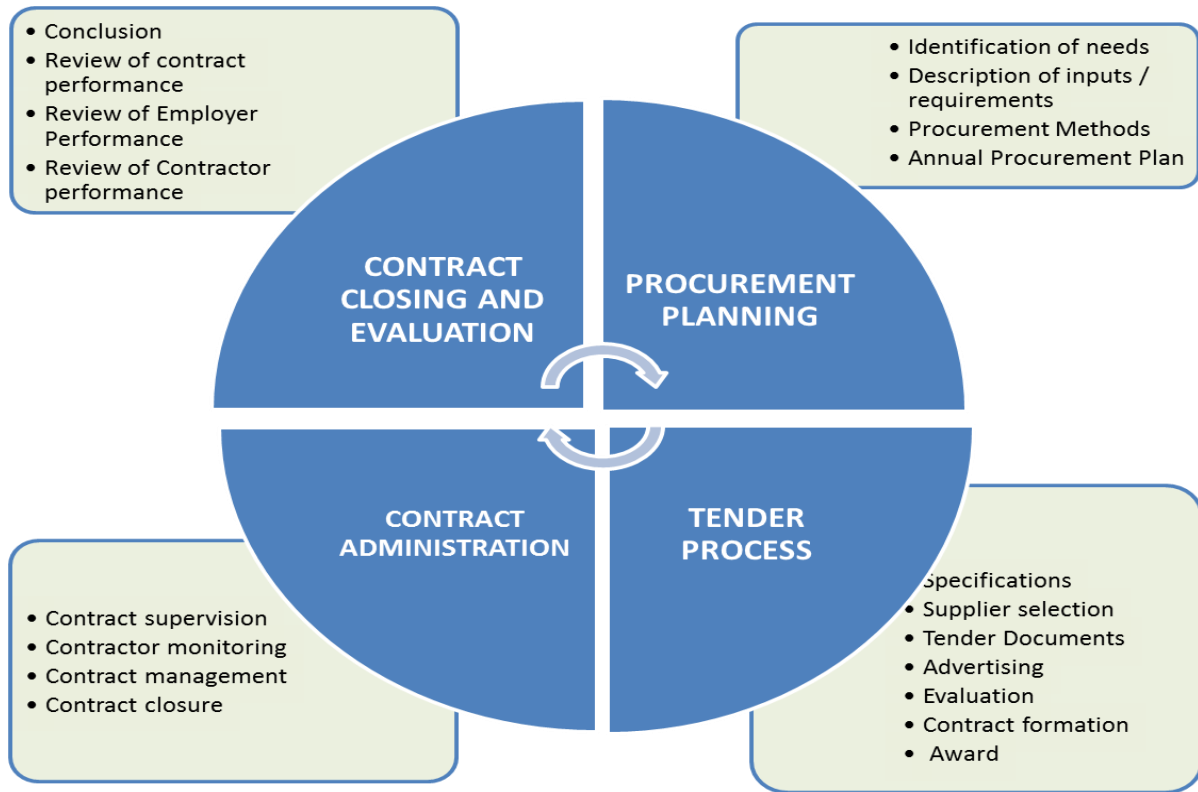
A thorough understanding is important of the roles and responsibilities of key actors, bodies and committees LGAs Job Family (ies) with major roles and responsibilities in the LGA procurement cycle in order to maximize efficiency and effectiveness in procurement operations and processes, enhance adequate decision-making, minimize the amount of conflicts that may arise and put to the maximum the level of responsibilities of those involved in LGA procurement.

1.2.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Explain the roles and responsibilities in the LGA Procurement Cycle of:
 - Accounting Officer;
 - Tender Board;
 - Finance Committee;
 - Procurement Management Unit;
 - User Department; and
 - Evaluation Committee (including Negotiation Team).

Figure 1: Common Local Government Procurement Cycle



1.2.2 Accounting Officer

Sec.36 of the Act provides functions and powers of the Accounting Officer in the execution of the procurement process within the PE. The AO shall be responsible for, among others:

- i) Establishing a Tender Board in accordance with the Act;
- ii) Appointing members of the Tender Board specified in the Act; and
- iii) Causing to be established a Procurement Management Unit (PMU) staffed to an appropriate level.
- iv) Approving all procurement opportunities and certifying the availability of funds to support the procurement activities;
- v) Appointing the Evaluation Committee and negotiation team;
- vi) Communicating award decisions and signing contracts for the procurement activities on behalf of the Procuring Entity;
- vii) Handling complaints by suppliers, contractors or consultants including submitting copy of complaints and reports of the findings to PPRA;
- viii) Ensure the implementation of the awarded contracts is in accordance with the terms and conditions of the award;

- ix) Submitting to the PPRA a list of contracts awarded, annual procurement plan and a list of blacklisted firms;
- x) Implementing decisions made by the PPRA and Appeals Authority after investigation or adjudication of a complaint;
- xi) Providing feedback on the implementation of the decision of the Authority or the Appeals Authority within seven working days of receiving communication of the decision.

The Accounting Officer may request for any professional or technical advice from any appropriate body or person in Tanzania or elsewhere if his entity does not have the required technical experts.

It is further stated that all Accounting Officers or Chief Executive Officers and their delegates shall be accountable for failure to comply with the provisions of the PPA 2011.

1.2.3 Council Tender Board

It is provided in the Act that the composition of Local Government Authority Tender Board and the method of appointment of the members, and the procedures to be followed by such a Tender Board, shall be prescribed in Regulations made pursuant to the provisions of the Local Government Finances Act (Cap 290).

Sec.33 of the Act provides functions of the Tender Board for a Procuring Entity (PE) as an important organ to ensure that procurements are executed as per requirements of the law. After having being established by the AO, the TB will, among others, be responsible for:

- i) Adjudication of recommendations from the Procurement Management Unit and approve award of contracts;
- ii) Review all applications for variations, addenda or amendments to ongoing contracts;
- iii) Approving tendering and contract documents;
- iv) Approve procurement and disposal by tender procedures;
- v) Ensure that best practices in relation to procurement and disposal by tender are strictly adhered by Procuring Entities; and
- vi) Liaising directly with the Authority on matters within its jurisdiction.

Special attention will be given as to the Tender Board's role in approving variations, addenda or amendments to ongoing contracts. It is not uncommon for contracts to

be varied or addenda to be made without the TB approval. The Module provides more light on the approvals of such changes to contract documents.

1.2.4 Procurement Management Unit

The functions of Procurement Management Unit (PMU) have been enhanced in particular with regard to reporting mechanism within the entity and preparation and submission of Annual Procurement Plan (APP) and quarterly reports on the implementation of the APP (ref. PPA-S38). Furthermore, it is provided that the Head of PMU shall report directly to the Accounting Officer of the Procuring Entity and that PMU shall have its own vote and budget enable it carry out its responsibilities under the Act (ref. PPA-S37).

The Accounting Officer (AO) has duty to ensure that the PMU is established and staffed to an appropriate levels under which PMU shall consist of procurement and other technical specialists together with necessary supporting and administrative staff.

The AO shall write an official letter personally addressed to the appointed Head of PMU and the specific or general duties that will be carried out within the unit in line with requirements of the law and with particular reference to functioning of the PE. This requirement cannot be delegated by the AO to a functional officer. The Head of the Procurement Management Unit shall report directly to the Accounting Officer of the Procuring Entity.

According to PPA 2011 (Sec.38) the functions of the PMU include among others:

- i) Manage all procurement and disposal by tender activities of the PE except adjudication and the award of contract;
- ii) Support the functioning of the Tender Board and implement its decisions;
- iii) Act as a secretariat to the Tender Board;
- iv) Plan the procurement and disposal by tender activities of the Procuring Entity;
- v) Check and prepare statements of requirements, tendering documents and advertisements of tender opportunities;
- vi) Prepare contract documents and issue approved contract documents;
- vii) Maintain a register of all contracts awarded and archive records of the procurement and disposal process;
- viii) Prepare monthly, quarterly or any other reports(to management, TB, FPC) on the implementation of the annual procurement plan;

- ix) Co-ordinate the procurement and disposal activities of all the departments of the Procuring Entity; and
- x) Other requirements include submission of reports to PPRA through PMIS.

1.2.5 User Department

The procurement process is normally triggered by the User Department (UD) when there is a need to be met within the UD and this normally initiated by end-users, Service Delivery Facilities (schools, health units, etc), etc. The user has, therefore, been given responsibilities and functions by the Act both as initiator of procurement and consumer of the services to be procured. The responsibilities and functions of User Departments include, but are not limited to:

- i) Liaise with and assist the PMU throughout the procurement or disposal by tender process to the point of contract placement;
- ii) Initiate procurement and disposal by tender requirements and forward them to the PMU;
- iii) Prepare technical inputs to statements of requirements and or terms of reference for procurement requirements to the PMU;
- iv) Propose technical specifications to the PMU when necessary;
- v) Participate in tender evaluation;
- vi) Certify for payments to suppliers, contractors or consultants; and
- vii) Maintain and archive records of contracts management.

The Act requires the User Departments to liaise with the PMU during budgeting and for the User Department to prepare a schedule of requirements for procurement as part of the annual budget and procurement planning process. This shall be reviewed and submitted to the PMU for compilation of the annual procurement plan.

1.2.6 Evaluation Committee

In the Institutional arrangement the Act recognises Evaluation Committees under Sec.39. If for any reason, whatsoever, the evaluation process is not correctly and fairly conducted then the entire procurement process is deemed as failure. It is during this stage in the procurement process that manipulations are easily done to favour a particular supplier, service provider or consultant for personal or institutional benefit. The recommendation and appointment of a credible Evaluation Committee [EC] is therefore crucial in upholding the integrity of the procurement process.

The Act stipulates that:

- i) For each tender there shall be formed an Evaluation Committee which shall conduct the evaluation and report to the Procurement Management Unit;
- ii) The membership of the Evaluation Committee shall be recommended by PMU and approved by the Accounting Officer;
- iii) The number of the members of the Evaluation Committee shall depend on the value and complexity of the procurement with Members of an appropriate level of expertise and experience, depending on the value and complexity of the procurement requirement;
- iv) Members of the Evaluation Committee may be external to the PE, where the required skills or experience are not available within the Procuring Entity or where members are indisposed or have a conflict of interest;
- v) The meetings of the Evaluation Committee, the conduct of the evaluation and the evaluation methodologies shall be executed in accordance with the regulations and Guidelines; and
- vi) The criteria to be used in the evaluation of tenders shall be the ones provided in the tender document with minor modifications to suit the conditions (sub-criteria weights); No other criteria shall be used in this respect.

➤ The Role of the Inspection and Acceptance Committee is in the contract administration phase and introduced in detail in Training Module No 4 :Contract Management and Administration in Local Government Authorities

Independence of Powers and Functions

In the spirit of ensuring “Independence” of functions and powers of the various actors in the procurement functions of the PE, the Accounting Officer, the Tender Board, the Procurement Management Unit, User department and the Evaluation Committee shall act independently in relation to their respective functions and powers i.e. no interference.

Exercises

Exercise No 1: Plenary Discussion

Cases of the CTB or the PMU overturning the recommendations of the Evaluation Committee are very common. At times, the PMU goes ahead to award contracts without the approval of the TB and Users appoint Evaluation Committees contrary to the requirements of the Act (which provides for the PMU to recommend and the AO to appoint the committee members). These are just few examples of how the powers and functions of the different actors in the procurement process do not observe the independence of functions as per requirements of the law.

- Critically discuss the contradictions between PPA 2011 and LGA Regulations under GN 330 on prohibition and restriction of User Department from participating in the Evaluation exercise.

Exercise No 2: Group Work

- From your knowledge of Roles & Responsibilities fill in the key players (from the LGA Procurement Job Family) involved in the Procurement Cycle.

| Activity in the Procurement Cycle | Who realizes? (initiation) | Who has authority? (multi-level approval) | Who contributes? (inputs in the process) | Who is involved? (Stakeholder) |
|---|----------------------------|---|--|--------------------------------|
| Identification of Operational Needs | | | | |
| Scheduling of Procurement Needs | | | | |
| Preparation of APP | | | | |
| Defining Specifications | | | | |
| Defining Procurement Approach | | | | |
| Tender Documents Preparation & Issuance | | | | |
| Tender Notice and Advert | | | | |
| Closing and Receiving Bids | | | | |
| Tender Evaluation | | | | |
| Negotiations | | | | |
| Supplier / Contractor Selection | | | | |
| Vetting & Award Notification | | | | |
| Contract formation & Signing | | | | |
| Contract management & Payment | | | | |
| Discharge of contract / Close-out | | | | |
| Contract Review | | | | |

Unit 1.3: Methods of Procurement and their Conditions for Use

Sect. 64 provides that a Procuring Entity engaging in the procurement of goods, works, consultancy services, non-consultancy services or disposal of assets by tender shall apply competitive tendering, while upholding the principles of fairness, openness and achieving Value for Money.

1.3.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Identify various methods of procurement and their conditions for use; and
- Apply the basic principles of procurement and disposal and selection of methods of procurement.

1.3.2 Methods of Procurement

It is provided in the Act that all procurement and disposal of assets by tender shall be conducted in a manner that maximizes competition and achieve maximum benefit from goods, works or services procured with the resources available worth the cost incurred (Value for Money).

The law also provides for making use of community participation approach, Minor Value Procurement, Micro (Value) Procurement and Common Use Items and Services (CUIS) system as they constitute an important part of the common LGA procurement process besides tenders.

Consideration for Selection of Procurement Methods

In considering options for Procurement Methods, the following basic principles should be taken into consideration:

- The amount of expenditure per contract;
- The need for urgency;
- The need for economy;
- Efficiency and transparency requirement;
- Competition and sources of supply; and
- Any other particular constraints of procurement in the LGA

Methods of Procurement

The following are the major methods of procurement in use (seventh schedule of the Public Procurement Regulations):

- i) International Competitive Tendering;
- ii) National Competitive Tendering;
- iii) Restricted Tendering;
- iv) Single Source;
- v) National Shopping;
- vi) Minor Value Procurement;
- vii) Micro (Value) Procurement; and
- viii) Other Procurement Methods.

NB: The use of Procurement Methods / approaches may fall under:

- Procurement methods involving negotiations or two-stage tendering, simultaneous or consecutive negotiations; and
- Procurement methods that do not involve negotiations.

Other Procurement Methods and Approaches as defined in the Law:

- The following methods are deemed more as approaches than on default threshold methods as under:
 - a) Procurement under Public Private Partnership (PPP);
 - b) Force Account;
 - c) Community participation and special groups;
 - d) Commodity procurement;
 - e) Use of items or services from relevant public bodies; and
 - f) Direct from manufacturers (foreseen)

Thresholds:

- Participants are advised to check on the forthcoming Public Procurement Regulations (Amended) once gazetted and issued as thresholds of the various procurement methods are likely to be adjusted

Exercises

Group discussion:

- 1) Among goods, works, non-consultancy and consultancy services, what are the procurement categories mostly undertaken in your Council?
- 2) What method(s) of procurement are used by your LGA for each of the mentioned categories?
- 3) What are exceptions to the above default methods?

Unit 1.4: Prohibitions and General Provisions

Sect. 64 of the Public Procurement Act provides that a Procuring Entity engaging in the procurement of goods, works, consultancy services, non-consultancy services or disposal of assets by tender shall apply competitive tendering, while upholding the principles of fairness, openness and achieving Value for Money.

1.4.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Recognize and explain prohibitions and general provisions of the procurement law; and
- Recognize requirements of the code of conduct for procurement practitioners.

1.4.2 Prohibitions

The law prohibits any involvement in corrupt practices by public officials and/or tenderers. When a PE is satisfied, after appropriate investigation, that any person or firm to which it is proposed to award a tender, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, it may reject a proposal for award of such contract.

➤ Note that the authority to declare debarment of any person or tenderer including its directors to participate in a public financed contract has been amended in the 2016 i.e. can only be done by the PPRA

Procuring Entities, tenderers and procurement agents under public financed contracts are under the duty to proceed in a transparent and accountable manner during the procurement or disposal process and execution of contracts.

It is further provided that the PE and a tenderer shall, in any tender for public contracts, not engage in fraud and corruption including bribery in competing for and executing a contract as per memorandum provided in the Third Schedule to the Procurement Regulations and shall abide with the laws of the country.

The Procuring Entities and tenderers under public financed contracts shall proceed in a transparent and accountable manner during the procurement and execution of such contracts.

Prohibitions further provide for PEs not to procure from a member of its staff or a person who has direct influence on the decision of the PE acting in a private capacity, either alone or as a partner in a partnership or as an officer of a company.

Any officer having conflict of interest shall be required to make a declaration of the conflicting interest and as such shall not participate in any decision that requires his/her opinion.

Final Exercise: Session 1

Review of the Public Procurement Act, 2011
Review each of the following statements by using the Public Procurement Act, 2011 to determine whether each of the statement is True or False.

| Statement | True | False | PPA Sect |
|--|------|-------|----------|
| 1. The functions of the Public Procurement Policy Division shall be to supplement the functions of PPRA. | | | |
| 2. The functions of the Public Procurement Regulatory Authority Shall include assist the PEs in the evaluation of complex tenders. | | | |
| 3. All contract awards are approved by Tender Boards while all advertisements of tenders and contract signing are approved by the Accounting Officers of the respective public bodies. | | | |
| 4. Accounting Officer, Tender Board, PMU, User Department and the Evaluation Committee shall act independently in relation to their functions and powers; Tender Board shall report to PPAA report on contract awarded in breach of PPA | | | |
| 5. The Authority shall, among others, where there is persistent or serious breach of the Act or regulations or guidelines made under this Act, recommend to the competent authority the replacement of the head of PMU, the Chairman, or any member of a Tender Board, as the case may be; including the disciplining of the Accounting Officer. | | | |
| 6. The Accounting Officer may inform the Authority of the composition of the Tender Board and the qualifications of its members not later than 30 days from the date of its appointment or during submission of APP. | | | |

| Statement | True | False | PPA Sect |
|--|------|-------|----------|
| 7. Splitting of procurement is prohibited unless authorized by the PPRA. | | | |
| 8. The functions of the Tender Board shall be to (a) deliberate on the recommendations from the PMU and approve award of contracts; (b) review all applications for variations, addenda or amendments to ongoing contracts (c) approve tendering and contract documents. | | | |
| 9. PE or TB is not allowed to ask a tenderer which has submitted lowest evaluated tender to demonstrate its qualifications before the award of contract is confirmed. | | | |
| 10. The budget approving authority shall, in respect of procurement, be responsible for-(a) reviewing and approving of Annual Procurement Plan based on its budget and action plan; (b) reviewing of quarterly procurement report submitted by the AO for retrospective approval. | | | |
| 11. Rejection of all tenders may be justified when tenders involve costs substantially higher than the original budget or estimates. | | | |
| 12. Where the Accounting Officer is not satisfied with the decision of the Tender Board, he shall: (a) return the decision to the Tender Board for review giving written reasons for the dissatisfaction; and (b) where not satisfied with the outcome of the review, refer the matter to a new committee. | | | |
| 13. Except where there is need to achieve certain social objectives by calling for the participation of local communities all procurements for public entities shall apply competitive tendering using methods prescribed in the Act without regard to the type and value of the procurement. | | | |
| 14. The PMU shall (a) manage all procurement and disposal by tender activities of the PE including adjudication minor value contracts by PMU; (b) support the functioning of the TB. | | | |

| Statement | True | False | PPA Sect |
|---|-------------|--------------|--------------------------|
| 15. The membership of the Evaluation Committee shall be recommended by the PMU, in accordance with Regulations made under this Act, and approved by the Accounting Officer following endorsement by TB. | | | |
| <i>ISSUES and CRITIQUES during Plenary Session</i> | | | |
| <i>Definition of Approving Authority is different from PPA 2011: "official of the Council when approving procurement" has been added</i> | | | Refer to PPA 2011 |
| <i>Definition of Procuring Entity differs from PPA 2011 and reads "in relation to the Council means the Accounting Officer, head of department, and an officer in-charge of Sub-Council levels when engaged in procurement"</i> | | | Refer to PPA 2011 |
| <i>Procurement Management Unit means "unit of a Council responsible for procurement and management of contracts"</i> | | | Refer to PPA 2011 |
| <i>Council Legal Officer added as advisor to the CTB without voting right</i> | | | Refer GN 330 2014 |
| <i>Functions of Finance Committee misses several functions including PPA 60(4) to scrutinise award decisions</i> | | | Refer to PPA 2011 |
| <i>Notification of decision by the CTB shall be signed by the Secretary or AO</i> | | | Refer GN 330 2014 |
| <i>When approved by HoD, it states that endorsement by secretary to CTB and at least three CTB members is required</i> | | | Refer GN 330 2014 |
| <i>User department shall not be members of Evaluation Committees contradicts the Principal Law</i> | | | Refer to PPA 2011 |
| <i>Powers of the Finance Committee are not mentioned as per PPA 60 (4)</i> | | | Refer to PPA 2011 |

SESSION TWO: SALIENT FEATURES OF PUBLIC PROCUREMENT REGULATIONS

The primary aim of this session is to enable participants to enhance their understanding and interpretation of Public Procurement Regulations with regard to Local Government Authorities' Procurement.

The session is divided in four units as follows:

Unit 2.1: Compulsory Approvals of Procurement in LGAs;

Unit 2.2: Procedures for Emergency Procurement;

Unit 2.3: Procurement of Sector Specific Goods and Services; and

Unit 2.4: Procedures for Procurement under Public Private Partnerships

By the end of the Session, the participants will be able to:

1. Identify and explain the salient features of the Public Procurement Regulations;
2. Outline procedures involved in the procurement of goods, works and services in line with the Regulations;
3. Use appropriate methods of procurement in acquisition of goods, works and services for their LGAs;
4. Explain tendering proceedings in Council procurement; and
5. Apply the various provisions of the Regulations in LGA's procurement.

Unit 2.1: Compulsory Approvals of Procurement in LGAs

2.1.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Identify roles and responsibilities in approving and oversight organs of the LGA's *Job families*;
- Recognize approval levels in procurement cycle and decisions in LGAs; and
- Make procurement decisions in line with the Public Procurement Regulations 2013

2.1.2 Principles of Economy and Efficiency

The basic principles of public procurement shall be to make the best possible use of public funds with honesty and fairness. Hence, there is need to ensure that those

involved in approval of LGA procurement process will uphold this principle in line with requirements of the law in the course of decision-making and approvals.

It is therefore the duty of Public officers and members of Tender Boards, when undertaking or approving procurement or disposal of public assets by tender, to ensure that appropriate procedures be carried out diligently and efficiently in the procurement or disposal of assets, so that the prices paid or benefit received by the Procuring Entity represent the best value or net outcome that can reasonably be obtained for the funds applied for or the assets disposed of.

Hence public officers and members of Tender Boards have the duty to ensure that the goods, works or services procured are of satisfactory quality; are appropriate to the PE's requirements and, where necessary, are compatible with any similar goods or services already supplied or provided for PE's use or for a particular project.

It is further provided that Procuring Entity shall not deny prequalification, if required, to a firm for reasons other than legal capacity, financial capability and experience to successfully perform the contract.

In cognizant to need to promote local industry and support socio-economic development deliberate provisions are in place to benefit target group and eligibility requirements for the preference and reservations schemes for such target groups the provision of goods, works and services in achieving the objectives.

2.1.3 Approvals

Tender Documents

Any procurement by a PE shall be authorised by the Accounting Officer. The PMU shall, before inviting tenders, furnish to the Tender Board for its approval, the text of the invitations to tender and the specifications or the expression of interest and terms of reference. The documents will contain all tender or proposal and draft contract documents together with a description of the advertising procedure to be followed. Modifications in the said documents or procedures shall be made as directed by the Tender Board.

The list of pre-qualified tenderers, together with a statement of their qualification and of the reasons for the exclusions of any applicant for pre-qualification, shall be furnished by the PMU to the TB for the approval of the recommendation and the Tender Board shall advise the Accounting Officer to approve the list before the applicants are notified of the Procuring Entity's decision.

Under the Public Procurement Regulations, the Tender Board has also been given the mandate that Tender documents shall only be issued with the approval of the appropriate Tender Board, which shall examine the draft tender documents before approving the issue of the tender.

Recommendations of the Evaluation Committee

Where tenders are received and evaluated, the PMU shall furnish to the TB, within fourteen day for its review, a detailed report on the evaluation and comparison of the tenders or proposals received together with the recommendations for award and any information as the TB may request.

The Tender Board is empowered to review the evaluation and recommendation made by the PMU and may either approve the recommendation and authorize acceptance of the tender and award a contract in the form specified in the tender documents; or refuse to authorise recommendation for award of the tenders. In cases where pre-qualification is required, the PMU shall, before pre-qualification, inform the Tender Board on the procedure to be followed, and shall introduce such modifications in such procedure as the Tender Board shall direct.

➤ It should be noted that the Finance Committee of the Council has been given powers in the approval process i.e. scrutinize contract awards.

Vetting of Contracts by the Attorney General

It is also provided in the law that tender whose value is beyond the prescribed threshold (currently one (1) billion shillings) shall be vetted by the Attorney-General before the contract is signed by the parties. Any contract whose value is below the set threshold shall be scrutinized by the Council Legal Officer.

Amendments

It is provided that any amendment to the contract that may change the original terms and conditions of such contract shall be prepared by the PMU in consultation with the user department before it is submitted to the TB for approval and that contract amendment shall not be issued to a tenderer prior to obtaining approval from a Tender Board.

Exercises

Discuss the implications or constraint on approvals under the following conditions:

1. Procurement of Own Source Revenue Collection Project by LLG
2. Procurement under Capital (Council) Development Grant for Service Delivery Facility.

Unit 2.2: Procedures for Emergency Procurement

2.2.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Identify and apply appropriate procedures for emergency procurement in line with requirements of the Public Procurement Regulations;
- Identify and explain the role of AO, TB, PMU, GPSA, PPRA and Paymaster General in emergency procurement; and
- Make emergency procurement decisions in line with the Regulations.

2.2.2 Emergency Procurement

Emergency procurement occurs, but is an area prone to abuse. For this reason the Act and its Regulations (Section 65) have laid down procedures to be followed by the PEs.

The responsibility for “emergence procurement” rests with the PE as the Public Procurement (Amendment) Act 2016 relieves GPSA from duty to approve emergency procurement. The section provides for the criteria and circumstances under which the Accounting Officer is allowed to proceed with such procurement where it is determined that it meets the following criteria:

- a) Compelling urgency that creates threat to life, health, welfare of public as a result of major disaster, epidemic and reasons of similar nature; and
- b) Situation whereby without the urgent procurement the entity is likely to suffer irreparable loss.

Retrospective approval shall be sought from the Pay-Master General within seven (7) working days from date of award. The Regulations further provide for the Accounting Officer to evaluate the need for the emergency procurement and decide the preferred procurement method in order to guarantee economy and efficiency; and ensure compliance to the requirements of the Act.

2.2.3 Procurement of Life Saving Health Commodities, Supplies and Equipment

Procurement of life-saving health commodities, supplies and equipment shall be treated as items of public interest in their procurement. The Procuring Entity shall, in consideration of their importance and nature, by approval of the Minister, fast-track their procurement process or use emergency

Exercises

Group Discussion

The Security Committee of your district has convened an emergency meeting to evaluate the critical food shortage in the district. It has been established that the matter was immediately taken to higher authorities with the Prime Minister's Office (Maafa) whereby 2,045 tons of grain have been allocated and thus requires immediate haulage from the Central Grain Reserve 650 kilometres away. You have been asked to advise and act within the swiftest means to ensure availability of the "chakula cha msaada" while observing the requirements of the law.

- Discuss on the role and responsibilities of the AO, TB, PMU, PPRA and Pay Master General in the above Emergency Procurement; and
- Advise the Accounting Officer on appropriate steps to be taken in the procurement of transport services to tackle the pandemic given the above situation.

Unit 2.3: Procurement of Sector Specific Goods and Services

2.3.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Identify and apply procedures for sector specific goods and services including
 - Common Use Items and Services (CUIS) under GPSA;
 - Medicines and Medical Supplies;
 - ICT Equipment;
 - Electrical, Mechanical and Electronics Services under TEMESA; and
- Make procurement decisions of sector specific procurement in line with the Regulations.

2.3.2 Procurement from Government Procurement Services Agency

Some provisions have been introduced in the Act that requires PEs to observe the Regulations while making procurement of specified goods under Framework Arrangements.

Procurement of Catalogue Items

Procuring Entities are required to order from the Government Procurement Services Agency (GPSA) any item included in the approved current stores catalogue where such item is available at lower prices than current market prices. Under this arrangement the Agency is required to publish on quarterly year basis in the

Gazette, Journal and Tenders Portal the descriptions of items available on the stores catalogue open framework, modality of agreement and type of contract.

Where the Procuring Entity submits to GPSA a request for purchase of items in the store catalogue and such items are not available, the Agency shall, within one (1) working day of receipt of the request, issue a non-availability certificate to the PE who may opt for another appropriate procurement method.

Other services that a PE may procure from GPSA include “clearing and forwarding service” where such service is available at lower prices than current market prices.

The amendment of the principal Act provides for the procurement of goods for Government agencies in conformity with established and approved standards as specified in the Regulations e.g. vehicles for use by Executives.

Procurement of Common Use Items and Services

GPSA is managing a facility for procurement of Common Use Items and Services (CUIS) by Procuring Entities through framework agreements with a duration of not less than one year and not more than three years. GPSA would periodically publish in the Journal and Tenders Portal the list of suppliers and service providers with awarded framework agreements to enable PEs use the list placing of “call off orders” as and when need arise.

In case of common use items and services falling under open framework agreements, the PE shall seek approval of the Tender Board to conduct “a mini competition” amongst the suppliers or services providers with a GPSA framework agreement.

2.3.3 Procurement of Electrical, Mechanical and Electronics Services

The Tanzania Electrical, Mechanical and Electronic Engineering Agency (TEMESA) has been bestowed the responsibility to carry out maintenance or repair of Government owned motor vehicles, plant and equipment, maintenance, repair and installation of electrical, air conditioning and refrigeration and electronics services. The services are provided through open or closed framework agreements with service providers based on framework agreements published in the Journal and Tenders Portal.

For the purpose of up-keeping quality service delivery TEMESA conducts inspection prior and after the service are provided and shall issue a certificate of approval.

Where the agency is unable to carry out the repair and maintenance due to non-availability of spare parts, technical knowhow or other resource constraints, it may procure such services from service providers awarded closed framework agreements by Call off Orders in consultation with the PE.

2.3.4 Procurement of Computers and other IT Equipment

The ministry responsible for information technology services shall prepare detailed and acceptable schedule of requirements, standards and specifications which shall be made available to the Authority for use by Procuring Entities in the procurement of computers and other related information technology equipment and tools. This includes computers of any type, computer printers, scanners, servers, storage media, software and local area networks.

2.3.5 Procurement of Medicines and Medical Supplies

The Medical Stores Department (MSD) maintains a list of catalogue items which shall be published on a yearly basis in the Tenders Portal and Journal. PEs are required, by the end of January of each year, to submit to the MSD the provisional annual estimates of the required catalogue items including descriptions, specifications, statement of requirements and quantities. MSD shall then arrange for procurement of catalogue items which are required continuously or repeatedly over a set period of time and which are common to more than one Procuring Entity and may be procured through framework agreements by placing call off orders.

The PE is required to place orders with MSD for any item included in the price catalogue within one (1) working day after reaching the buffer stock or upon touching safety stock. Where the catalogue items requested to be purchased by the PE are not available, the Department shall, within one (1) working day of receipt of the request, issue a non-availability notice ("Out of Stock") to the PE who may opt for another appropriate procurement method of sourcing.

Exercises

Group Discussion

- In which areas do you think "Call off Orders" have enhanced efficiency and reduced procurement cost for your LGA?
- What are the conditions that will favour "mini-competition" in procurement under CUIS?
- What are the key challenges identified in the procurement of CUIS and medical supplies?

Unit 2.4: Procedures for Procurement under Public Private Partnerships

2.4.1 Unit Objectives

Procurement under Public Private Partnerships (PPP) is of growing importance in Procuring Entities including LGAs (in particular Urban and Town Councils) based on opportunities for the private sector and public entities to share or transfer expertise for mutual benefit.

By the end of the unit, the participants will be able to:

- Identify and apply procedures for procurement under PPP in line with the provisions of the Regulations; and
- Differentiate between solicited and unsolicited PPPs.

2.4.2 Public Private Partnerships

A new part has been introduced in PPA 2011 to cover procurement under Public Private Partnerships (PPP): sections 79 to 82 provides for procurement of unsolicited PPP proposal, the selection of transaction adviser or manager and the selection of private party and choice of procurement method.

It should be appreciated that the approval of PPP projects shall be in accordance with Public Private Partnership Act, 2010 and its Regulations referred in S79 (2) and stipulates that the Procuring Entity shall not proceed with the procurement phase of solicited or unsolicited PPP prior to obtaining approval of the project concept by the relevant authorities under the Public Private Partnership Act.

Feasibility Study

Before undertaking the procurement of a solicited PPP project the contracting authority shall carry out a feasibility study and the contracting authority shall not proceed with the procurement phase of solicited PPP or private sector participation project if the feasibility study indicates that the proposed project will not deliver value for money or improve the quality of the public service.

Selection Process of a Private Partner

It is provided under the Regulations that the selection of a private party shall be in accordance with the competitive bidding procedures and shall be based on the “best value” to the project for the duration of the partnership as opposed to the lowest bidder under the conventional tenders.

Factors that contribute “value” to a project shall include among others: project design, project delivery schedule, use of innovation, access to expertise and project fee over the partnership duration.

Conducting Due Diligence

The contracting authority is required to conduct due diligence on the private partner that is recommended to be awarded the contract by:

- a) Verifying experience of the private partner to ensure that he possesses the qualifications and expertise necessary to meet the contracting authority’s objectives;
- b) Verifying the potential private party’s financial capability and where the contracting authority lacks the expertise to determine financial capability, an independent financial review may be performed and certified by a competent authority prior to final private party selection; and
- c) Confirming the available working capital proposed for the PPP as well as the bonding capability of the proposed partners through the provided bank and surety references.

Any proposal of the party, submitting unsolicited private partnership proposal shall be subjected to a *formal competitive process* set out in the PPA regulations.

It is further provided that a *transaction advisor* or manager is to be appointed for the purposes of ensuring a public private partnership implementation process runs smoothly in accordance with the procedures stipulated in the regulations.

Exercises

Group discussion

- Assess the factors in favour of Unsolicited Vs Solicited PPPs for a Revenue collection project in your LGA.

Final Exercise: Session 2

Review each of the following statements. Use the Public Procurement Act, 2011 and Regulations, 2013 – GN 446 to determine whether each statement is true or false.

| Statement | True | False | PPA Sect | Reg. No |
|---|------|-------|----------|---------|
| 1. PEs shall prepare a tender notice for national and international tenders and submit the same to the Authority for publication in the Journal and Tenders Portal where local newspapers are found costly. | | | | |

| Statement | True | False | PPA Sect | Reg. No |
|--|------|-------|----------|---------|
| 2. Splitting of procurement may lead to institution of criminal proceedings under the Corruption Act of 1971, unless authorized by the PPRA. | | | | |
| 3. The use of brand names “or equivalent” is permitted to make clear specifications. | | | | |
| 4. During evaluation any procedure under which tenders above or below a pre-determined tender value is automatically disqualified shall not be accepted for procurement of goods. | | | | |
| 5. Tender securing declaration shall apply for procurement the value of which does not exceed the threshold for exclusive preference as provided in the Ninth and Thirteenth Schedules to Regulations under GN 446. | | | | |
| 6. Except where there is need to achieve certain social objectives by calling for the participation of local communities all procurements for public entities shall apply competitive tendering using methods prescribed in the regulations without regard to type and value of the procurement. | | | | |
| 7. A PE may reserve works, goods, consultancy or non-consultancy services with a value not exceeding the amount prescribed in the Regulations to local firms who are based and operate in LGAs or region, except where if established that local capacity is not available. | | | | |
| 8. The TB shall review the evaluation and recommendation for award of contract and approve the award to the recommended supplier or disapprove the recommended supplier and award to the best supplier as they shall determine. | | | | |
| 9. Technical and financial capabilities are the only qualification criteria for procurement of goods. | | | | |
| 10. Any procurement by a PE shall be authorized by an AO and the PMU shall, if it deems fit, furnish to the Tender Board for its approval, the text of the invitations to tender and the specifications. | | | | |

| Statement | True | False | PPA Sect | Reg. No |
|--|------|-------|----------|---------|
| 11. All procurement records kept in accordance with regulation shall on request be made available to suppliers, contractors or service providers. | | | | |
| 12. The Tender Board may delegate its responsibility for work and decisions of the sub-division bodies to which the procurement and disposal function by tender is delegated. | | | | |
| 13. A decision of the Tender Board may be made by the Tender Board without convening a meeting through a circular resolution after obtaining approval from PPRA. | | | | |
| 14. In a situation where an application for approval for emergency procurement is impracticable, the AO may proceed with the emergency procurement in accordance with the chosen procurement method and TB may grant retrospective approval | | | | |
| 15. Any amendment to the contract that may change the original terms and conditions of such contract shall be prepared by the PMU in consultation with the user department before it is submitted to the Tender Board for approval. | | | | |
| 16. Once signed, the contract or written agreement shall not be altered, except when an alteration is necessary for the benefit of the Procuring Entity or when an alteration does not prejudice the PE. | | | | |
| 17. The Agency shall arrange for procurement of common use items and services by Procuring Entities through "closed" framework agreements for a period of 3-5 years. | | | | |
| 18. A tenderer who has entered into framework agreement with the Agency shall comply with terms and conditions of the agreement, but may ask the PE to review the rates/ prices stated in call off order after obtaining approval from PPRA. | | | | |
| 19. Only tenders received within the time limit prescribed in the invitation to tender shall be eligible for consideration. Tenders not properly sealed / whose envelopes are open shall be rejected. | | | | |

| Statement | True | False | PPA Sect | Reg. No |
|--|------|-------|----------|---------|
| 20. All tenders shall be checked for substantial responsiveness to the commercial terms and conditions during opening. | | | | |

SESSION THREE: TENDERING PROCEEDINGS

The session is divided in four units as follows:

- Unit 3.1: General Proceedings and Procedures for Procurement of Goods;
- Unit 3.2: Procurement of Non-Consultancy Services;
- Unit 3.3: Procurement of Works; and
- Unit 3.4: Selection and Employment of Consultants.

By the end of the Session, the participants will be able to explain and apply tender procedures for:

1. Preparation of Tendering documents for Goods, Works and Services;
2. Invitation and Receiving of Tenders and Quotations;
3. Evaluation of Goods, Works and Services; and
4. Negotiation, Approval and Award of Contract.

Councils and/or LGA staff with interest in procurement records, reports and assessment of compliance are advised to consult:

- Training Module No 3 provides detailed guidance on procurement record keeping and reporting; and
- Units of other Training Module, which provide detailed guidance on assessment indicators and criteria for assessing performance in procurement planning, procurement record management, contract administration and management.

Unit 3.1: General Tender Proceedings and Procedures for Procurement of Goods

3.1.1 Unit Objectives

The primary objective of all procurement, public or private, is to obtain the goods or works in the optimum and the most economical fashion, taking into account the requirements of quality, price of the project.

By the end of the unit, the participants will be able to:

- Describe and apply general tender proceedings;
- Describe and apply procedures for procurement of goods;
- Demonstrate understanding the use of SBDs for procurement of goods;
- Describe procedures for advertising, receiving and opening of Bids; and

- Describe procedures for evaluation and award of contract.

3.1.2 Recap of General Tender Proceedings

It is the general requirement when engaging in public procurement that the proceeds of all public funds be used with due attention to economy and efficiency. Therefore as a matter of policy the Government requires that any procurement of goods and any related services, should substantially attract enough competition. Furthermore, it is the requirement by the Government that any bidding procedures and contracts awards which may be used for procurement of goods and services on projects wholly or partially financed by the Government should be subject to conditions and procedures acceptable by public and the would be financiers and to the satisfaction that it will fulfil the purchaser's obligations to cause the project be carried out diligently and efficiently.

The Regulations provides that any Procuring Entity that wishes to commence competitive tendering proceedings shall prepare a tender notice inviting tenderers to submit priced offers for the supply of goods, undertaking of works or provision of services required.

It is further specified in the Regulations that the PMU shall seek approval of the Tender Board prior to publication of the invitation and issue of the tender Documents. The succession stages in the procurement proceedings, thus, need closer monitoring to ensure proper implementation and value for money is achieved.

Basic Policy Considerations:

The Procurement Act is generally guided by four basic policy considerations:

- The need for economy and efficiency in the provision of works, goods and services;
- The Government's interest in giving all eligible contractors and suppliers equal opportunity to compete in the supply of goods and works financed by the government;
- The Government's interest in encouraging the development and participation of local contractors and suppliers; and
- The importance of transparency in the procurement process.

Use of Standard Bidding Documents

It is a requirement under the Regulations to use Standard Bidding Documents (SBDs) to ensure uniformity in the information given to bidders. The Standard Documents shall be introduced with minimum changes as necessary to be customized for the Procuring Entity and procurement specific issues. Any such

changes should be introduced only through the **Bid Data Sheet** for goods or **Contract Data Sheet** for works.

Other changes regarding conditions of contract should be made through **Special Conditions of Contract**, and not by introducing changes in the standard wording of the SBDs. Where no relevant standard bidding documents have been issued it is recommended that the PE may use other internationally recognized standard conditions of contract and contract forms widely used by international organizations such as the World Bank.

Type and Size of Contracts

The tender documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions as appropriate. The most common types of contracts provide for payments on the basis of a lump sum, unit price, or combination thereof.

➤ Training Module No 4 on Contract Management and Administration provides details of the various types of public contracts and its use.

For tendering purposes public procurements may be divided into parts and sections in accordance with the magnitude, nature and location of goods to be procured. However, sub-division into “Lots” should be of such an appropriate size as to foster appropriate competition.

Where similar but separate works or items of equipment are required, they may be procured either separately or in groups in order to attract the interest of both smaller and larger bidders in order to maximize competition. To this end, tenderers are allowed to bid for individual packages or for a group of similar packages at their option.

It is a requirement that detailed engineering of works or goods should be provided (including the preparation of technical specifications and other bidding documents) before the invitation to bid.

➤ In the case of turnkey contracts or contracts for large complex and very specialized projects (not often used in LGAs), it may be undesirable to prepare technical specifications in advance. In such cases, the Procuring Entity may seek technical specifications and design through competition.

➤ In case of special processes, closely integrated manufacturing or turnkey

contracts (not often used in LGAs) may be acceptable or other methods like Buy-Operate- Transfer (BOT) may be applied.

As explained, the Procuring Entity is required to send Tender Documents to the Tender Board for comments and approval and to incorporate any amendments agreed and/or directed as appropriate into the final text. Bidding documents that have not been approved by the Tender Board may not be considered as sufficient and adequate to satisfy the PPA and related regulations. Consequently, such procurement may not, in principle, be eligible for government financing.

Review by Council Tender Board

The Tender Board shall review the procurement proceedings, documents, bid evaluation, award recommendations and contracts to ensure that the procurement process is carried out in accordance with the PPA procedures. However, the PPA has provisions for small contracts and other situations that may warrant for waiver of the review.

Tender documents which are subject to prior review by the respective Tender Boards and that have not been reviewed will not be considered and may be cancelled by the Tender Board with the appropriate limit of authority for that entity.

- Mis-procurement cannot be entertained in public procurement including Donor-funded projects. The Government therefore, does not finance expenditures for goods, works and services, which have not been procured in accordance with the laid down procedures.

Fraud and corruption clause should be included in the bidding documents as provisions against corrupt practices and the tender documents shall have reference to the PPA provisions where appropriate.

Methods for Procurement

The procurement of goods, works and non-consultancy services through international and national competitive tendering prescribed in the Regulations shall be considered before other methods of tendering prescribed in implementation of the project. Other methods of procurement may be used where it is established that such methods may have due regard for transparency, economy and efficiency in the procurement of the project. A PE may select an appropriate alternative method of procurement if:

- a) The competitive tendering is not considered to be the most economic and efficient method of procurement; and
- b) The nature and estimated value of the goods, works, or services permit.

Tender Advertising, Receiving and Opening

The secretary of the Tender Board shall, on behalf of the board, receive and keep the tenders in a locked tender box or in a secure office space. The registration number, the date and time of arrival shall be recorded on the envelope and shall remain sealed and be kept in a safe place until they are opened. On receipt of tenders, in case where the tender box is not used, the envelopes shall be recorded in a special register in the order in which they arrive.

Tenders received after the deadline for the submission of tenders stipulated in the tender documents shall neither be opened nor be considered and shall be returned unopened to the tenderer who submitted it.

The secretary of the Tender Board shall convene and chair a meeting for the purpose of opening the tenders which are submitted, in accordance with regulation 56.

The time for the tender opening shall be the same as the time set for the deadline for receipt of tenders and shall be announced, together with the place for the tender opening, in the invitation to tender. All tenders submitted before the deadline for submission shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender proceedings and the names of all those present at the tender opening and the organizations they represent shall be recorded by the secretary of the respective Tender Board.

Appointment of Evaluation Committee

An Accounting Officer shall form a tender Evaluation Committee comprising of not less than three and not more than five members, save for exceptional cases where the number could be more than five members.

3.1.3 Key Issues for Procurement of Goods

The main issues for procurement of goods include:

- Needs Identification;
- Setting qualifications and evaluation criteria and use of SBDs for procurement of goods;
- Advertising, receiving and opening of Bids; and
- Evaluation and award of contract.

3.1.4 Needs Identification

As has been explained before, the purchase order or contract will be performed to the satisfaction of the buying organization only when the purchase description is selected or written, specifying the quality requirements properly. The need for greater clarity and precision is expressed through this communication when orders are placed with suppliers.

The purchase description is done through Technical Specifications to define the technical characteristics of the goods and related services as required by the LGA. The technical specifications are part of schedule of supply in the bidding documents and therefore it is part of contract.

Generally, the purpose of providing detailed description of material(s) to be procured is to provide the basis for:

- Acquiring good of the right quality;
- Consistent evaluation and comparison of bids;
- Formation of contract; and
- Facilitate inspection and testing.

3.1.5 Tender Process

The steps in the tender process for goods is detailed in the below sections:

a) Advertisement

The Procuring Entity is required to advertise the invitation to tender in the form of Specific Procurement Notice (SPN) for any particular contract under International Competitive Bidding (ICB) or National Competitive Bidding (NCB). The invitation to bid shall be notified to all eligible potential bidders. Notification shall be given in sufficient time to enable prospective bidders to obtain pre-qualification or bidding documents and prepare and submit their proposals.

b) Invitation to Bid

The invitation to bid shall be prepared by the Procuring Entity and shall contain:

- Brief description of goods or scope of the work;
- Indication of the conditions for obtaining documents;
- Data for invitation to bid, bid closing as well as bid opening date, time and place;

- Name and complete address of the Procuring Entity;
- Any restrictions on procurement in terms of eligibility; and
- Source of financing.

Pre-qualification of bidders may be required for large or complex contracts or turnkey contracts to ensure, in advance of bidding, that invitations to bid are confined to capable firms. For suppliers of goods or equipment, pre-qualification may be required where quality and/or performance is of primary importance and/or suppliers' back-up and maintenance services are critical.

When pre-qualification is undertaken the PPA requires that qualification of bidders by the Procuring Entity shall be based upon the capability and resources of the applicants to perform the contract satisfactorily, taking into account:

- Experience and past performance on similar contracts;
- Knowledge of local working conditions;
- Capabilities with respect to personnel, equipment and construction or manufacturing facilities;
- Financial conditions; and
- Current commitments.

3.1.6 Procurement Methods

This section provides a brief overview of common procurement methods for goods. Annex 1 provides the detailed schedule of procurement methods as per Tanzanian law and circumstances for us.

a) Limited International Competition

Under Limited International Competition (LIC) a list of potential suppliers or contractors, shall be prepared and approved by the Procuring Entity. They shall contain as wide as possible representations from eligible countries to ensure competitive prices. The PE despite the adoption of the system of Limited International Competition, will issue the General Procurement Notice concerning the project. The General Procurement Notice shall indicate that invitations to bid would be addressed by the purchaser only to a limited list of suppliers.

b) National Competitive Bidding

National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement and may be the most efficient and economical way of procuring goods or works which, by their nature or scope are unlikely to attract foreign competition. The procurement through NCB is

advertised in the National Press, and need not be notified to the international community. Under NCB eligible bidders resident within or outside Tanzania may submit bids, if they wish to participate.

c) International Shopping

International shopping is a procurement method based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value. The PE may opt for public competition to be invited through request for quotations at international level, where it has been determined that:

- The goods to be procured are so diversified that it would be of no commercial interest for any single supplier to bid for them; or
- The goods are readily available off-the-shelf goods or standard specification commodities; and
- The goods cannot be purchased locally.

d) National Shopping

A request for quotations (national shopping) shall be addressed at the same time by the PE to all approved national suppliers and agents. The request shall describe in clear terms the goods to be acquired, give specifications and quantities, specify the place and the time for delivery and indicate the terms of payment.

e) Direct Contracting

In very exceptional circumstance the PE may waive altogether any of the firms of public competition and decide that procurement be obtained through direct negotiation between the purchaser and a specified contractor or supplier. Such authorization may be granted and specified in the appraisal report particularly in the following circumstances.

- Where specific technology(ies) and processes are obtainable only from one manufacturer holding exclusive patents and manufacturing rights;
- Where critical items need to be purchased from a specified supplier to ensure that the output of a process plant shall be guaranteed by the contractor responsible for the process design;
- Where standardization of equipment is essential for economic and technical reasons and it has been proved to be satisfactory that compatibility of the existing equipment with another make of equipment

cannot be established and that there is no advantage in having an alternative supplier;

- Where standardization of spare parts is required so that they may be compatible with existing equipment or spare parts or stock items related to specific and specialized equipment or machinery; and
- Where on an on-going project additional terms need to be purchased for the completion of implementation.

f) Other Methods of Procurement

Other procurement methods may include Minor Value Procurement (MVP) and Micro (Value) Procurement (MP) to suit the circumstances. Note should be taken that no solicitation document is required for procurement under Micro Value Procurement except for provision of taxable receipt from established drug stores/ shop.

➤ Refer Annex 1.2 based on 11th Schedule / Table on Methods of Procurement. The conditions for use are further detailed in Training Module No 2 “Procurement Planning for Local Government Authorities”

3.1.7 Content of Bidding Documents

Important elements of tender documents that are required to give adequate information and clarity include three main parts, namely 1) bidding procedure, 2) supply requirement and 3) contract. It should also be read with addenda issued if any.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms

PART 2 Supply Requirements

- Section VI. Schedule of Supply

PART 3 Contracts

- Section VII. General Conditions of Contract (GCC)
- Section VIII. Special Conditions of Contract (SCC)
- Section IX. Contract Forms

The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents issued and legally obtained from the PE. Failure to furnish all information or documentation as stipulated in the Bidding Documents may result in the rejection of the bid.

3.1.8 Evaluation and Comparison of Bids

The Evaluation Committee deals only with tenders received in time and accepted by the PE (which requires a record of the Opening Meeting). The committee shall be provided with all necessary data and information to enable its functioning to the point of recommending the award of contract.

a) Steps in Evaluation of Bids

- Appointing Evaluation Team;
- Preliminary Examination of Bids;
- Detailed Examination of Bids;
- Correction of errors (where applicable);
- Post qualification (if applicable);
- Negotiation;
- Cool-off and Vetting; and
- Contract award (Formation and Entry into Force).

Convening

The Accounting Officer shall form the Evaluation Committee comprising of not less than three and not more than five members. In exceptional circumstances, the Accounting Officer may form an Evaluation Committee of more than five members depending on the value and complexity of the procurement if there are justifiable reasons to increase the number of the Evaluation Committee. The Accounting Officer has also the right to appoint members from outside the Procuring Entity

The Evaluation Team shall convene its meeting and appoint the Chairman. Members shall be availed all necessary information/data and shall be required to sign “Covenant Forms “and disclosure of any conflict of interest in the proceedings **before the start of the first meeting and evaluation process.**

The Evaluation Committee shall evaluate the opened and accepted tenders in order to evaluate and determine the cost or price to the Procuring Entity of each tender in a manner that permits a comparison between the tenders on the basis of the evaluated costs or prices.

Preliminary Examination of Bids

Prior to the detailed evaluation of tenders, the Evaluation Committee shall carry out a preliminary examination of the tenders to determine whether or not all documents and technical documentation requested have been provided, and determine the completeness of submitted documents.

- Each tender is substantially responsive to the requirements of the tender documents;
- The required securities have been provided;
- The documents have been properly signed; and
- The tenders are otherwise generally in order: Bid Submission Sheet, including: brief description of the goods and related services offered, and the price of the Bid; the period of validity of the Bid;
- Price Schedules;
- Written confirmation of authorization to commit Bidder; and
- Bid Security, if applicable.

If any of these documents or information is missing, the offer shall be rejected.

Checking for Responsiveness of Bids

The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself. A substantially responsive bid is one that conforms to all the terms, conditions and specifications of the Bidding Documents without material deviation, reservation or omission. A material deviation, reservation, or omission is one that:

- Affects in any substantial way the scope, quality, or performance of the Goods and related services specified in the Contract; or
- Limits in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
- If rectified would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

Examination of Terms and Conditions and Technical Evaluation

The Purchaser shall examine the bid to confirm that all terms and conditions specified in the General Conditions of Contract (GCC) and the Special Conditions of Contract (SCC) have been accepted by the Bidder without any material deviation or reservation. If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the bid is not substantially responsive, it shall reject the bid.

Conversion to Single Currency

For evaluation and comparison purposes, the Purchaser shall convert all bid prices expressed in the amounts in various currencies into a single currency, using the selling exchange rate established by the source and on the date specified in the Bidding Documents.

Evaluation of Bids

The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive. To evaluate a bid, the PE shall only use all the criteria and methodologies defined in **Section III, Evaluation and Qualification Criteria**. No other criteria or methodology shall be permitted and shall consider the following:

- 1) The bid price;
- 2) Price adjustment for correction of arithmetic errors;
- 3) Price adjustment due to discounts offered;
- 4) Adjustment for non-conformities and omissions;
- 5) Application of all the evaluation factors indicated in evaluation and qualification criteria; and
- 6) Adjustments due to the application of a margin of preference where applicable.

Comparison of Bids

The PE shall compare all substantially responsive bids to determine the lowest evaluated bid.

Post-Qualification of the Bidder

The PE shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.

The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, to clarifications in the qualification criteria indicated in Evaluation and Qualification Criteria. Factors not included in Evaluation and Qualification criteria shall not be used in the evaluation of the Bidder's qualification.

An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

Rejection of Tender(s)

A Procuring Entity shall reject a bid if the tenderer:

- Is not qualified or eligible;
- Does not accept a correction of an arithmetical error
- Is not responsive; or
- Is not accompanied by an appropriate tender security, if required.

Rejection of all Tenders

Rejection of all tenders is justified where:

- There is lack of effective competition;
- Tenders or proposals are not substantially responsive to the tender documents or to the request for proposals;
- The economic or technical data of the project have been altered;
- Tenders or proposals involve costs substantially higher than the original budget or estimates;
- Exceptional circumstances render normal performance of the contract impossible;
- Tenders received contain serious irregularities resulting in interference with the normal play of market forces; or
- Funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available.

Where the rejection of all tenders or all proposals is due to lack of competition, wider advertising shall be considered and where the rejection is due to most of the tenders or proposals being non-responsive, new tenders or new proposals may be invited from the initially pre-qualified firms, or with the prior agreement of the appropriate Tender Board, from only those who submitted tenders or proposals in the first instance.

Prior approval of Tender Board shall be sought before rejecting all tenders or all proposals, soliciting new tenders or proposals or entering into negotiations with the lowest evaluated tenderer.

➤ The provision on requirement to seek approval from PPRA prior to rejection of tenders / proposals has been waived.

Rejection of Abnormally Low Tender

The PE may reject a submission if it has determined that the price in combination with other constituent elements of the submission is abnormally low in relation to the subject matter of the procurement and raise concerns with the Procuring Entity as to the ability of the tenderer that presented that submission to perform the procurement contract. However before rejecting an abnormally low tender the Procuring Entity shall:

- b) Request an explanation of the tender or of those parts which it considers contribute to the tender being abnormally low;
- c) Take account of the evidence provided in response to a request in writing; and
- d) Subsequently verify the tender or parts of the tender being abnormal.

The decision of the Procuring Entity to reject a submission in accordance with this regulation and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the tenderer concerned. The Accounting Officer shall seek the approval of the Authority prior to rejecting a tender.

3.1.9 Approvals and Award

Approval by the Tender Board

The Tender Board shall, in accordance with section 75 of the Act, review the evaluation and recommendation made by PMU, approve the recommendations and

authorize acceptance or refuse to authorize recommendation for award and refer the evaluation to PMU for re-evaluation or re-tendering. When the TB finds the whole process acceptable, it shall inform the Accounting Officer of its award decision within three (3) working days of making the decision.

Cool off Period and Vetting of Contracts

Upon receipt of the notification of award decision from the Tender Board, the Accounting Officer shall, having satisfied himself that proper procedures have been followed and within three (3) days, issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them seven (7) working days within which to submit a complaint, if any.

However, the Accounting Officer shall, before issuing a notice of intention to award a contract, submit the award decision to the Committee responsible for finance and planning, for scrutiny, and where the Committee is dissatisfied with the decision of the Tender Board, it shall request the Authority to conduct an investigation.

The contract is also subject to “Vetting” by the Attorney General for contracts whose value are in excess of the threshold set, currently one billion shillings. For contracts below the threshold need to be vetted by the Council Legal Officer.

The contract shall be deemed to have entered into force only after it has been signed by the two parties to the contract.

Publication of Tender Award

The Accounting Officer shall, within the period specified in the regulations after the communication of award, notify unsuccessful tenderers the name of the person to whom the contract is awarded and the contract amount. The results of tender award shall be furnished and be published in the Journal and Tenders Portal on regular basis within the time-limit set in the Regulations. Awarded contract shall also be published on the Council Notice Board.

Amendments after Signing

Once signed, the contract or written agreement shall not be altered, except when an alteration is necessary for the benefit of the Procuring Entity or when an alteration does not prejudice the Procuring Entity.

The proposed variations such as additions or deductions which are not incidental to or arising out of the contract, and which alter the scope, extent or intention of the contract shall, in every case, be referred to the appropriate Tender Board for approval before instructions are issued to the tenderer.

Exercises

Group discussion

- Discuss the general proceedings involved in the preparation of tender documents;
- Discuss the processes involved in the preparation of tender documents for goods; and
- Discuss the various steps involved in the evaluation of tenders for Goods.

Unit 3.2: Procurement of Non-Consultancy Services

3.2.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Describe the procedures for procurement of non-consultancy services: advertising, receiving and opening of bids;
- Demonstrate the use of standard bidding documents for procurement of non-consultancy services; and
- Describe the procedures for evaluation and award of contract.

3.2.2 Definition of Non-Consultancy Services

Non-consultancy services means a service of a skilled or non-skilled nature, which is not a consultancy services and includes but not limited to cleaning, security, maintenance, repair services, etc. It also covers any object of procurement other than goods or works, which involve the furnish of labour, time or effort including the delivery of reports, drawings or designs, or the hire or use of vehicles, machinery or equipment for the purposes of providing transport, or for carrying out work of any kind, with or without the provision of drivers, operators or technicians.

3.2.3 Tender Documents for Non-Consultancy Services

Statement of Requirements

Normally the potential service providers are told only the performance level that is required. Service providers are not told HOW the service should be done or what number of personnel should be used in providing the service.

While making procurement of non-consultancy services care has to be taken since by its nature the same are intangible and difficult to measure during delivery.

- A performance specification for a carpeted floor require shampooed carpets, dust free to withstand entrance of a given number of employees working in an office.
- No mention is made in the specifications of number of cleaning personnel to be employed or how the carpet is to be cleaned.

Service providers are free to make their choices as they see fit and in most cases, organizations use performance specifications extensively to obtain complicated services. In order to obtain the objectives:

- a) Services should be itemized in sufficient detail to distinguish between the different classes of services or between services of the same nature carried out in different locations. These may give rise to different considerations of cost; and
- b) Activity schedule should be a simple and as brief as possible.

To reduce and control the expense associated with this approach to describe requirements, description should be written as explicitly as possible. Service being procured should be sectionalised into the greatest practical number of distinct components with potential service providers required to quote on each component.

Service Specification

Specifications for services are commonly called Service Level Agreements (SLA) and tend to be performance based. SLA may specify the level of service that can be reasonably expected. The services, which are non-consultancy, are of many types, which include Transport, Advertising, Landscaping, Security, Banking, Catering etc.

Throughout the 1990's, there has been a trend worldwide and in Tanzania to buy in more services in public entities including LGAs. One reason is that organisations are tending to outsource non-core aspects of their business in order to focus on core aspects of their business. Secondly, public bodies are under increasing pressure to demonstrate that services they provide are competitive, this has resulted in outsourcing some in-house services to private companies. Services are difficult to specify and services specification has taken increased significance to many organisations, due to the result of poor service levels from the result of bad service specification.

Services differ from products (goods) in a number of ways:

- Services are intangible;
- Services involve the performance of activities or tasks;
- Services cannot be owned like a product;
- Services cannot be stored;
- Samples of services cannot be seen prior to purchase;
- Some services cannot be performed remotely; and
- Services are provided by people.

Specifying Services

The above differences have implications for specification and as such are typically more difficult to specify than products. The requirements of many products (goods) can be precisely stated, for example in terms of dimensions, weight, type of material, or fuel consumption. Services being intangible are less easy to define. How clean is clean? How long should it take to repair a computer? What is the definition of a good, well-cooked meal? To add to the difficulty, people provide services and as well all know, people are different.

Provision of standardized service may therefore be difficult. Hand in hand with this, it can be difficult in assessing whether the service has been correctly performed. For example, is an architect at fault if the client does not like the architect's design?

Therefore, specifying time of need for the service is very important and planned as far ahead as reasonably possible. This will enable the service provider to organize the provision of the service efficiently. Place of Service Delivery- many services must be performed at the purchaser's premises, this includes catering, security, cleaning, gardening and computer maintenance. Several aspects needs to be incorporated in specifications of non-consultancy services that are unnecessary in a specification for goods, including:

- Supervision;
- Access to premises;
- Provision of facilities; and
- Confidentiality.

Service Level Agreements

Service Level Agreements (SLA) are often referred to specification of service, which can be defined as an Agreement between the service provider and customers, quantifying the minimum acceptable level of service to the customer. Service level agreements should not lay down parameters for supplier performance, but should also act as a quantifiable basis by which the supplier can be measured.

Service Level Agreements will cover such aspects as:

- Details of services to be provided, with objective measures of requirements where possible;
- Time and point of provision;
- Quality of people authorized to provide the service;
- Support and back-up arrangements;
- Required documentation and reports; and
- Required response times under normal circumstances, and in emergencies.

➤ E.g. the supplier undertakes to be on the customer's site within 1 hour of a logged call on 90% of occasions and will be on site within 2 hours on 100% of occasions.

SLA's are linked to payment and in the previous example if the supplier did not achieve the service level agreed, then some monies might be deducted from monthly invoice

➤ The relevant steps of the tendering process are summarised here as follows:

- a) Selection of method of procurement
- b) Preparation of specifications and statement of requirements
- c) Preparation and issue of tendering documents;
- d) Tendering period and tender receipt;
- e) Tender opening;
- f) Tender evaluation including negotiation
- g) Tender acceptance and notification(allowing for cool-off)
- h) Contract award and signing

Exercises

Brainstorming

- Outline the major differences between consultancy and non-consultancy services.

Group Exercise

- Prepare the statement of requirements and specifications for cleaning services for the conference room and its surroundings of your LGA for the purpose of acquiring a NC service provider. The inputs are to be incorporated in the Bid Document to be distributed to interested Bidders.

Unit 3.3: Procurement of Works

In their operations LGAs may find that the form of contract for works differs in scope from that of goods. Specifications and quality requirements related to inspections, control and monitoring of works contracts are significantly more important and demanding.

3.3.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Describe procedures for procurement of works;
- Demonstrate understanding of the use of SBDs for procurement of **works**;
- Describe procedures for advertising, receiving and opening of bids; and
- Describe procedures for evaluation and award of contracts for works.

Brainstorming

- What do you understand by the term procurement of Works?
- Who is involved in Preparation of Specifications, BOQ and Drawings for works?

3.3.2 Definition of Works

"Works" in the context and definitions of public procurement means all work associated with the construction, reconstruction demolition, repair or rehabilitation of a building, structure, road or airfield. It also includes any other civil works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing. The services tendered and contracted on the basis of performance of measurable physical outputs such as transport of people or goods, drilling, mapping, photography and seismic investigations.

- Contracts which include works and services, shall be regarded as works if the value of services is less than the value of works.

Under normal circumstances the PE may proceed with the procurement of works whereby the design and engineering, supply and installation of equipment and the construction of the complete plant or works shall be provided by a single contractor under one procurement contract.

A Procuring Entity may remain responsible for the design and engineering, and may, in addition, invite tenders for a single contractor to take responsibility for the supply and installation of all goods and for the works required for a project.

3.3.3 Bidding Documents for Works

Technical Specifications and Drawings

There are considerable advantages in standardizing General Specifications for repetitive works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail.

The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for materials and workmanship, recognized international standards should be used as much as possible.

Where other particular standards are used, whether national standards of Tanzania or other standards, the specifications should state that materials and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable.

Drawings should be prepared and approved by qualified personnel:

- **Buildings:** registered Architect, Civil Engineer [Structural details], Electrical Engineer [electrical installation], etc; and
- **Civil engineering works:** registered Civil Engineer, etc.

The technical specifications and drawings should contain enough details to enable the quantities to be estimated correctly and consequently generate the engineers estimate.

Bill of Quantities

The objectives of the Bill of Quantities (BOQ) are:

- To provide sufficient information on the quantities of works to be performed to enable bids to be prepared efficiently and accurately; and

- When a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of works executed.

In order to attain these objectives, works should be itemized/sectionalized in the Bill of Quantities in sufficient detail to distinguish between the different classes of works or between works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost.

Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

A Daily Work Schedule should be included only if the probability of unforeseen work, outside the items included in the Bill of Quantities, is high. To facilitate checking by the Employer of the realism of rates quoted by the Bidders, the Daily Work Schedule should normally comprise the following:

- List of the various classes of labour, materials, and constructional plant for which basic day work rates or prices are to be inserted by the Bidder; and
- Statement of the conditions under which the Contractor will be paid for work executed on a day-work basis whereby nominal quantities for each item of day-work are to be priced by each Bidder at Day-work rates in the Bid.

The rate to be entered by the Bidder against each basic day-work item should include the Contractor's profit, overheads, supervision, and other charges.

Provisional Sums

These are general provision for physical contingencies (quantity overruns), which may be made by including a provisional sum in the Summary Bill of Quantities. Similarly, contingency allowances for possible price increases should be provided as a provisional sum in the Summary Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

Where such provisional sums or contingency allowances are used, the Special Conditions of Contract should state the manner in which they will be used, and under whose authority (usually the Project Manager).

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors (refer to Clause 8 of the Conditions of Contract)

should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description.

Works Contract

Normally the principal parties to a works contract would include Employer and Contractor. Duties and responsibilities of the Employer include, among others,

- Appoints the contractor, and
- Appoint the Project Manager by notifying the contractor.

The Employer is vested with Power to terminate the Contractor's employment for default. On the other hand the Contractor is fully responsible for the construction of the works and their security until they are taken over by the Employer.

Among the Contractor's Rights include the Contractor's right to prompt and full payment from the Employer based on issued certificates.

The Project Manager's Obligations include Obligation to issue further drawings to the Contractor which he thinks, in his opinion, are necessary for proper execution of the works and to ensure that the works are executed by the contractor to his satisfaction.

Time, Cost and Quality Control

Projects are normally controlled through the Iron triangle that reflects on the three parameters for control of time, costs and quality, which ultimately are included in the contractor's Work Programme. The Contractor is required to submit to the Project Manager a Programme showing the general methods, as well as arrangements, order, and timing for all the activities in the Works. This Programme shall form a baseline against which the actual progress of each activity shall be gauged.

Payment Certificates

The Contractor shall submit to the Project Manager periodic statements (monthly, weekly or daily) of the estimated value of the work executed less the cumulative amount certified previously. The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor within twenty eight (28) days from the receipt of certificate.

The value of work executed shall be determined by the Project Manager which shall comprise the verified value of the quantities of the items in the Bill of Quantities, which are completed.

The Project Manager is not bound to certify any payment, if the net amount, after all retentions and deductions would be less than minimum amount of Interim Payment Certificate stated in the Special Conditions of Contract.

Termination

The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;
- b) The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days; and
- c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.

STOP: Explore other additional causes that may lead to such "Termination"

If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for:

- a) Value of the work done;
- b) Materials ordered;
- c) Reasonable cost of removal of equipment;
- d) Repatriation of the contractor's personnel employed solely on the works; and
- e) Contractor's costs of protecting and securing the works, less advance payments received up to the date of the certificate.

Dispute Resolution

If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the

decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

Contract Monitoring

A Procuring Entity shall monitor the contractor's performance against the schedule of works stated in the contract by means of daily, weekly or monthly reports from the Procuring Entity's supervisor responsible for the works.

When the works have been completed to the satisfaction of the Procuring Entity, and after any period provided in the contract has elapsed, the Procuring Entity shall promptly authorise final payment to be made to the contractor on his application, and release the contractor from any performance guarantee provided the contractor has made good all the defects identified therein.

3.3.4 Procurement under Buy - Own - Transfer

The entrepreneur under Buy-Own-Transfer (BOT) or other similar modalities and type of contracts shall be selected under applicable ICB or LIC procedures. This may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost of magnitude of the financing offered the performance specifications of the facilitate offered, the cost charged to the user or purchaser, other income generated for the purchaser by the facility, and the period of facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods, works and services required for the facility from eligible sources using its own procedures.

3.3.5 Community Participation in Works Contracts

Where it is found to be in the interest of project sustainability, or to achieve certain specific social objectives of the project, it may be desirable in selected project components to:

- Call for the participation of local communities and/or non-governmental organizations (NGO's); or
- Increase the utilization of local know-how and materials; or
- Employ labour intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided these are efficient.

3.3.6 Consultant Engineer Service

The scope of service for consultant's work is easier to define for detailed engineering designs following a successful feasibility study since on the one hand the basic characteristics of the project and the related problem areas are known and on the other, the technical specifications and other important criteria may be determined on the basis of study.

- Projects for which there are no sufficient pre-investment studies shall be given particular attention regarding their technical design parameters.
- For very large projects or where the nature of the work requires major inputs from diverse disciplines, it may be deemed necessary to retain more than one consultant. In such cases, the term of reference will include specific provision for coordination of various consultants' work.

For the preparation of final detailed designs and tender documents, the Procuring Entity requires the consultant to be made solely responsible for the accuracy and the suitability of its work. The terms of reference will provide, therefore, that while the buyer shall supervise and review the consultant's work, no modifications shall be made in the final documents prepared by the consultant without his consent. As appropriate the consultant may be appointed to act as an adviser to the buyer on all technical problems related to the project, with authority to make final decisions within such limits as may be prescribed by the buyer.

For works supervision and inspection services, the definition of the consultant's tasks is in general fairly simple. There may be instances, however, where the buyer may consider that an additional consultant is necessary because of the complexity of the project or the highly specialized nature of the inputs from diverse disciplines.

In such case, the terms of reference will provide for coordination of the work and specify the responsibilities of the different consultants.

At the stage of detailed engineering designs, detailed designs and supervision of construction, it is important that the responsibilities of the consultants be clearly understood by the buyer and all other interested parties.

Cost Estimate for Key Staff

The cost estimate and budget for key staffs shall be based on the Terms of Reference. The budget shall be as detailed and as accurate as possible.

Although assignments often vary in importance, type, duration and complexity, the buyer shall be able to prepare a detailed estimate by breaking down each assignment into activities to be undertaken in time, in a given order and subsequently determine the duration and cost of each.

Therefore the principal cost categories and characteristics on which the cost estimates are based are as follows:

- a) The consultant's staff, profile, qualifications, time spent at headquarters and in the field, whose cost in (person/months for person/weeks, person/day) is based on the fixed rate of the cost of one person/month;
- b) National professional and support staff, whose cost is in general, estimated on the basis of local salaries;
- c) Direct costs such as travel, transport, per diem;
- d) The cost of physical inputs and materials such as equipment, vehicles, office supplies; and
- e) Other expenditure (offices, communications, services, etc); and physical and price contingencies.

Statement of Duties and Responsibilities

- a) The consultant shall ensure that fair and interpretation of the contract clauses is made all times;
- b) The team shall advice on situation likely to lead to contract disputes. In case of any dispute in interpretation of contract documentation, the consultants shall ensure that a fair assignment is made and if necessary variation orders are issued on time;
- c) The consultant shall ensure that the contractor follow all technical dimensions;
- d) Regular site meetings in at least once a month in order to maintain good progress on the work and submit monthly/ quarterly report;
- e) Work done should be measured regularly for the purposes of the establishment of payment certificates in favour of contractors;
- f) The consultant should advice on the practical completion date, the project liability period and final completion certificate of work;
- g) It is the responsibility of the Clint/consultant to assist in all technical issues related to the works;
- h) Reporting requirements;
- i) The consultant shall prepare and submit the following reports:
 - o Inspection report;

- Monthly/quarterly report for the progress of the works and any other advice;
- Report for its meeting
- Draft final report for comments and discussion with the client;
- Final report which will take into a consideration, comments, revisions, and recommendations of the discussion with the client; and
- Final report and certificates of completion of works.

Exercise

Group Discussion:

Briefly outline how Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of works, or between works of the same nature carried out in different locations or in other circumstances, which may give rise to different considerations of cost.

Unit 3.4: Selection and Employment of Consultants

In their operations LGAs may find that the form of contract for consultancy services differs in scope from that of goods, and specification and quality requirements related to inspections, control and monitoring of works contracts becomes significantly more important and demanding.

3.4.1 Unit Objectives

By the end of the unit, the participants will be able to:

- Describe procedures for procurement of consultancy services
- Demonstrate understanding preparation of Terms of Reference and the use of Request for Proposals for procurement of Consultancy Services;
- Explain and apply procedures for advertising, receiving and open of Request for Proposals; and
- Explain and apply procedures for evaluation and award of contract for Consultancy Services.

Brainstorming

In the procurement of consultancy services a Procuring Entity invites consultants to compete with each other by submitting priced proposals to be evaluated either on the basis of technical aspect and criteria only or on the basis of a combination of quality and cost.

- What do you understand by the term Consultancy Services?
- What is the importance of TOR in procurement of Consultancy Services?

3.4.1 Defining Proposal

A proposal means the offer made by a consultant in response to a request for consultancy services addressed to it by the Procuring Entity on the basis of the appropriate Terms of Reference (TOR). Procurement of Services also refers to the purchase of consultancy services of an intellectual and advisory nature i.e. procurement of service in which the physical aspects of the activity do not predominate. In most cases PEs will find themselves engaged in the process of engaging services of a consultant ranging from:

- Works and construction undertakings;
- Feasibility studies;
- Training and advisory services;
- Transaction advisors under PPPs; and
- Environmental issues, etc.

The type of services to be procured would have been identified and included in the Annual Procurement Plan. However, in some cases this might not be the case and the PMU will have to propose the procurement process for the required services in consultation with the User Department that initiated the need.

3.4.2 Principal Stages

The principal stages in the selection process, in chronological order, are as follows:

- Preparing the terms of reference and contract format;
- Preparing the cost estimate and the budget;
- Advertising the acquisition of service;
- Preparing a short list of consultants;
- Determining the selection procedures and criteria for selection;
- Inviting the consultants to submit proposals;
- Evaluating proposals and selecting a consultant;
- Negotiating the contract with the selected consultants; and
- Award and signing the contract.

3.4.3 Contents of Terms of Reference

For any consultancy services to be procured, the Procuring Entity is required to prepare “Terms of Reference” which serve as the basis on which proposals are sought. The terms of reference shall provide:

- A precise statement of the objective sought;

- A clear description of the nature and scope of the services required and their context as well as the time interval in which they shall be provided;
- A statement of the duties and responsibilities of the consultant;
- A statement of the duties and responsibilities of the Employer (i.e. LGA);
- Information of any counterpart staff and its role;
- Information on training and the transfer of technology, where necessary;
- A summary of the data, a list of all studies and information on the assignment, facilities and services which the PE will provide to the consultant; and
- Output and Reporting mechanism and how the contract would be managed.

The Terms of Reference are used for two purposes:

- To inform consultants of the intended scope of work when they are invited to submit proposals; and
- To define the consultant's services in the contract to be negotiated after selection.

The responsibility for preparing the terms of reference and budget for the required services lies with the User Department. The PMU may assist the User Department in preparing the terms of reference and shall agree to the terms of reference.

3.4.4 Methods of Selection and Employment Consultants

The procurement of consultant services is a specialised form of procurement requiring bidding procedures and documents which are very different to those for standard goods and works. Selecting consultants for long or complex assignments on the basis of cost alone is unlikely to achieve the required quality of services. The use of merit-point evaluation systems and two-envelope bidding procedures are routine features in the procurement and selection of consultants, which are briefly explained below.

Other methods are introduced in detail in Training Module No 2 "Project Planning for LGAs"

- Quality and Cost Based Selection (QCBS) Method
- Quality-Based Selection (QBS)
- Selection under Fixed Budget
- Least-Cost Selection
- Selection Based on Consultants' Qualifications

Merit-Point System

A merit point system uses a point-scoring basis to determine the winning bidder. Points are awarded for technical capability and usually for the financial cost, according to criteria specified in the Request for Proposals. The bidder scoring the highest number of points is usually recommended for the award of contract.

Where cost is a factor in selection, technical quality for consultancy assignments is normally awarded 80% of the total points and cost 20%. However this is only a guideline and the appropriateness of the weighting of the technical and financial scores should be assessed for each assignment.

Merit point systems can also be used to evaluate whether bids pass a minimum technical score to proceed to a final financial evaluation (Least Cost Selection Method). The financial envelopes of all bidders whose bids pass the minimum technical score are then opened, and the bid with the lowest price recommended for award of contract.

Two-Envelope Bidding

To avoid any chance of the bidder's price influencing the technical evaluation under a merit point system, financial bids are submitted in a separate sealed envelope. The financial envelope must only be opened after the technical evaluation is completed and approved by the tender committee. In the interests of transparency, a second public opening of the financial bids of those bidders who have passed the technical evaluation stage is held.

Single-Source Selection

Single-source selection of consultants lacks the benefit of competition in regard to quality and cost, is not transparent in selection, and may encourage unacceptable practices. Therefore, single-source selection should only be used in exceptional circumstances. The justification for single-source selection must be examined carefully to ensure economy and efficiency. The conditions for the use of direct procurement should be noted before using this selection method.

Single-source selection is only appropriate if there is a clear advantage over competitive selection:

- for tasks that are a natural continuation of previous work carried out by the firm;
- where rapid selection is essential (for example, in an emergency situation);

- for very low value assignments; and
- When only one firm is qualified or has the necessary experience for the assignment.

3.4.5 Receipt, Opening and Evaluation of Proposals

The following are the major steps in the receipt, opening and evaluation of proposals received by the PE:

- i. Receipt and opening of proposals (Minutes to be kept as record);
- ii. Appointment of Evaluation Committee;
- iii. Evaluation of technical proposals (as per guidelines);
- iv. Notification of results of technical evaluation;
- v. Opening and evaluation of financial proposal;
- vi. Evaluation of financial proposals (as per guidelines);
- vii. Combined quality and cost evaluation (as per guidelines);
- viii. Post qualification of consultants;
- ix. Submission to the Tender Board;
- x. Contract negotiations;
- xi. Approval of award of contract by Tender Board; and
- xii. Contract Signing;

3.4.6 Management of Consultant Contracts

In managing contracts for consultant services, a Procuring Entity shall monitor the performance of the consultant against the terms of reference stated in the contract, by means of daily, weekly or monthly reports from the Procuring Entity's supervisor responsible for the services.

Where the performance of the consultant:

- a) Is satisfactory, the Procuring Entity shall authorise payments by measurement and certification, at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, if so stated in the contract;
- b) Does not meet the requirements stated in the contract, the Procuring Entity shall draw the consultant attention to any short-comings, and may refuse to authorize further payments until these are remedied.

Where an agreement cannot be reached with the consultant so as to remedy the situation, the Procuring Entity shall notify the consultant formally that he is in

breach of the terms of the contract, and may invoke the procedure for disputes further to the provisions of that contract. In trying to remedy faults, the PE may:

- Withhold payment of any moneys retained; or
- Call any performance security, if such has been furnished by the consultant.

Exercise

Group Exercise: Preparation of TOR

The Mwanguku DC, a newly demarcated Council in Mwangaza Region has been evaluating various options available as “Own Sources” in order to ease dependence on the Central Government financing which, of late have proved not to fully support the Council Development as well as Operational Plans. The Council has earmarked a 20 acre piece of land along the beach which could cater for recreational functions for both foreign as well as local tourism and the idea has received all the go ahead from the Finance Planning Committee which awaits a council paper to be presented to the Full council due the next 3months.

You are required to prepare TOR to acquire the services of a Consultant, who will be engaged to make the feasibility study and advise the Council on the Project. You are allowed to make ANY assumptions in relation to the completion of the assignment.

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PPRA. Standard Bidding Documents for Goods, Non-Consultancy Services, Works and Consultancy Services

PPRA. Guidelines and Circulars.

PPRA. Procedural Forms.

PPRA. Schedule of Procurement Indicators and Sub-Indicators.

PPRA. Operational Procurement Manuals.

ANNEXES

Annex 1: Procurement Methods

This annex provides a detailed overview of the various procurement methods as per Tanzanian procurement law, which include the following main methods:

- 1) Open Procurement Methods;
- 2) Methods involving Negotiations;
- 3) Method without Negotiations; and
- 4) Other Methods.

Part V of PPR 2013 GN No. 446 covers methods of procurement and their conditions for use. According to **PPR-R149** default Method shall be **OPEN TENDERING - NATIONAL AND INTERNATIONAL**. Other methods may be used as an exception subject to the approval of Tender Board if Competitive tendering is not considered to be the most economic and efficient method of procurement; and the nature and estimated value of goods, works or services permit.

Open tendering procedures i.e. 1) International Competitive Tendering; 2) National Competitive tendering; and 3) Restricted Tendering have the same requirements save for the thresholds for application of those methods, see table 5 below:

Table 5: Open Procurement Methods: Thresholds and Conditions for Use

| Method of Tendering | Circumstances for Use | Goods | Works | Non Consultancy Services | Disposal of Public Assets |
|--|--|---|----------------------------|----------------------------|----------------------------|
| International competitive tendering PPR-R150 | The need to attract maximum competition where capacity within the country is not available or goods and services are not available in the country. Margin of preference in favour of local firms applies. | No limit Procedure of Procurement is Covered in PPR-Part VII | | | |
| National competitive tendering PPR-R151 | The need to attract maximum competition where local capacity is available, the need to restrict payments to Tsh only, the need to minimize procurement transaction costs. Does not limit participation of foreign firms, however a margin of preference shall be applied in favour of local firms | Up to Tsh 1,000,000,000 | Up to Tsh 5,000,000,000 | Up to Tsh 1,000,000,000 | Up to Tsh 5,000,000,000 |
| Restricted tendering (PPR-R152) | <ul style="list-style-type: none"> • Tenderers already prequalified, • Few specialized tenderers, • Emergency circumstances, • Need to achieve certain social objectives by involving the community, • Set aside contracts for purpose of capacity building of local firms. | No limit, but must be justified <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirements relating to international and national competitive tendering apply. | | | |

Procurement Methods involving Negotiations

Procurement methods with negotiations include:

- Two stage tendering – **PPR-R154**;
- Request of Proposal with simultaneous negotiations – negotiations held with all bidders – **PPR-R155 to 156**;
- Request for Proposal with Consecutive Negotiations – **PPR-R157**;
- Request for Proposals with competitive negotiations –**PPR- R158**;
- Single source procurement method for goods or services –**PPR-R159-160**; and
- Single source procurement method for works – **PPR-R161**.

PPR-R153 gives conditions for use of two stage tendering and request for proposal with simultaneous negotiations, consecutive negotiations and competitive negotiations and they are summarized in **Table 6**.

All methods have one purpose in common, which is to ensure clarity of the PEs requirements before obtaining the final price quotation. In addition, two stage tendering, request for proposals with simultaneous negotiations as well as with consecutive negotiations are applicable in re-tendering where the original tenders were rejected.

The essential differences between request for proposal with simultaneous negotiations, consecutive negotiations and competitive negotiations are as follows:

a) Request of Proposal with Simultaneous Negotiations

With simultaneous negotiation, proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements are considered to be responsive and are invited for negotiations which are carried out in the presence of all pre-selected bidders. With this method the PE is required to ensure that the number of tenderers invited to participate in the negotiations, which shall be at least three, is sufficient to ensure maximum competition. After negotiations, the PE shall request all tenderers remaining in the procurement proceedings to present their best and final offer which shall not be negotiated and the PE shall select the offer that best meets its needs in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposal.

b) Request of Proposal with Consecutive Negotiations

In the request for proposal with consecutive negotiations, proposals whose technical, quality and performance characteristics meet or exceed the relevant

minimum requirements are considered to be responsive and are ranked in accordance with criteria and procedure for evaluating proposals as set out in the request for proposal. A tenderer whose proposal is best ranking is first invited for negotiations of its financial proposal. If negotiations fail to result into a contract, the second best ranking is invited for negotiations of its financial proposals in that order. PE is not allowed to re-open negotiations with any supplier with which it has terminated negotiations.

c) Request of Proposal with Competitive Negotiations

In request for proposals with competitive negotiations, proposals of which the technical, quality and performance characteristics meet or exceed the relevant minimum requirements are considered to be responsive and each tenderer shall be invited separately for negotiations of its offer. Following completion of negotiations, the PE shall request all remaining tenderers in the procurement proceedings to present by a specified date their best and final offer with respect to all aspects of their proposals. The successful offer shall be the offer that best meets the need of the PE.

d) Single Source Procurement Method

The requirements for single source method for procurement of goods, services and works have remained the same except that the thresholds attached to the method has been removed as long as the procurement meets requirements of PPR-R159 for goods and services and **PPR-R161** for works which are supposed to be taken individually and not collectively as was previously interpreted under GN. No. 97 of 2005. The procedure for single source is described in **PPR-R160** and given that it is only one tenderer invited to participate, negotiations are allowed in all aspects of its submission.

- For more details with regard to two stages tendering, Request of Proposal with simultaneous negotiations, Request for Proposal with Consecutive Negotiations, and Request for Proposals with competitive negotiations one may wish to visit Unicitral Modal Law on Procurement 2011, Articles 30, 48, 49, 50 and 52.

Table 6: Procurement Methods with Negotiations: Thresholds and Conditions for Use

| Method of Tendering | Circumstances for Use | Goods | Works | Non Consultancy Services | Disposal of Public Assets |
|---|--|-------|-------|--------------------------|---------------------------|
| Two Stage Tendering PPR 153(1) & PPR-R154 | <ul style="list-style-type: none"> • Need to refine aspects of the description of subject matter of procurement and to formulate them with the detail required to meet its requirements; • A repeat tender process following no submission of tenders in previously invited tender | | | | |

NO LIMIT IS GIVEN ON ITS APPLICATION

Procedure:

- Obtain tenders in two stages- First stage proposal without price on: technical, quality or performance characteristics of the subject of procurement; Contractual terms and conditions of supply; and professional and technical competence of the tenders
- May engage in discussion with those who are responsive. Opportunity to be extended to all.
- Revise set of terms and conditions of procurement in response to the tenderer submission and discussions held. Observe PPR-R154(7)
- Invite responsive bidders to submit financial offers in response to revised set of terms and conditions of procurement.
- Tenders wishing to withdraw in the second stage may do so without forfeiting their bid security.

| Method of Tendering | Circumstances for Use | Goods | Works | Non Consultancy Services | Disposal of Public Assets |
|--|--|--|-------|--------------------------|---------------------------|
| Request for Proposals with Simultaneous Negotiations PPR 153(2)& PPR-R155 to 156 | <ul style="list-style-type: none"> • PE unable to formulate a detailed description of subject matter and therefore a need to involve tenderers through negotiation to obtain the most satisfactory solution to its procurement needs; • Tender for research, experiment or study of which quantities to be procured have no commercial viability to recover the costs; • Procurement for national defence or national security; • A repeat tender process following no submission of tenders in previously invited tender or rejection of all tenders; and • Technical nature of goods, works and services dictate the need to negotiate with tenderers | NO LIMIT IS GIVEN ON ITS APPLICATION???? | | | |

Procedure:

- Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection – the need to have a clear rating criteria to arrive to a required number;
- Observe PPR-R155(2) with regard to invitation to participate; PPR-R155(9) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and PPR-R155(10) with regard to the contents of the Request of Proposals;
- Simultaneous negotiations shall be conducted with tenderers that presented responsive proposals. The number of tenderers should be at least three to ensure competition. **Conducted concurrently be the same representative of a PE.**
- Not allowed to modify the subject matter of procurement; any qualification or evaluations criterion; or minimum requirements with regard to qualifications of tenderers;
- Invite tenderers remaining in the proceedings to present their best and final offer with respect to all aspects of their proposals.

| Method of Tendering | Circumstances for Use | Goods | Works | Non Consultancy Services | Disposal of Public Assets |
|--|--|--|-------|--------------------------|---------------------------|
| Request for Proposals with Consecutive Negotiations PPR 153(3) & PPR-R157 | <ul style="list-style-type: none"> The need to consider separately the quality and technical aspects, and financial aspects of the proposal; The need to establish acceptability of the financial terms and conditions of procurement contract by PE | NO LIMIT IS GIVEN ON ITS APPLICATION <u>Procedure:</u> <ul style="list-style-type: none"> Obtain proposals in the same way as Request for Proposals without Negotiations. Observe PPR-R162(2) with regard to invitation to participate; PPR-R162(4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; and PPR-R162(5) with regard to the contents of the Request of Proposals; Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; Invite the tenderer with the best ranking proposal for negotiations on financial aspects of its proposal; Proceed to the next ranked if not possible to result into a procurement contract. | | | |
| Request for Proposals with Competitive Negotiations PPR 153(4) & PPR- R158 | <ul style="list-style-type: none"> emergency circumstances making it impractical to use open tendering proceedings; Procurement for national defence or national security; | NO LIMIT IS GIVEN ON ITS APPLICATION <u>Procedure:</u> <ul style="list-style-type: none"> Bidders are invited to submit proposals which are evaluated and each invited separately to negotiate its proposals before they are invited to submit their Best and Final Offer (BAFO) which shall not be negotiated Successful offer shall be the offer that best meets the needs of a PE. | | | |
| Single source procurement for goods and services (PPR-R159) | <ul style="list-style-type: none"> Only one supplier of service provider available, emergency circumstances, additional supplies required in a contract awarded through open tendering, research, experiment or development basis where there is commercial viability, national defence or national security, continuity of functioning of existing equipment or Services; | No limit, but must be justified. <u>Procedure:</u> Except for no need of advertising and the time given to bidders, all requirement relating to international and national competitive tendering in terms of documentation apply. | | | Not applicable |

Procurement Methods without Negotiations

Procurement methods without negotiations include:

- Request for proposals without negotiations – **PPR-R162**
- Shopping – **PPR-R163 to 164**;
- Minor Value Procurement – **PPR-R165**; and
- Micro (Value) Procurement – **PPR- R166**.

a) Micro (Value) Procurement Method

The request for proposal without negotiations method is more or less the same as a two stage tendering method except that no negotiations is allowed on both the technical and financial proposal of the tenderer. In this method, proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and shall be subjected to the opening of the envelopes containing the financial aspects of their proposals. During the opening of financial proposals the score of the technical, quality and performance characteristics of each responsive proposal and the corresponding financial aspect of that proposal shall be read out in the presence of the tenderers invited to the opening of the envelopes containing the financial aspects of the proposals. The successful proposal shall be the proposal with the best combined evaluation in terms of the price and the criteria specified in the request for proposals.

b) Micro (Value) Procurement Method

The micro procurement method has been introduced to respond to the outcry by many PEs that items bought by individuals attracted cheaper prices compared to those obtained through a tender process. The author has always argued that cheaper prices obtained by individuals when buying are because they were paying in cash for goods or services in question. Important aspects of this method include the following:

- Procurement may be delegated to User Department subject to not exceeding limits set out in 7th Schedule of PPR 2013 or limits set in the guidelines issued by PPRA;
- They need not be approved by Tender Board, but must be reported to Tender Board on monthly basis by the holder of delegated procurement authority using procedural forms issued by PPRA;
- All micro procurements shall be reported to PPRA on quarterly basis using a procedural form prepared by the same; and
- For common use item and services PEs shall use framework contracts under GPSA implying that the use of this method shall not be for the purpose of

avoiding the use of the system for procurement of common use items and service.

Table 6: Procurement Methods without Negotiations: Thresholds and Conditions for Use

| Method of Tendering | Circumstances for Use | Goods | Works | Non Consultancy Services | Disposal of Public Assets |
|--|--|--|-----------------------|--------------------------|---------------------------|
| Request for Proposals Without Negotiations | <ul style="list-style-type: none"> Need to consider financial aspects of proposals separately and only after completion of examination of quality and technical aspects of the proposals. | <p><u>Procedure:</u> More less the same as Quality Based selection for Consultancy Services</p> <ul style="list-style-type: none"> Invite tenders to submit their proposals. It may be desirable to limit the number through pre-qualification or pre-selection; Observe PPR-R162(2) with regard to invitation to participate; PPR-R162(4) with regard to issuing a Request for Proposals to the pre-qualified or pre-selected providers; PPR-R162(5) with regard to the contents of the Request of Proposals; Evaluate technical, quality and performance characteristic of a proposal and rank them in accordance with criteria and procedure for evaluating proposal set out in the request for Proposal document; Open financial proposals of those successful in their technical proposal; Best proposal shall be one with best | | | |
| Competitive quotations (Shopping) PPR -R163 | <ul style="list-style-type: none"> For diversified goods offering no commercial interest for any single supplier to tender for them For off the shelf or standard commodity specifications | Up to Tsh 120,000,000 | Up to Tsh 200,000,000 | Up to Tsh 100,000,000 | Not applicable |
| | | <p><u>Procedure</u></p> <ul style="list-style-type: none"> Obtain quotations from at least three suppliers; Observe minimum time given to bidders as shown in Eighth Schedule; and Observe procedure given in PPR-R164 | | | |
| Minor value procurement | | Up to 10,000,000 | Up to 20,000,000 | Up to 10,000,000 | Not applicable |
| Micro procurement | | 5,000,000 | Not applicable | Not applicable | Not applicable |

Other Procurement Methods

Other procurement methods as per procurement law include:

- Force account;
- Community participation; and
- Procurement of commodities and foodstuffs.

Force account procurement method for works relates to LGAs (Pes) use of own staff, hired labour or public or semi-public agencies or departments in the construction of works- **PPR-R167**. One of the pre-requisites for the use of this method is the availability of qualified personnel within PE to carry out and/or supervise the required works.

Provisions with regard to **community participation in procurement** and procurement of commodities have remained the same as was contained in GN. No. 97 of 2005 (**PPR-R169**) save for procurement of the same using framework agreements if included in the list of common use items.

New provisions have been introduced with regard to **procurement of food stuffs** for schools, training institutions, hospitals and prisons in which GPSA shall play a major role for procurement of such items having obtained standards for such goods from the relevant Ministries and estimated quantities from responsible institutions (**PPR-R170**).

➤ Note that PPA 2011 as amended 2016 includes **special groups** which includes women, youth, elderly and persons with disability for special consideration, of which the Procuring Entity shall set aside a specific percentage of the procurement volume in accordance with the procedures set out in the Regulations”

- PPA 2011 as amended 2016 necessitates changes in the Public Procurement (Amended) Regulations and participants are advised to check on the PPRA website once published.
- Expected changes in the procurement methods and its use include 1) adjusted thresholds for minor value and micro (value) procurement; 2) procedures for direct procurement from manufacturers; and 3) procedures for registration and eligibility of special groups for public procurement.

Methods of Selection and Employment of Consultants

The procurement of consultant services is a specialised form of procurement requiring bidding procedures and documents which are very different to those for standard goods and works. The use of merit-point evaluation systems and two-envelope bidding procedures are routine features in the procurement and selection of consultants. Selecting consultants for long or complex assignments on the basis of cost alone is unlikely to achieve the required quality of services.

a) Merit-Point Systems

A merit point system uses a point-scoring basis to determine the winning bidder. Points are awarded for technical capability and usually for the financial cost, according to criteria specified in the Request for Proposals. The bidder scoring the highest number of points is usually recommended for the award of contract.

Where cost is a factor in selection, technical quality for consultancy assignments is normally awarded 80% of the total points and cost 20%. However this is only a guideline and the appropriateness of the weighting of the technical and financial scores should be assessed for each assignment.

Merit point systems can also be used to evaluate whether bids pass a minimum technical score to proceed to a final financial evaluation (Least Cost Selection Method). The financial envelopes of all bidders whose bids pass the minimum technical score are then opened, and the bid with the lowest price recommended for award of contract.

b) Two-Envelope Bidding

To avoid any chance of the bidder's price influencing the technical evaluation under a merit point system, financial bids are submitted in a separate sealed envelope. The financial envelope must only be opened after the technical evaluation is completed and approved by the tender committee. In the interests of transparency, a second public opening of the financial bids of those bidders who have passed the technical evaluation stage is held.

c) Quality and Cost Based Selection Method

Quality and Cost Based Selection (QCBS) is the standard method of selecting consultants through competition between pre-qualified short-listed firms. Selection is based on the technical quality of the consultants, the quality of the proposal, and on the cost of the services to be provided. The relative weights given to the technical quality and cost of each proposal are determined for each case depending on the nature of the assignment.

d) Quality-Based Selection

Quality Based Selection (QBS) may be appropriate for complex or highly specialised assignments, or those which invite innovations. The selection is based solely on the quality of the proposal without consideration of the cost. QBS is suitable for the following types of assignments:

- Complex or highly specialised assignments where it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- Assignments that have a long term impact and in which the objective is to have the best experts available (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- Assignments that can be carried out in very different ways, and therefore proposals may not be directly comparable (for example, management advice, or policy studies in which the value of the services depends on the quality of the analysis).

The Request for Proposals (RFP) should not indicate the estimated budget, but may provide the estimated number of key staff and time, specifying that this information is given as an indication only, and that consultants are free to propose their own estimates. The RFP may require submission of a technical proposal only (without a financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the bidders, after the negotiations are successfully concluded.

If technical proposals only are invited, after evaluating the technical proposals the Consultant with the highest ranked technical proposal will be invited to submit a detailed financial proposal. The Council and the Consultant shall then negotiate the financial proposal and the contract.

e) Selection under a Fixed Budget

Fixed Budget Selection (FBS) is where the Council seeks to obtain the best technical proposal from pre-qualified short-listed consultants within a pre-determined budget limit. This method is only appropriate when:

- The assignment is simple and can be precisely defined; and
- The budget is fixed.

The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate sealed envelopes, within the stated budget. The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks.

Technical proposals will be evaluated and bidders who pass the minimum technical score will be invited to a public opening of their financial envelopes.

Bidders whose technical proposals fail to meet the minimum technical score will have their financial envelopes returned unopened. Any financial proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal within the budget will be selected for award of contract.

f) Least-Cost Selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and professional standards exist, and when the contract value is small.

A minimum qualifying score for the required quality is established and is stated in the RFP. Shortlisted bidders are required to submit technical and financial proposals in separate envelopes. Technical envelopes are opened first and evaluated. Those bids scoring less than the minimum qualifying score are rejected. The financial envelopes of the remaining bidders are opened in public. The firm with the lowest price is selected for contract award.

g) Selection Based on Consultants' Qualifications

This method may be appropriate for very small assignments where the need for submission and evaluation of detailed competitive proposals is not justified. Expressions of interest and information on the consultants' experience and competence relevant to the assignment are requested. The firm with the most appropriate qualifications and references is selected. The selected firm is invited to submit a combined technical and financial proposal, and then invited to negotiate the proposal and the contract.

h) Single-Source Selection

Single-source selection of consultants lacks the benefit of competition in regard to quality and cost, is not transparent in selection, and may encourage unacceptable practices. Therefore, single-source selection should only be used in exceptional circumstances. The justification for single-source selection must be examined carefully to ensure economy and efficiency. The conditions for the use of direct procurement should be noted before using this selection method. Single-source selection is only appropriate if there is a clear advantage over competitive selection:

- For tasks that are a natural continuation of previous work carried out by the firm;
- Where rapid selection is essential (for example, in an emergency situation);
- For very low value assignments; and
- When only one firm is qualified or has the necessary experience for the assignment.

Annex 2: Course Evaluation Form

| | |
|--------------------|------------------------|
| Name of Module: | |
| Venue of Training: | |
| Dates of Training | From To |
| Trainer(s): | 1. 2. |
| Name of LGA: | |
| Name (Optional): | |
| Position: | |

Indicate your answer by putting a circle around the number (i), (ii), (iii), (iv) or (v).

PART ONE: OVERALL RELEVANCE OF THE COURSE

- 1. The objectives of the course were relevant to my training needs:**
 - (i) Completely agree; means that all the objectives were relevant
 - (ii) Mostly agree; means that most of the objectives were relevant
 - (iii) Agree; shows approximately half of the objectives were relevant
 - (iv) Slightly agree; indicates that a few objectives were relevant
 - (v) Completely disagree; to the extent that all objectives were irrelevant

- 2. The outputs of the course were relevant to my work:**
 - (i) Completely agree; means that all output were relevant
 - (ii) Mostly agree; implies that most output were relevant
 - (iii) Agree; shows approximately half of the output were relevant
 - (iv) Slightly agree; indicates that a few output relevant
 - (v) Completely disagree; to the extent that all output were irrelevant

PART TWO: COURSE CONTENT

- 3. The content of the course was the same as I expected:**
 - (i) Completely agree; all the parts of the course were covered as I expected
 - (ii) Mostly agree; means that most of the parts of the course were covered as I expected but a few were omitted
 - (iii) Agree; indicates that approximately one half of what I expected to cover in the course were actually covered while most of them were omitted
 - (iv) Slightly agree; indicates that most of the parts of the course I expected to cover were omitted
 - (v) Completely disagree; to the extent that all parts I expected to cover in the course were omitted.

4. I found the following topics particularly useful (list in order of usefulness):

- 1.
- 2.
- 3.

5. I found the following topics particularly not useful (list in order of non-usefulness):

- 1.
- 2.
- 3.

6. I found the overall content of the course very easy to understand:

- (i) Completely agree; that the course content was easy to understand
- (ii) Mostly agree; means that the course content was quite easy to understand
- (iii) Agree; shows that I found my level of understanding fairly acceptable
- (iv) Slightly agree; implies that I found the course content somewhat difficult to understand
- (v) Completely disagree; indicates that found the content very difficult to understand

7. I intend to more effectively perform the following tasks upon return to my duty station (list in order of priority)

- 1.
- 2.
- 3.

PART THREE: COURSE DELIVERY AND ORGANISATION

8. The overall presentation of the facilitators was:

- (i) Excellent
- (ii) Very good
- (iii) Good
- (iv) Fair
- (v) Poor

9. The training methods are:

- (i) Very good
- (ii) Good
- (iii) Poor

Suggestions:

10. I found theory and practice well-balanced in course delivery:

- (i) Completely agree
- (ii) Mostly agree
- (iii) Agree
- (iv) Slightly agree
- (v) Completely disagree

Suggestions:

11. The duration of the course is:

- (i) Too long
- (ii) Adequate
- (iii) Too short

Suggestion:

12. The workload of the course is:

- (i) Too little
- (ii) Just right
- (iii) Too heavy

Suggestion:

13. The training aids and materials are:

- (i) Very adequate
- (ii) Adequate
- (iii) Inadequate

Suggestion:

14. The training venue was:

- (i) Very convenient
- (ii) Convenient
- (iii) Not convenient

Suggestions:

15. The meals and services were:

- (i) Very adequate
- (ii) Adequate
- (iii) Inadequate

Suggestion:

PART FOUR: SUGGESTIONS FOR FUTURE IMPROVEMENTS

11. Give up to three suggestions for future improvement of similar short-term course:

1.
2.
3.

12. What other training would improve your performance on the job?

1.
2.
3.

13. Provide any other comments as you deem necessary

.....
.....
.....

We thank you for your response.

Date: