

REF: PPRA/6/5 VOL. 1(1)

27th March, 2020

PPRA CIRCULAR NO. 02/2020

All Accounting Officers, National & County Governments
All Clerks, Senate, National & County Assembly (ies)
Chief Registrar, the Judiciary and the Courts
All Secretaries/CEOs/Accounting Officers, Constitutional Commissions &
Independent Offices
All CEOs, State Corporations
All Vice Chancellors, Public Universities
All Ambassadors/High Commissioners, Kenya Diplomatic Missions
All Principals, Public Colleges, Polytechnics, Training Institutes, Primary &
Secondary Schools
All Trustees, Public Pension Funds
All County Commissioners, County Service Delivery Coordination Units
All Fund Account Managers, NG-CDFs
All County Coordinators, NGAAs

**RE: PREVENTIVE MEASURES FOR HANDLING OF PROCUREMENT
ACTIVITIES FOR PROCURING ENTITIES DUE TO CORONA VIRUS
(COVID-19)**

Following the Presidential address to the Nation on 15th and 25th March, 2020 on the measures that the Government of Kenya has put in place to reduce the potential spreading of the Corona Virus (COVID-19) and continuous guidance from the Ministry of Health, procuring entities are reminded to fully comply with these guidelines to mitigate the spread of COVID-19 as they conduct procurement activities. The Authority has continued to offer appropriate advice and guidance to its stakeholders and hereby issues guidelines shown below to support the preventive measures on the spreading of COVID-19 outlined by the Government, for handling procurement activities for all procuring entities.

Given the current situation in the Country and the guidance issued by the Ministry of Health with respect to COVID-19 matters, procuring entities are advised to scale down their procurement activities with exception of the ongoing procurement processes, save for the procurement of essential and critical services. For the initiated procurement processes, Accounting Officers should make a decision on whether the procurement process can proceed in the context of the prevailing circumstances and in view of the Government directives as well as objectives/principles enshrined in the Public Procurement and Asset Disposal Act, 2015 (the Act) and the possibility of the entity achieving the intended outcome of the subject procurement within the existing constraints. Where a procuring entity is unable to process an ongoing procurement to conclusion, the Accounting Officer will be expected to make a rational decision on whether to terminate the procurement by invoking provisions of Section 63 of the Act on the basis of force majeure to avoid inherent challenges and risks.

Page 1 of 5

It is hereby emphasized that procurement planning is compulsory in order to ensure efficient procurement of goods, works and services and it must be prepared in line with annual budgets, its implementation monitored and adjustments made as appropriate and that prior requisite approvals are obtained in accordance with the Act. Consequently, the Accounting officers are advised to review their procurement plans to prioritize and fast track procurements that facilitate delivery of essential services and if necessary re-allocate resources for the same in view of the existing regulatory and policy frameworks, including review of the methods of procurement in the approved procurement plan, to be consistent with the current situation, in accordance with the Act.

1. Emerging Procurements to Mitigate Spread of COVID-19

In response to the current situation, procuring entities at both National and County Governments have deployed resources in laying down measures and interventions to address the COVID-19 pandemic some of which may involve procurement.

Accounting Officers are reminded to ensure that such emerging procurements are reflected/captured in the Approved Procurement Plan maintained in accordance with Section 53 of the Act and budget set aside to meet the resultant financial obligations before commencement of such procurements, in line with Section 53(8) of the Act. Further, Accounting Officers are reminded to ensure that necessary approvals are secured in line with the provisions under Section 69 of the Act especially with regard to retrospective approvals.

2. Pre- Bid Meetings and Site Inspections

All procuring entities should suspend pre-bid meetings/conferences and provide potential bidders with a dedicated and continuously monitored email address and phone number/s for seeking clarifications or any other communication. Bidders should be instructed to raise any queries resulting from the bidding documents or seek clarifications by email. Responses to clarifications shall be copied to all potential bidders by email. In exceptional cases and where pre-bid meetings involve site inspections, the entities should schedule bidders to visit the sites in smaller groups of not more than 3 bidders at a time. Such site visits/inspections should not be mandatory and if possible should be delayed and where it is critical for potential bidders to inspect sites before submitting their bids, it should be conducted in strict compliance with the measures put in place by the Government to reduce spread of COVID-19.

3. Bid Submissions

Whereas bids shall be submitted in hard or soft copy as per instructions issued by procuring entities, entities are encouraged to use electronic means as much as possible. For international tenders where foreign bidders are not able to submit bids in hardcopy, they should give unconditional Powers of Attorney to a local representative/partner to submit their bids as allowed/specified in the tender documents or through other electronic means as provided for by the procuring entity. Any Bids received in hardcopy should be quarantined first for the requisite timeframe and then sanitized appropriately to reduce spread of COVID-19.

4. Bid Closing

Procuring Entities should opt to extend the bid submission deadlines in such circumstances where there is no urgency. The procuring entity shall ensure that no two or more tenders are

closing at same time to limit the number of the bidders expected to witness bid opening exercise.

5. Bid Opening

The procuring entity shall ensure that no two or more tenders are opened concurrently to limit the number of the bidders witnessing the exercise. Where bidders or their representatives chose to attend the bid opening, the procuring entity shall ensure that the venue where opening is conducted is spacious and observe a social distance of at least 1.5 metres away from each other. Screening of attendees should take place and sanitary facilities must be provided at all opening sessions. If possible bids may be opened with electronic attendance through conferencing facilities with the concurrence of all bidders. Failure by bidders to attend any bid opening will not invalidate the process. The results of bid opening shall be communicated by the respective procuring entities to the bidders by email; or any other acceptable electronic means of communication.

6. Post Qualifications

Given that travelling outside the country is not allowed by the Government, a procuring entity may conduct such post qualification engagements through video conferencing where possible. In exceptional cases, a procuring entity may conduct due diligence locally but with a team of not exceeding five (5) officers who are members of the appointed tender evaluation committee for the subject procurement and prior arrangements must be put in place by the procuring entity and the concerned bidder to ensure that social distancing amongst other measures are strictly observed as per the directives issued by the Government and Ministry of Health.

7. Evaluation Committee Meetings

Procuring entities will conduct evaluation committee meetings in strict adherence to the Government directives mentioned above. The evaluation committee members should be positioned in a space of at least 1.5 metres away from each other during the meetings, amongst all other protective and preventive measures as directed by the Ministry of Health.

8. Compliance Monitoring and Investigations

The Authority has suspended compliance monitoring and investigations that involve direct physical contact with procuring entities and other subjects. However, the Authority will continue to conduct compliance monitoring and investigations of the procurement and asset disposal activities by the procuring entities through other approaches. Communications and queries in this regard, shall be done by email.

9. Technical Support and Training Activities

The Authority has suspended offering of trainings/technical support interventions with the stakeholders through physical contacts. However, the Authority will continue to receive requests for technical support/advisory through info@ppra.go.ke and telephone calls. The Authority will subsequently issue written responses/advice as appropriate to procuring entities/stakeholders and communicate the same electronically.

10. Submission of Mandatory Reports to the Authority

Procuring entities will continue to submit the mandatory reports to the Authority in conformity with the existing reporting guidelines and formats through reports@ppra.go.ke. The Authority shall not receive physical/ hardcopy reports.

In addition, Accounting Officers should continue to upload all contract awards in the Public Procurement Information Portal (PPIP) in compliance with the requirements of the Executive Order No. 2 of 2018 - *Procurement of Public Goods, Works and Services by Public Entities*. Further, Accounting Officers are reminded to publish all contracts awards in their websites pursuant to Section 138(1) of the Act.

11. Administrative Reviews

The conduct of reviews at the Public Procurement Administrative Review Board (PPARB) shall be undertaken as per guidelines issued vide Circular Nos. PPRA/ARB/01.Vol.2 (113) of 16th March, 2020 and PPRA/ARB/01.Vol.2 (114) of 24th March, 2020 respectively, which are available on <http://ppra.go.ke/circulars/> and on the Authority's social media platforms.

12. Contract Implementation and Management

Accounting officers are advised to review implementation of the ongoing contracts with a view to ensuring that such contracts are performed in strict compliance with the measures put in place by the Government to reduce spread of COVID-19. The contractors should undertake in writing to commit to full compliance with the measures put in place by the Government to reduce spread of COVID-19 with regular reports submitted to the procuring entity on interventions the contractor has undertaken. The procuring entity is obliged to monitor and ensure the contractor complies with the undertakings and the safety measures put in place by the Government.

Where contract implementation including sites activities are affected by the current situation or where implementation of the contract will lead to a breach of the directives issued by the Government on the spread of COVID-19, the Accounting officer should take measures to ensure that suspension of the contract is done in writing and consent of parties secured in accordance with the terms and conditions espoused in the contract to mitigate contractual disputes and loss of public resources. Accounting officers are advised to consult the office of the Attorney General and or the County Attorney where any matter relating to a contract is unclear to them.

13. Compliance with the Procurement Law

All Accounting Officers are reminded to comply with the Act and the Regulations issued under the repealed Public Procurement and Disposal Act, 2005 pursuant to Section 24 of the Interpretation and General Provisions Act, Cap 2 of the Laws of Kenya in line with Section 44 (1) of the Act. Accounting officers shall conduct all procurement and asset disposal processes with a view of ensuring realisation of value for money and economy, and proper utilisation of public resources.

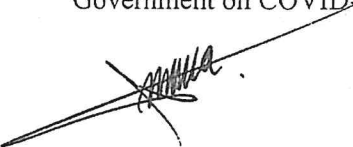
14. How to reach PPRA

The Authority's services can be accessed through the following available platforms:

- (a) Tel: 020-3244000/020-2213106/7
- (b) Email: info@ppra.go.ke; feedback@ppra.go.ke and reports@ppra.go.ke
- (c) Social media: Facebook (PPRAKenya) and Twitter (PPRAKenya)
- (d) Website: www.ppra.go.ke

Please bring the contents of this circular to the attention of all officers involved in the public procurement and disposal processes within your entities for compliance. NB. The Authority will

continue to review these guidelines based on the updated advice and directions issued by the Government on COVID-19.



MAURICE J.O. JUMA, MBS
DIRECTOR GENERAL

Copy to: Dr. Joseph K. Kinyua, EGH
Head of Public Service
Office of the President
Harambee Avenue
NAIROBI

Mr. Nzioka Waita
Chief of Staff and Head of President's Delivery Unit
Office of the President
Harambee Avenue
NAIROBI

Hon. Justice (Rtd.) Paul Kihara Kariuki, EGH
Attorney General
Office of Attorney General
and Department of Justice
NAIROBI

Dr. Julius Muia, CBS
Principal Secretary
The National Treasury
The National Treasury and Planning
Treasury Building
NAIROBI

The Auditor General
Kenya National Audit Office
Anniversary Towers
NAIROBI

Jacqueline Mogeni (Mrs)
Chief Executive Officer
Council of Governors
Delta Corner House, Off Waiyaki Way
NAIROBI

