



Manual for Procurement and Management of Projects

First Edition

June 2009

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PREFACE

The Government of Kenya, like most governments around the world, is the single largest buyer of goods, services and works, in the country. Some 30% of the annual national budget of Kenya goes to procurement. Hence public procurement plays a critical role in the Kenyan economy and is an important factor in economic growth. Sound and efficient use of scarce public resources is the responsibility of the Government and every public entity.

The Government of Kenya embarked on the reform of public procurement to enhance its efficiency, transparency and value for money. In 2005 the Parliament enacted the Public Procurement and Disposal Act. The Minister of Finance issued the Public Procurement and Disposal Regulations in 2006. These two legislations constitute the foundation and authority for all public procurement activities in the Republic of Kenya.

With support from the US Agency for International Development (USAID), the Public Procurement Oversight Authority (PPOA) developed the Public Procurement General Manual. To supplement the general manual, PPOA and its partners are developing sector specific procurement manuals.

In 2007 the Government of Kenya (GOK) signed with USAID the Millennium Challenge Account Threshold Project (MCA-TP) for strengthening the public procurement system in Kenya. ARD, Inc have been contracted to carry out various activities under the MCA-TP, including the preparation of eight sector manuals, one of which is this Manual for Procurement and Management for Projects. This Manual has been prepared on behalf of the PPOA by ARD's partner in the MCA-TP, Crown Agents, with review by ARD. PPOA provided direction and guidance during the preparation of the Manual and approved this final version for use by all sections of the GOK when procuring or managing projects.

Signature _____

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June 2009

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ACRONYMS

AO	Accounting Officer
APP	Annual Procurement Plan
ARB	Administrative Review Board
CEO	Chief Executive Officer
EC	Evaluation Committee
FY	Financial Year
GCC	General Conditions of the Contract
GOK	Government of Kenya
IAC	Inspection and Acceptance Committee
ICC	International Chamber of Commerce
ICT	International Competitive Tender
ITT	Invitation To Tender
LC	Letter of Credit
MCA-TP	Millennium Challenge Account Threshold Program
MCC	Millennium Challenge Corporation
MOF	Ministry of Finance
NCT	National Competitive Tender
NEMA	National Environment Management Authority
NGO	Non Government Organization
PC	Procurement Committee
PE	Procuring Entity
PIT	Project Implementation Team
PM	Project Manager
PPOA	Public Procurement Oversight Authority
PPOAB	Public Procurement Oversight Advisory Board
PU	Procurement Unit
PS	Permanent Secretary
RFP	Request For Proposals
SBD	Standard Bidding Document
SCC	Special Conditions of the Contract
SOR	Statement Of Requirements
TC	Tender Committee
TOC	Tender Opening Committee
TOR	Terms of Reference
UN	United Nations
USAID	United States Agency for International Development

Chapter 1 Definitions

Acceptance	Acceptance of goods, works or services by the Inspection and Acceptance Committee in part or in full, qualified or not following an inspection
Act	Public Procurement and Disposal Act of 2005
Announcement	The act of publicly announcing through national and/or international media the forecast or opening or results of procurement proceedings
Bidding Documents	Standard documents elaborated by the PPOA or the PE for the purpose of procuring goods, works or services
Complex	Denotes that the procurement is complicated, intricate and difficult
Contract File	The file which contains all supporting documents related to a specific contract such as correspondence, payments, drawings, reports, and delivery data. The contract file contents are compulsory requirements for audit trails.
Contractor	The status of a vendor or successful bidder or candidate that has entered into a contract with a procuring entity
Corruption	The offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution.
Debarred Contractor	A supplier, contractor, consultant prohibited from bidding or entering into a contract agreement with any public procuring entity in the Republic of Kenya.
Direct Procurement	A method of procurement that does not require competitive tendering. Direct Procurement is strictly regulated.
Employer	Has the same meaning as Owner or Procuring Entity, the entity employing the services or the goods of the supplier and/or service provider
Force Majeure	An event or series of events which are not foreseeable and are not the result of dilatory conduct and result in the temporary delay or permanent stoppage of the contract execution. Examples include natural disasters, climatic events, social unrests, wars. Force Majeure has to be approved by the TC.
Inspection	Examination or formal evaluation exercise of goods, works or services. Results are compared to requirements and standards to determine whether the item or activity is in line with these targets.
Operator	Has the same meaning as Contractor
Owner	Has the same meaning as Employer or Procuring Entity
Project	A non-routine, high value, complex, longer-term procurement for something that is not available off-the-shelf.
Regulations	Public Procurement and Disposal Regulations 2006

Chapter 1 INTRODUCTION

The purpose of this manual is to provide useful guidance to Procuring Entities (PE) and other key stakeholders dealing with procurement and management of large projects on matters not included or not covered in sufficient detail, in the Public Procurement and Disposal General Manual.

The authority for this manual derives from the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006. These established the Public Procurement Oversight Authority (PPOA) with the power to issue instructions and guidelines and standard documentation which PEs must use. The PPOA has issued a Public Procurement and Disposal General Manual and has made available Standard Bidding Documents. This manual supplements these general documents.

Why do we need a specific manual for project procurement and management?

Project procurement and management typically require the Procuring Entity to possess advanced technical expertise in project design and implementation, considerable human, financial and material resources, advanced contracting and negotiation skills, strong knowledge of dealings with international contractors. For all these reasons, it was agreed that a project procurement manual would be a valuable tool for procuring entities. The manual offers an opportunity to standardize and streamline procurement procedures for complex projects.

1.1 Types of Projects

Projects can cover a variety of types. Typically projects are identified by:

- Size – projects are usually larger in value and extent than typical procurements;
- Duration – projects often take several years and therefore have to span more than one GoK financial year;
- Complexity – project requirements are usually complicated and often comprise different types of procurement, including consultancy, works, and supplies;
- Contract management – the implementation phase of the procurement requires active management to ensure success; and
- One-offs – projects' procurements usually have to be designed and made to the PE's specific requirements.

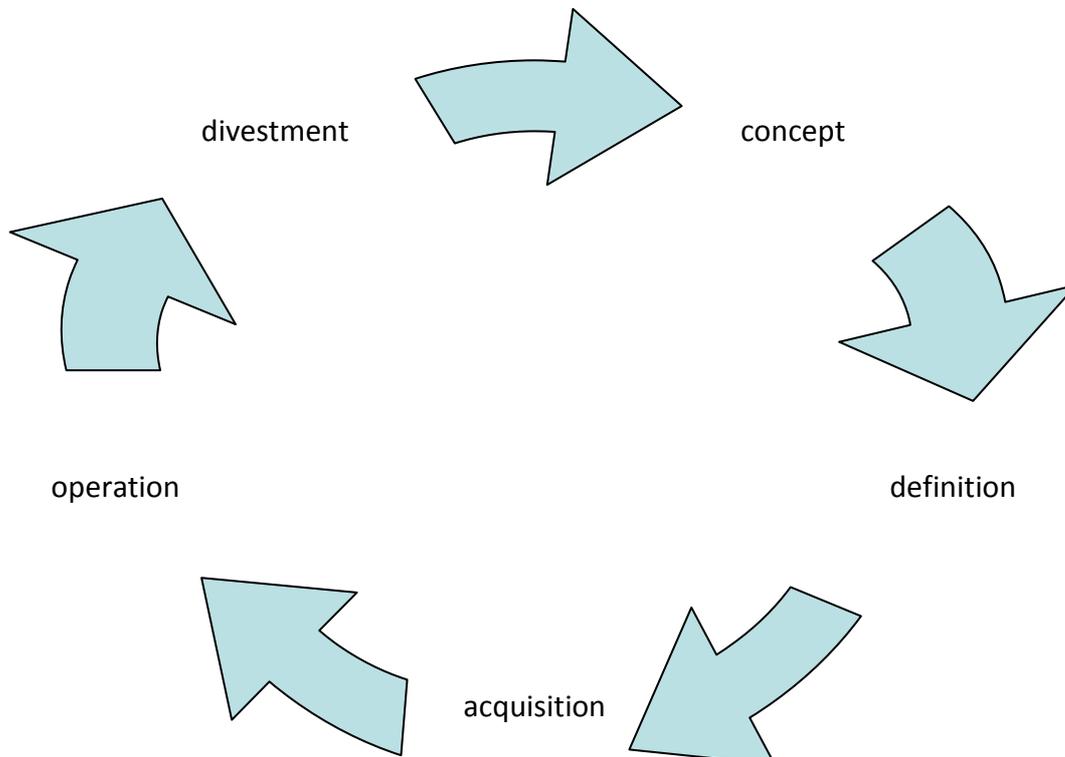
Many works contracts are projects, but projects can also include procurement of specialized supplies such as helicopters or hospital equipment, specialized IT equipment and systems, power and water treatment equipment, turnkey investments and public private partnerships.

This manual covers all areas of procurement from needs identification, planning, design, bidding to contracting and managing a complex project through to successful completion. It should be read in conjunction with other sector specific procurement manuals where appropriate: e.g. the Procurement Manual for Works, the Public Procurement Manual for Information and Communications Technology and the Public Procurement Manual for the Health Sector where purchase of specialized hospital equipment is concerned.

1.2 The Project Cycle

Projects are broken down into phases to help make them manageable. They start with a concept, which when approved is given more detailed definition. Then the physical parts of the project are acquired. Once the assets have been commissioned the operational phase starts and at the end of this phase, which may last many years, the project assets are dismantled or disposed of.

The project cycle is shown in the following diagram. This manual covers the definition and acquisition phases of a project.



The concept phase begins when the project is first conceived and ends when the project is given approval in principle to proceed.

The definition phase goes into much greater detail for the chosen project. During this phase, a more detailed specification is produced, the scale of the project is decided and some options are ruled out.

The acquisition phase covers the procurement of the asset or work.

The operation phase may span many years when the asset is being used. This is when the project pays back the investment made in it.

Finally the divestment phase covers the sale of the asset or the demolition of buildings to enable usable parts, such as the land, to be reused for future projects.

The cycle covers a wide variety of periods: an ICT project may cover 5 years, while a power station project typically lasts 30 years.

1.3 Implementing Projects

Projects are known to present challenges to purchasers, particularly Government purchasers, because they often cover requirements that have not been met previously and because of their scale. Methodologies have been developed to help purchasers make a success of their projects. One of the most widely used is called “Projects in Controlled Environments” or PRINCE, now in its improved version, PRINCE2. As the name implies PRINCE2 procedures are primarily aimed at projects on the PE’s premises rather than works projects, although the same principles can be applied to all projects.

Projects bring together resources, skills, technology and ideas to achieve business objectives and deliver business benefits. Good project management helps to ensure that risks are identified and managed appropriately, and objectives and benefits are achieved within budget, within time and to the required quality.

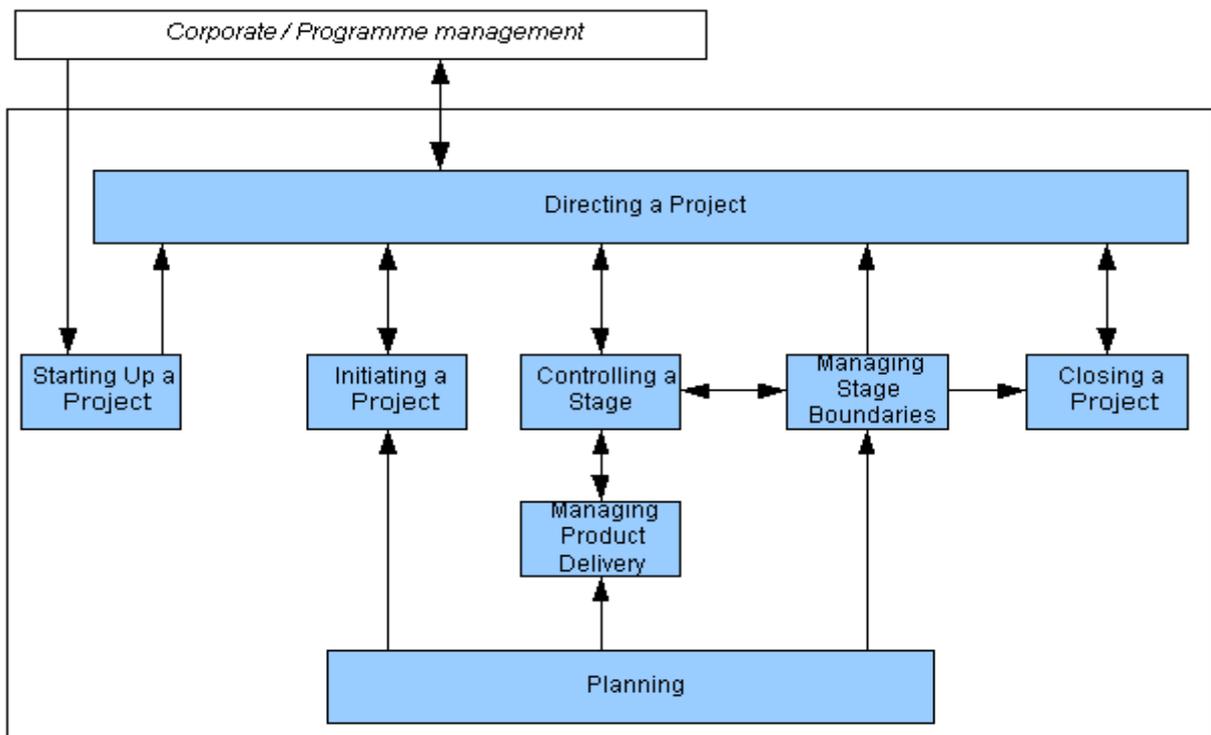
PRINCE2 is recognised as a world-class international product and is the standard method for project management, not least because it embodies many years of good practice in project management and provides a flexible and adaptable approach to suit all projects. It is a project management method designed to provide a framework covering the wide variety of disciplines and activities required within a project. The focus throughout PRINCE2 is on the Business Case, which describes the rationale and business justification for the project. The Business Case drives all the project management processes, from initial project set-up through to successful finish.

Many organisations are employing the skills and services of external suppliers, working alongside in-house resources, to enhance their ability to deliver successful projects. PRINCE2 provides a mechanism to harness these resources and enable the team to integrate and work together effectively on a project. PRINCE2 requires the purchaser to break large projects up into stages to make the project more manageable. PRINCE2 requires the purchaser to follow clearly specified procedures to ensure it is ready to proceed to the next stage. It includes procedures for:

- Starting up a project;

- Planning;
- Initiating a project;
- Directing a project;
- Controlling a stage;
- Managing product delivery;
- Managing stage boundaries; and
- Closing a project.

PRINCE2 tries to ensure that all those involved in delivering a project have the right information to enable them to do their job: This diagram shows the flows of information:



PRINCE2 is often used in conjunction with “gateways” which are formal stage boundaries. Some governments insist on an independent “gateway review” to ensure that a project is ready to move onto the next stage. Gateway reviews can include ensuring that all political influences on a project, such as different ministers, ministries, parliament, and local government authorities are signed on to a project before significant amounts of money are spent.

PRINCE2 is owned by the UK’s Office of Government Commerce but is used worldwide. Details of PRINCE2 training and qualifications can be obtained from: <http://www.prince2.org.uk/>.

Chapter 2 GENERAL PROCUREMENT POLICIES AND GUIDELINES

The procurement and management of complex projects requires the involvement of many staff members at different stages of the procurement cycle. In order to design, tender, administer and report on project procurements effectively and successfully, it is critical for the Procuring Entity (PE) to clearly define roles and responsibilities of each staff member involved in this activity.

Procuring Entities are required to establish a functional and effective **Procurement Unit**. The size and level of staffing will depend on the procurement workload, considering the volume, value, complexity and type of procurements carried out throughout the year. The head of the PE shall ensure that the procurement unit is staffed with personnel with appropriate technical skills and high integrity. The Head of the Procurement Unit must be a procurement professional who should preferably report to the Head of the Procuring Entity. This reporting structure will enhance transparency and separation of powers within the PE.

The Procurement Unit's main responsibility is to coordinate procurement activities from inception through to completion in total compliance with the applicable rules and regulations. This includes active involvement in the planning and contract management of projects.

Given the high value of project procurements, **Procurement Committees** are unlikely to be involved in them.

In accordance with Schedule I of the Regulations, the establishment of a **Tender Committee** (TC) is a requirement for all procurement actions in excess of Kshs 500,000. Sections 10, 11 and 12 of the Public Procurement and Disposal Regulations 2006 provide more information on the functions and rules of the Tender Committee. The TC is responsible for ensuring that the selection of bidders is based on fair competition and in compliance with the legal and regulatory framework for the supply of goods and services. The members of the TC are appointed by the Head of the PE but in accordance with the statutory composition stipulated in Schedule II of the Regulations. The secretary to the TC is the procurement professional in charge of the Procurement Unit of the PE. Tender Committee meetings must be attended by at least five (5) members of the Committee including the Chairman, or their nominated alternates, forming the quorum.

The Tender Committee shall fulfil the following functions:

- Award contracts where the value exceeds the thresholds of Schedule I;
- Approve contract variations;
- Approve tender validity extension;
- Ensure availability of funds;

- Review the selection of procurement method and approve the selection of other than open tendering method; and
- Consider recommendations of the Evaluation Committee (EC).

TCs, like the other committees for procurement, should endeavour to reach decision by consensus, but if that cannot be achieved they should hold a vote on the decision required. If the vote is tied the Chairman of the TC has a casting vote.

Where the procurement under consideration is greater than KShs 50 million in value, as it may well be for projects, the PE must invite two observers, at least one of whom must be from the private sector or a relevant professional discipline, to attend the meeting of the TC. It is good practice to give the observers at least a week's notice of the meeting, but the meeting may proceed to conduct its business even if the observers do not attend the meeting.

The **Evaluation Committee** (EC) selects bids following a technical and financial analysis. Members of the EC shall be appointed by the AO or the head of the PE. The EC shall have at least three (3) members including the Chairman. No member of the EC shall be a member of the TC, per Regulation 16. Members should be knowledgeable in the operational, technical and financial aspects of the type of procurement being carried out. A representative of the End User Department and a member of the Procurement Unit should normally be included in the membership. The EC shall submit a written comprehensive evaluation report for the Tender Committee's review and approval.

The **Tender Opening Committee** (TOC) is composed of at least three (3) members appointed by the AO or Head of PE. All but one member may also be members of the EC. Section 60 of the Act provides more information on tender opening procedures.

The **Inspection and Acceptance Committee** (IAC) is responsible for ensuring that goods, works and/or services received are fully compliant with the terms of the procurement contracts. They shall comprise at least three (3) members. The members should include those with expertise in the subject matter of the project. It is recommended that in addition members include those from the User Department, the Procurement Unit and the Finance Unit. Regulation 17 provides more information on the IAC.

The **End User Department** plays a critical role in the procurement cycle starting with the initiation of the procurement requirements. The end user should proactively participate in the evaluation of tenders, report any deviation from the contract to the PU, prepare technical specifications, assist with procurement plans, etc. They should be involved from inception through successful completion of the project.

Project procurement and management is a team effort if it is to be successful. All staff members while involved in the procurement must adhere to the strictest ethical standards and avoid conflicts of interest or the perception of a conflict of interest.

Chapter 3 PROCUREMENT PROCEDURES FOR PROJECTS

3.1 Feasibility Study

Once the procurement needs have been identified by the End User, the very first activity to be undertaken by the PE is to conduct a feasibility study. This is a critical stage for complex projects. If the expertise does not exist in-house, the PE should make provision to procure the services of a consultant. Procedures for procurement of consultant services should be followed, as stipulated in the Public Procurement and Disposal General Manual.

The PU and the end user will prepare terms of reference for the consultant, to be advertised in national and/or international media with an opportunity to respond within at least thirty (30) days. The TOR to be included in the Request for Proposals (RFP) may include any or all of the following functions:

- To conduct national and international market surveys;
- To propose design options;
- To develop specifications or terms of reference for tender documents;
- To conduct stakeholder analysis;
- To assist with the evaluation of tenders; and
- To supervise the performance of the contractor.

The feasibility study allows the PE to determine the scope, duration, financial, human and material resource requirements, procurement method and sources to undertake the requirements of the project. The consultant hired to perform the tasks above is EXCLUDED from bidding on the procurements derived from the feasibility study.

3.2 Environmental Impact Assessment

An additional important step that the Procuring Entity must undertake for any project involving works is to submit to NEMA (National Environment Management Authority) a project report in the prescribed form. NEMA may require the PE to carry out an environmental impact assessment of the proposed project. No such project may commence prior to receiving NEMA's approval.

3.3 Procurement Strategy

Before the procurement plan is developed, PEs should consider the procurement strategy to be adopted. In particular the PE needs to decide whether to engage a single contractor in a turnkey approach, or use multiple contractors. The former minimises the effort required for project management but makes it less likely that Kenyan contractors will be able to qualify for the contract. The latter greatly increases the chances of at least some of the work being done by Kenyan contractors but will require more intensive contract and project management.

3.4 Procurement Plan

Section 26(3) of the Act and Regulations 20 and 21 make procurement planning mandatory for PEs. Procurement plans are an integral part of the annual budget process. A bottom up approach is recommended for the procurement planning process with each department preparing and submitting their plans to the Head of the PU who in turn prepares a consolidated annual procurement plan (APP) for approval by the AO and the Board of the PE. Heads of Department are required to submit signed APP to their Accounting Officer at least thirty (30) days before the close the fiscal year. Procurement plans for projects may be prepared on a multi-year basis, in which case they should be integrated into the medium-term budgetary expenditure framework (Regulation 20(3)). Sound planning will allow the PE to identify the timeline and accomplishments for each plan.

The procurement plan shall include but not be limited to the following information:

- Detailed breakdown of the goods, works, consultancies and services required;
- A schedule of the planned delivery, implementation or completion dates for all goods, works, consultancies and services required;
- Estimate of the value of each procurement package of goods, works, consultancies and services and the source of funding, if different from other packages;
- Source of funding;
- Indication of items or sections of the services, consultancies or works that can be aggregated for procurement as a single package;
- Procurement method;
- Details of any committed or planned procurement expenditure under existing multi-year contracts;
- Price adjustment mechanism for long projects (those lasting more than one year); and
- Timelines for critical stages of the delivery or implementation programme.

The procurement plan for projects needs to be backed up by market research data since projects cover one-off items. This market research may be gathered from the Internet, trade shows, visiting manufacturer's factories, visiting other clients' sites and from the specialist

trade press and should be joint exercise between the End User Department and the Procurement Unit.

A format of a typical plan item is shown in the Appendices.

3.5 Prequalification

Prequalification of prospective bidders for complex projects is highly recommended for it ensures that: a) invitations to tender are sent only to those contractors who have adequate experience, capabilities and resources; b) the PE saves valuable time and resources by NOT evaluating a large number of bids.

3.5.1 Advertisement

The Procuring Entity will publish the announcement in both national and international media. It is the intention to develop national arrangements for advertising bid opportunities, which should also be used when they are available. The PE may also contact foreign embassies and United Nations agencies based in Kenya to inform them of the procurement opportunity. The PE will provide sufficient time between the effective date of publication and the date of submission of applications. Regulation 24 requires a minimum of fourteen (14) days. However, PEs are strongly encouraged to provide more time (30-45 days) because of international advertisement and the complexity of the project.

3.5.2 Prequalification Process

Prequalification may be carried out as a stage in open tendering or it may be a separate preliminary step before the main tender procedure begins. Prequalification for projects should not be confused with the annual registration process of suppliers and contractors for use under the RFQ procedure. The first step should always be to investigate whether another PE has recently carried out a similar prequalification exercise, in which case it may be sensible to use the data they have obtained. Failing that, the PE should carry out a prequalification ensuring that the criteria used to select suppliers or contractors are stringent enough to weed out those who are not suitable without disqualifying so many that competition would be inadequate.

3.5.3 Prequalification Documents

Where a brief advertisement is not sufficient to capture the complexity, technical specifications or terms of reference, volume and terms and conditions of the requirements, the procuring entity should use prequalification documents. The document will include all the necessary information for a prospective bidder to make an informed judgment to determine whether their application will qualify. The document will include the following information:

- Name, address and contact details of the PE;
- Details of the requirements including nature, quantity, location and schedule for delivery of services and performance of the contract;
- Evaluation criteria;

- Method, place and deadline for submission of applications; and
- Documentary evidence to demonstrate legal ability to enter into contract with PE.

3.5.4 Prequalification criteria

The PE should establish qualification criteria which will help to ascertain that the applicant has:

- The necessary qualifications, capabilities, experience, resources to successfully carry out the TOR (personnel, equipment, facilities, past performance on similar projects);
- The legal capacity to enter into a contract with the PE; and
- The required financial and commercial resources.

The qualifications required to carry out small projects are relatively simple, whereas PEs should look for much greater physical and financial resources from applicants for large projects.

3.5.5 Prequalification Evaluation

There is no requirement for a formal opening of the applications. However a formal evaluation is required. Given the high value and complexity of projects, the Evaluation Committee will conduct an evaluation of all applications and submit a comprehensive evaluation report for the Tender Committee's review and approval.

The PE is required to inform all applicants of the results of the evaluation of their applications. A brief reason for disqualification should be provided to applicants who are not successful. Subsequent tenders will be sent only to the short listed applicants.

In the case where a high number of applicants are qualified, the PE should short list applicants with the highest score. There will therefore be a long list (all qualified applicants) and a short list (top scoring applicants only).

Where there are a known limited number of suppliers the PU may decide to:

- Proceed with restricted tendering procedures with prior written approval of the Tender Committee; or
- Proceed with open tendering procedures and ensure that known suppliers are made aware of the procurement opportunities.

Unless the PU is confident that it has comprehensive information on the supply market, the latter option should be preferred.

3.6 Procurement Records Management

Proper record keeping of the entire procurement cycle is critical and a requirement of the Act and Regulations. It is an important requirement that a PE shall maintain an individual file for each procurement containing all information, documents and communications relating to that procurement proceeding. Records should be kept available for at least six (6) years from the contract start date for audit purposes. The Head of Procurement Unit is the principal custodian of procurement and contract files.

PPOA has published a Procurement Records Management Procedures Manual and all PEs must follow the instructions given in that manual on the documents to be retained and the conditions under which they should be stored.

3.7 Tendering Procedures

While the prequalification process is open to all applicants on the national and international markets, the tendering will only concern the short listed applicants who were successful and informed of the acceptance of their application.

3.7.1 Preparing Specifications

Work on preparing the specification should begin as early as possible. The Evaluation Committee should preferably have been appointed by the time when the procurement plan was produced and should hold an initial meeting to agree the evaluation criteria to be used. The criteria contribute to the way the specification needs to be written. Writing specifications is a difficult task and PEs should consider employing outside help if the necessary expertise does not exist internally. The specification should be answering the questions “what do we want to happen and what do we want to achieve?” rather than “how do we want this to be made or built?”

3.7.2 Invitation To Tender

The Invitation To Tender (ITT) will be sent to all the short listed candidates at the same time. A fee may be required to offset printing, copying and distribution costs only. In any case the fee shall not exceed Kshs 5000. Charging a fee is not mandatory and the PE may decide to waive it. It is important to ensure that the fee does not discourage potential bidders. The PE should make every effort to use the most expeditious means to send the tender document to all bidders on the same day.

3.7.3 Bidding Period

The PE shall provide sufficient time for bidders to prepare and submit responsive bids. A minimum of thirty (30) days is recommended from the date of receipt of the ITT, even for those requirements which can be provided by national bidders. The PE should consider a longer period (45-60 days) for very complex procurements.

3.7.4 Tender Document

The tender document should provide bidders with all the information they need to submit a responsive bid. To avoid further requests for clarification and subsequent requests for

deadline extension, it is critical that the tender document be as complete and precise as possible to reflect the requirements of the PE. Special care should be given to the evaluation criteria for they cannot be changed after the bid submission deadline.

The tender document should consist of the following sections:

- Introduction;
- Tender Documents;
- Preparation of Tenders/Instruction;
- Submission of Tenders;
- Tender Opening and Evaluation;
- Award of Contract;
- Conditions of Contract; and
- Forms of bid and contract.

Standard Bidding Documents must be used where these are available from the PPOA website: www.ppoa.go.ke. SBDs are available for Design and Build (Turnkey), Works, Supply and Installation of Equipment and Supply of Specialized Goods. SBDs include all the forms necessary to tender and award project contracts.

In addition to the general clauses, some key clauses should be included in an international tender document for projects. These clauses include:

- Bidders Eligibility;
- Clarification of Tender Documents;
- Site Visit and Pre Bid Meeting;
- Language;
- Bid Security;
- Power of Attorney;
- Bid Currencies and Currency Fluctuation;
- Period of Bid Validity;
- Modification and Withdrawal of Bids;
- Conversion to Single Currency for Evaluation;
- Technical and Financial Evaluation;
- Award Criteria; and
- Form of Contract.

3.7.5 Objectives of the Project

The PE should clearly state the functional objectives of the project. In the bid documents it should be made clear that these are mandatory and will override any subsequent detail which may appear to contradict these objectives.

3.7.6 Pre-Bid Conference/Site Visit

The PE is strongly encouraged to organize:

a) a pre-bid conference to brief potential bidders or to offer a chance for the bidders to seek clarifications and/or;

b) a site visit, to enable bidders to gain access to the site for delivery of any proposed works, goods or services.

Details (time, date, location) of the conference/site visit must be included in the tender document. However, the failure of a bidder to attend the conference/site visit should not provide grounds for rejection of that bid. Particular attention should be paid to the date of the conference. It should be held early enough to allow bidders to incorporate the new information in the preparation of their bids but with sufficient notice to allow an international bidder to make the necessary travel arrangements. Typically at least 2 weeks should be allowed before any bidders' conference and at least 2 weeks of the bid period should remain afterwards to allow the bidders to incorporate the information learned. The PE shall ensure that it sends all clarifications or amendments to all bidders on the same day.

In addition to the pre-bid conference, bidders are allowed to submit further requests for clarification before the clarification deadline stipulated in the tender document. In the event that it is considered necessary to amend the bid document, the Procurement Unit should determine whether the circumstances require an extension of the tender submission deadline (an extension must be provided where less than one third of the original time allowed for the preparation of tenders remains).

3.7.7 Bid Validity

The PE should require that bid validity be for a period of not less than sixty (60) calendar days. In some cases of complex international projects, a validity period of one hundred twenty (120) days may be appropriate. The bid validity requirement must be clearly stipulated in the tender document.

3.7.8 Tender Opening

Bidders should submit tenders in full compliance with the terms and conditions of the tender document. The Tender Opening Committee (TOC) will conduct the opening of all tenders, except those received late. Unless disallowed in the tender document for specifically justified reasons, interested bidders may attend the opening.

The following information should be disclosed at the opening:

- Name of bidder;
- Total price of the tender including any discounts;
- Existence and amount of tender security; and
- Presence of a technical and financial proposal.

The TOC will prepare and keep a signed record of bidders in attendance and members of the TOC. Bids received late will be identified (stamped LATE) and recorded. The unopened envelopes will then be returned to the bidders. The TOC will submit a comprehensive report

to the Evaluation Committee (EC) which will contain all relevant information described above.

3.7.9 *Tender Evaluation*

The EC should start the evaluation of tenders received as soon as possible. The PE is advised to consider, in light of the daily workload of the EC, to have the evaluation carried out away from the office in a remote location. This allows the EC members to fully and exclusively commit their time to the tender evaluation.

The evaluation process should begin with a preliminary evaluation to check whether the basic requirements stipulated by Regulation 47 have been met:

- That the tender has been submitted in the required format;
- Any tender security submitted is in the required form, amount and validity period;
- The tender has been signed by a person lawfully authorised to do so;
- The required number of copies of the tender have been submitted;
- The tender is valid for the required period;
- All required documents and information have been submitted; and
- Any required samples have been submitted.

Following the preliminary evaluation a two-step evaluation approach will be used as follows:

- Technical Evaluation to determine bids substantial responsiveness to the technical requirements; followed by
- Financial Evaluation to determine lowest evaluated price.

The Procuring Entity may have the same Evaluation Committee to conduct both the technical and financial evaluation or have two separate committees for each evaluation. In the case of the latter, the technical evaluation shall be carried out first. A member should not be appointed to both committees.

The EC is required, per Regulation 46, to complete the tender evaluation within thirty (30) days after opening of tenders. In the case of two committees, the technical evaluation will be completed within thirty (30) days of tender opening. The financial evaluation will be completed within five (5) days of completion of the technical evaluation provided that both evaluations are completed within 30 days of tender opening (e.g. if the technical evaluation committee takes 29 days to complete the technical evaluation, the financial evaluation committee must complete their evaluation within 1 day.)

3.7.10 Technical Evaluation

The technical evaluation will consist of an examination of proposals to determine their completeness and responsiveness to the terms and conditions of the tender document, without material deviation or omission. A material deviation, reservation or omission is one that:

- Affects in any substantial way the scope, the quality or the performance of the works, services or goods specified in the tender document; or
- A reservation that would limit in any substantial way, inconsistent with the tender documents, the PE's rights or the bidder's obligations under any resulting contract; or
- An omission that, when corrected, would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant tenders.

Hence any tender with material deviation, reservation or omissions is considered non-responsive and is rejected. Only tenders considered responsive will be evaluated per the criteria stipulated in the tender document.

In the technical evaluation of projects, it is important to establish whether there is:

- Full conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
- Understanding of assignment, requirements supported by proposed methodology or design; and
- Suitable staffing, equipment and machinery capacity or arrangements for supervision or management of assignment.

Other elements of the evaluation criteria should be assessed, such as the proposed delivery or completion period, availability of after sale service and spare parts. All these factors need to be clearly stipulated in the tender document as part of the evaluation criteria.

3.7.11 Financial Evaluation

Once the technical evaluation has been completed, the financial evaluation will ensue to determine the evaluated price of each technically responsive tender taking into account the following:

- The tender price as read out during the tender opening;
- Correcting any arithmetic errors, in accordance with the methodology stipulated in the tender document;
- Applying non-conditional discounts offered in the bid;

- Making adjustments for any non-material errors or omissions;
- Applying any additional evaluation criteria, through an increase or decrease to the bid price in accordance with the weighting system established in the bid documents;
- Converting all bids to a single currency (normally the currency stated in the bid documents); and
- Applying any margin of preference indicated in the tender document.

The aim should be to take account of the total lifetime cost of acquisition, including payment terms, the cost of maintenance, energy and consumables and eventual disposal cost or estimated trade-in value.

3.7.12 Margin of Preference

In addition to the reservation for Kenyan contractors allowed under Section 39 of the Act the Minister of Finance will prescribe additional preferences and/or reservations in consideration of economic and social development factors. The PE should clearly set out in the ITT the precise provisions to be applied in respect of preference or reservation.

3.7.13 Request for Clarifications

The EC may decide to seek clarification from a bidder to assist in the evaluation of tenders. The request and clarification shall be in writing. The request for clarification should not seek and the bidder will not be allowed to:

- Modify the substance of the tender; or
- Substantially modify any other selection criteria

A bidder's failure to respond to a request for clarification may constitute grounds for disqualification.

3.7.14 Post-qualification

It is recommended that a further check be carried out at the end of the evaluation to ensure the recommended contractor still has the financial strength and resources to carry out the project successfully. This should be done in accordance with the procedures stipulated in Regulation 52.

3.7.15 Evaluation Report

The EC will submit a consolidated evaluation report to the Tender Committee. The report will be signed by all members of the EC, with any dissenting opinions recorded.

The evaluation report will include at least:

- Summary of tenders received and opened;
- Results of preliminary examination to determine tenders responsiveness;

- Reasons for non-responsiveness of tenders;
- Details of any non-material deviations which were accepted by the EC;
- Results of the technical evaluation;
- Evaluated price of each tender;
- Scoring of the tenders per their total evaluated price;
- Preference scheme, if any; and
- Recommendations for award the contract(s) to the lowest responsive tender(s), or other recommendation, such as the rejection of all tenders.

3.8 Contract Award

The Tender Committee has the responsibility and the prerogatives for contract award, as stipulated in the First Schedule threshold matrix of the Regulations. The TC has three (3) options with the evaluation report received from the EC:

- They can approve the award recommendation;
- They can reject the award recommendation with written reasons; or
- They can approve the contract award recommendation subject to minor clarifications or corrections.

Any item rejected by the TC may be resubmitted for re-adjudication if the EC provides new information.

3.8.1 *Notification of Award*

The PE will send a formal notification, within the tender validity period, to the successful bidder that their bid has been accepted. Unsuccessful bidders will be notified at the same time. A brief description of the reasons for not accepting their offers will be indicated in the letter. **A minimum fourteen (14) day holding period must be observed between the notification and the contract issuance.** No contract shall be signed within this period. This is meant to allow the successful bidder time to accept the award and for the unsuccessful bidders to raise any issues they may have with the award.

The award notice for contracts above Kshs 5 million shall also be sent to PPOA for posting on their website.

3.8.2 *Contract Issuance*

Following the 14-day hold period and acceptance of the award by the successful bidder, the PE may enter into a formal contract agreement with the successful bidder. The contract form and the terms and conditions will be similar to the contract form inserted in the tender document.

It is recommended that the Procuring Entity submit the contract to its Legal Advisor for a final review before signature. Good practice requires that the bidder signs the contract first before the Procuring Entity.

Chapter 4 CONTRACT MANAGEMENT AND ADMINISTRATION

The contract form, contract terms and conditions are included in and constitute an integral part of the tender document. The Bidder, when preparing and submitting a tender, should be familiar with the type of agreement he/she will enter into, should he/she be selected.

The Public Procurement and Disposal General Manual covers the management of contracts and inspection and acceptance arrangements in some detail and should be consulted.

Sound contract management of a project evolves around the control of cost, time, quality and resources.

- Cost Control means the execution and completion of the project within the contract price;
- Time Control means execution and completion of the project within the agreed time schedule;
- Quality Control means the execution of the project in conformance with the technical requirements and/or specifications;
- Resources control refers to the management of human and material resources (personnel, equipment, and supplies).

For each contract entered into, the Procuring Entity must designate a member of staff, or a team of staff, as the Contract Administrator responsible for administering the contract. It is recommended that the PE should implement a team approach to the contract management of large and complex projects. No one single person can effectively manage all phases of a complex procurement contract nor is it desirable for the sake of transparency.

4.1.1 Project Implementation Team

It is recommended that the PE's Accounting Officer appoint the Project Implementation Team (PIT) as early as possible and that the team members possess a diverse set of expertise required for the specific project. The project team will typically include staff from the Procurement Unit, Technical/End User, Finance Unit and the Project Manager. The PIT will receive and review progress reports submitted by the Contractor. The PIT will meet periodically with the Contractor to review implementation progress and related issues. The PIT should channel all communications through the Project Manager. The PIT will review requests for any changes and modifications and submit their recommendations to the TC.

4.1.2 Project Manager

One of the most critical appointments the PE should undertake, very early on before the contract award, is the designation of the Project Manager. In addition to performing the

duties assigned to the Contract Administrator by Chapter 9 of the Public Procurement and Disposal General Manual, the Project Manager has additional responsibilities relating to the special requirements of projects. The Project Manager should have the required technical expertise to effectively carry out the day-to-day contract management and supervision. If this expertise does not exist in-house, the PE should hire a consultant with a clear scope of work and authority. The same consultant, hired to conduct the feasibility study, requirements design, and tender evaluation, may carry out this task. The Project Manager's full name, contact information, terms of reference and authority should be stated in the signed contract in the SCC section. The Contractor should only take instructions from the Project Manager. The Project Manager should have no authority to amend the contract. The Project Manager will be responsible for:

- Ensuring that work proceeds in accordance with the project design and specifications;
- Ensuring that defects are remedied by the contractor;
- Preparing performance reports;
- Monitoring compliance with environmental, health and work safety standards;
- Monitoring quality management systems;
- Clarifying service requirements with the end users; for complex projects, such as hospitals, there may be need for extensive consultations with the medical team;
- Integrating new facilities into existing operations and ensuring that existing operations are not disrupted by the construction work;
- Integrating the major components of the project and coordinating with related projects under separate contracts;
- Dealing with the consequences of delays or changes;
- Maintaining contingency plans;
- Acting as a conduit for variations and dealing with the consequential price adjustments;
- Determining when each project stage has been completed and payment can be made;
- Resolving disputes and maintaining a good relationship with the contractor;
- Managing the defects liability period; and
- Working with the procurement unit and end users during the commissioning stage, when the equipment is procured and installed and the facility is made ready to become operational.

The workload required for sound contract management is considerable. It is good practice for the PE to require the Project Manager to invest in project management software, such as Microsoft Project, and to undergo training in its use.

4.1.3 Decision Making

One of the most common causes of problems in project implementation is the lack of decision making. The PE should ensure that the Project Manager is empowered to make day-to-day decisions to allow the project to proceed while making it clear which decisions require

approval by the IAC or the TC. Meetings of these committees required to make or endorse decisions must be convened promptly.

4.1.4 Contract Plan

The Project Manager should ensure that a plan for implementing the particular contract is produced as early as possible. It is normal practice to ask the contractor to produce a plan within a set period from signing of the contract. The PM needs to add the PE's own requirements to this, such as meetings of the IAC and requests for cash transfers from the Treasury or headquarters. The PM then uses the plan to monitor progress.

4.1.5 Contract Documents

The following documents are typically an integral part of the contract documents:

- a) Form of Contract;
- b) Contract Data Sheet (CDS);
- c) General Conditions of Contract (GCC); and
- d) Appendices to the General Conditions of Contract (Payments, Warranties, Liquidated Damages, Drawings, Price, Technical Specifications, etc.)

In case of conflict between the contract documents listed above, the order of precedence shall be the order stated in the Contract Documents.

The Contract Data Sheet (CDS) supplements the General Conditions of Contract (GCC). It provides specific details pertaining to the particular contract.

4.1.6 General Conditions of Contract

The clauses to be incorporated in the General Conditions of the Contract are prescribed by PPOA and are not to be altered. Special requirements for an individual contract must be covered in the Contract Data so that it is clear to all what is different for the contract in question.

The Contract is a key tool in managing any project. It should be readily accessible to all those involved in managing the contractor and referenced on a daily basis. It provides many tools to assist the PE in its contract management as outlined below.

4.1.7 Contractual Considerations

These include but are not limited to:

- **Governing Law and Jurisdiction.** In most cases this will be the laws of the Republic of Kenya under the jurisdiction of the Kenyan courts, but an international project, particularly one involving neighbouring countries, may require different provisions.

- **Language.** This will normally be English for all communications concerning the contract.
- **Disputes.** When disputes arise over the amount of payments due or the standard of the work or service provided, it is usually desirable for the parties to try to resolve the dispute among themselves before resorting to the formal resolution procedures in the contract, such as arbitration, or seeking redress through the courts. Such mechanisms may be expensive for both parties, may not lead to an optimum solution and may damage goodwill for the remainder of the contract. The aim should be to seek a solution that is based on mutual benefit and takes account of commercial considerations as well as contractual rights.
- **Assignment.** All assignments of this contract to third parties should require the Procuring Entity's prior written consent.
- **Subcontracts.** The Contractor shall not enter into any contract or contracts that will result in the Contractor exceeding the maximum percentage of subcontracting permitted by the Procuring Entity in respect of the Design-Build Services and the Operations Services, as set out in the Bidding Documents. Except with respect to the Subcontractors named in the Contractor's Bid, the Contractor shall not enter into a significant contract (i.e. one for more than 1% of the contract value) with any Subcontractor without the prior consent of the Procuring Entity, which should not be unreasonably withheld.

The Contractor should remain responsible for the observance by Subcontractors of the terms and conditions of the Contract and should ensure that all relevant terms of the Contract are included in its contracts with Subcontractors.

Subcontracting by the Contractor shall not relieve the Contractor of any of its obligations under the Contract and the Contractor shall be responsible for the acts, omissions and defaults of all Subcontractors, and the Subcontractors, employees, agents and sub-subcontractors, as fully as if they were acts, omissions or defaults of the Contractor or the Contractor's Personnel.

- **Contract Records.** All data, information, documentation, account, plans, reports, surveys of any kind ("contract records") prepared by the Contractor should become and remain the property of the Procuring Entity.
- **Performance Security.** Within thirty (30) days of the receipt of notification of award from the Procuring Entity, the successful bidder should be required to furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring Entity. The Performance Security should be valid for sufficient days after the end date to enable a thorough assessment to be made that all obligations have been met. Failure of the successful bidder to comply with these requirements constitutes sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring

Entity may make the award to the next lowest evaluated Bidder or call for new tenders. The Performance Security amount shall not exceed 10% of the total contract price and should be reduced by the value of any retention held by the PE. PEs should accept all forms of security permitted by the Regulations in respect of tender security, notably insurance company guarantees as well as bank guarantees.

- **Contractor's Personnel.** The Contractor may import any personnel necessary for the execution of the Project. The Contractor should ensure that these personnel are provided with the required residence visas and work permits. The contractor should be encouraged to use local labour that has the necessary skills. The contractor should be responsible for repatriation of all of its and its subcontractors' personnel employed on the contract. The Contractor should observe all recognized official holidays, religious or other customs and all local laws and regulations applying to the employment of labour.
- **Changes.** This clause will spell out each Party's rights, obligations and procedures to manage Changes originating from the Procuring Entity or Changes by the Contractor.

For major projects that extend over several years, there may be unavoidable changes in specifications, as the end-users' requirements will change and there may be need to capture advances in technology. These changes should be anticipated and contractually priced, and the impact on the overall project cost assessed. If these changes lead to unacceptable cost overruns, compromises in other areas may be necessary to bring the project cost within budget. Changes must be properly authorised and documented.

No change should be instructed until the cost and impact on the contract programme are known.

- **Variations.** All variations must collectively not exceed 10% of the original contract quantity for goods and services and 15% of the original contract quantity for works. Any price variation must be based on the consumer price index or the Central Bank of Kenya inflation rate.
- **Insurance.** The Procuring Entity should require the Contractor to take out and maintain in effect, during the performance of the contract adequate insurance. The identity of the insurers and the form of the policies should be subject to the prior approval of the Procuring Entity and the Contractor should submit appropriate certificates of insurance demonstrating that it has met its obligations. Some of the insurance policies that may be required include:

- Cargo Insurance (transport);
- Installation All Risks Insurance;
- Third Party Liability Insurance;
- Professional Liability Insurance;

- Automobile Liability Insurance;
- Workers' Compensation; and
- Employer's Liability.

Further guidance on the procurement of insurance services can be found in the Public Procurement Manual for Insurance Services, issued by the PPOA.

- **Defects Liability.** The Contractor should be required to warrant that the Site and New Facility or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed. It is recommended that the Defect Liability Period for large plant and equipment should be 18 months after the date of Completion of the New Facility or 12 months from the date of Operational Acceptance of the New Facility, whichever first occurs, unless specified otherwise in the SCC. For large civil engineering projects, the Defect Liability Period should be 12 months from the Completion Certificate date.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Site, New Facility or Plant and Equipment supplied or of the work executed by the Contractor, the Contractor should promptly, in consultation and agreement with the Procuring Entity regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good, as the Contractor shall, at its discretion, determine, such defect as well as any damage to the New Facility caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the New Facility arising out of or resulting from normal wear and tear.

- **Performance Guarantees.** If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees are not met either in whole or in part, the Contractor should be required at its cost and expense to make any such changes, modifications or additions to the New Facility or any part thereof as may be necessary to meet at least the minimum level of the Functional Guarantees. The Contractor should notify the Procuring Entity of completion of the necessary changes, modifications or additions, and should request the Procuring Entity to repeat the applicable Tests and Inspection until the minimum level of the Functional Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Procuring Entity may consider termination of the Contract.
- **Limitation of Liability.** Except in cases of criminal negligence or wilful misconduct, the Contractor should not be liable to the Procuring Entity in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits of interest costs, provided that this exclusion should not apply to any obligation of the Contractor to pay liquidated damages to the Procuring Entity; and

The aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the aggregate of the total Contract Price (including the Monthly Operations Payment times the original estimate of months during the New Operations Period) and the total available Performance Incentive Compensation, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Procuring Entity with respect to patent infringement.

- **Liquidated Damages.** Under this provision, parties to a contract agree to the payment of a certain sum as a fixed satisfaction for not meeting certain obligations in the contract, particularly timely delivery. They may be appropriately used when damages are uncertain and not capable of being ascertained by any satisfactory or known rule but they must not be punitive and must be related to the damage the PE is likely to suffer. Liquidated damages may be appropriate when a) the Contractor fails to meet technical standards as set out in the GCC; and b) the Contractor fails to attain completion of the project within the time schedule, or any extensions thereof in accordance with the contract terms and conditions. The liquidated amounts shall be specified in the SCC. The aggregate amount of liquidated damages shall not exceed the maximum amount specified in the SCC. Typically this is 15% of the contract value for plant and equipment and 10% for works.
- **Transfer of Ownership.** Ownership of the Plant and Equipment, including spare parts, to be imported into the country or procured locally should be transferred to the Procuring Entity upon completion of the project.
- **Milestones.** These are key indicators of progress in a contract. They should refer to key achievements which mark real progress, which represent something useful to the purchaser and which allow either some of the work to be passed to another contractor if necessary or part of the project to be used by the PE.
- **Payment Terms.** With large projects it is normal to pay the contractor sums on account as the contract proceeds in order to ease its cash flow. Payment terms are a powerful incentive to the contractor. PEs should therefore use payment terms which reflect real progress on the project and attempt to tie payments to useable milestones in the project. These might include the delivery of raw materials to the contractor's factory or site, the manufacture of key sub-components, delivery of materials to site, completion of sections of the work, etc. PEs should avoid committing themselves to making payments on particular dates regardless of the progress achieved by those dates.

Payments are the most powerful tool available to any PE. It is essential that payments are not made before they are due (for example, before work has been completed). However, it is equally important that payments are made when due under the contract because failure to make payments on time for whatever reason may lead to suspension of performance claims for damages and even to the contractor's failure.

- **Indemnification.** The Contractor should be required to indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Contractor's performance of the Services and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Procuring Entity, its contractors, employees, officers or agents.
- **Force Majeure.** If either party is prevented, hindered or delayed from or in performing any of his obligations under the contract they shall not be liable for failure to act in accordance with the contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. Force Majeure shall mean any event:
 - a) Beyond the reasonable control of the Procuring Entity or of the Contractor, as the case may be; and
 - b) Which is unavoidable notwithstanding the reasonable care of the Party affected.
- **Time for Notification.** The PE should require the Contractor to notify it within a set timescale, typically 7 days, of any event or instruction which in the Contractor's view justifies a claim for additional costs.
- **Suspension.** The Procuring Entity may request the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons. The Contractor should be allowed to suspend performance under the contract if the Procuring Entity:
 - a) fails to pay the Contractor any sum due under the Contract within the period specified in the Contract;
 - b) fails to approve any invoice or supporting documents without just cause under the Contract; or
 - c) commits a substantial breach of the Contract.
- **Termination.** The Procuring Entity may at any time terminate the Contract for any reason by giving the Contractor a notice of termination. The Procuring Entity should, upon termination of the contract, make the necessary payments of all services satisfactorily performed prior to the date of termination and all costs incurred by the Contractor to effect the instructions including to its subcontractors. The Procuring Entity may also terminate the Contract for

Contractor's Default if the Contractor becomes bankrupt or insolvent OR assigns or transfers the Contract or any right or interest in violation of the provisions of the Contract OR engages in corrupt or fraudulent practices.

- **Confidentiality.** The Contractor should treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable laws. The Contractor should not publish, permit to be published, or disclose any particulars of the Project in any trade or technical paper or elsewhere without the previous agreement in writing of the Procuring Entity.
- **Health and Safety.** The Contractor should comply with all health and safety regulations applicable to the site and type of the project. The Contractor should comply with any sanitary and environmental regulations which may be in force, take measures to prevent the development of unsanitary conditions in the workplace, living and surrounding areas and take precautions to prevent the spread of infectious or contagious diseases.
- **Operations and Maintenance Manuals.** The Contractor should be required, before the end of project, to submit to the Procuring Entity operating and maintenance manuals.
- **Testing and Inspection.** The Procuring Entity's IAC shall carry out the required testing and inspections of goods, works and services in close collaboration with the Contractor through the Contractor's personnel, the Procuring Entity's or a consultant.

4.1.8 Risk Management

Adequate steps for risk mitigation must be taken in all public procurement contracts. For projects the PE should maintain a risk register to identify and monitor risks. Any risks identified which are not covered by other measures such as performance guarantees should be isolated and addressed before they affect the performance of the contract.

4.1.9 Variations

Many project contracts because of their size and duration will be varied. There are legal limits to the extent of quantity variations allowed to contracts in Kenya: a maximum 10% quantity variation for supplies and services and 15% for works. Price variations should be based on the prevailing consumer price index obtained from the Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya. Any price or quantity variation is to be executed within the period of the contract. These restrictions are for good reason because variations if not controlled can cause excess profits to the contractor and even the failure of a project.

The contract should require the contractor to notify the PE of any circumstances which may affect the price or the programme as early as possible. These may include unexpected events, the actions or failure to act by the PE or another of its contractors or changes requested by users. In all cases the PM must request the effect of any change on the price and the time for

completion. Only when in possession of this information should a decision be recommended to the TC.

The TC must then authorize any variation to be instructed. If approved, the variation should be instructed formally in writing by a Variation Instruction or a Variation Order and the effect on the price and the time for completion recognized in a Variation to Contract Price.

4.1.10 Monitoring and Evaluation of Progress

It is essential on a projects contract to monitor the progress of the contractor. Some information can be required from the contractor but it is more satisfactory to receive reports from independent assessors, although this will add to the overall cost of the project. It is recommended that written reports are submitted monthly with meetings between the PM and the contractor at least once every quarter, or monthly at key stages. These meetings should consider how things could be managed better in the future as well as considering reports on progress to date.

It is advisable to develop a consistent format for supplier performance reports, and essential if the PE wishes to base qualification of contractors on their past performance. Such reports help catch problems early and enable corrective action to be taken during the contract. It is vital that the reports are filed centrally after they have been used to assist in managing the contract so that they are available for future qualification work.

A suggested format is given in the Appendices.

4.1.11 Contractual Claims

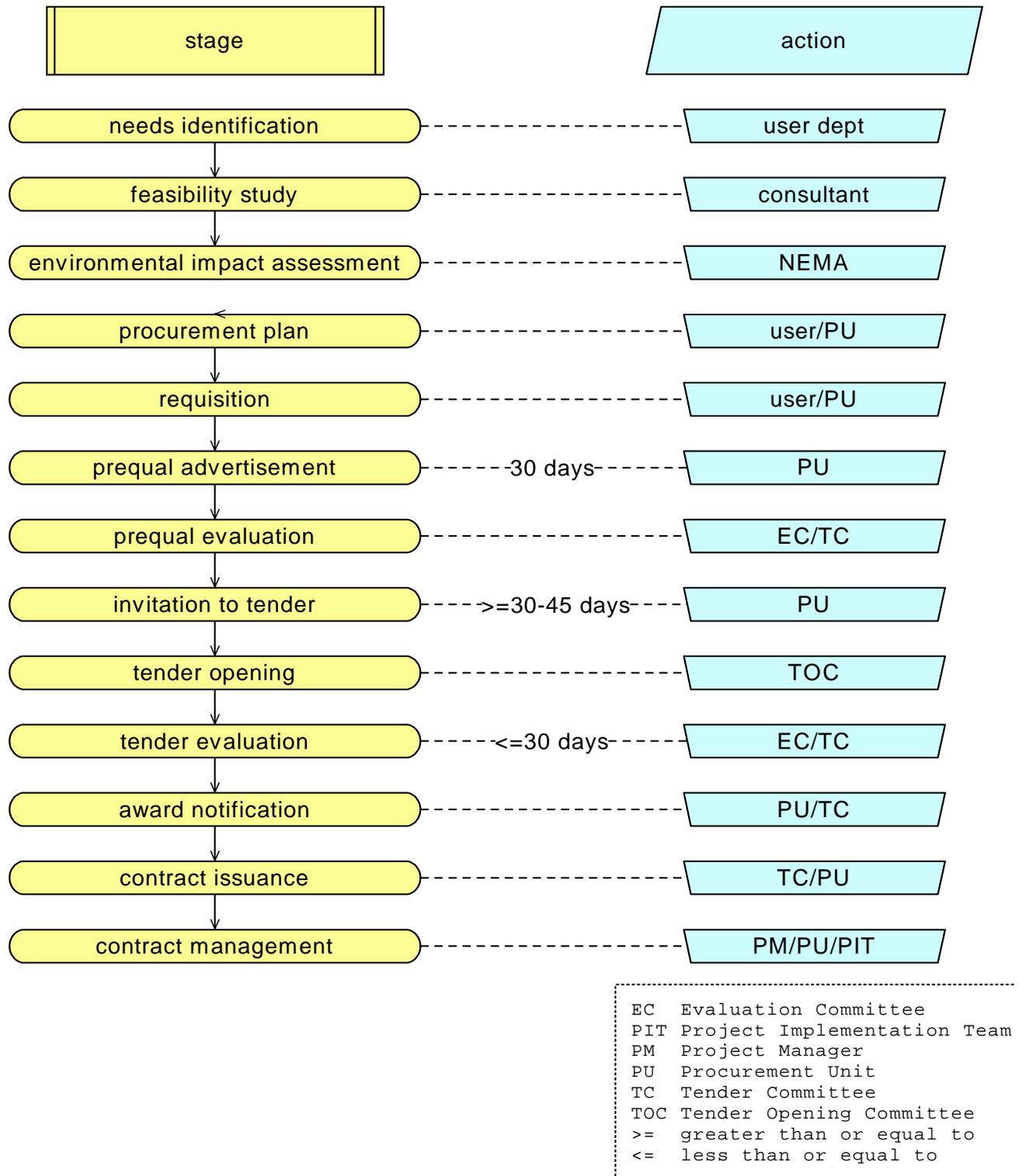
Claims arise from circumstances outside the control of either party to the contract. Because they result in no benefit to the PE but may increase costs or delay completion they should be treated with great suspicion. The contract should set a deadline for claim notification by the contractor. Equally the PE should not delay consideration of claims made – it is much harder to arrive at a proper settlement when staff have retired, been reposted or promoted to other jobs.

4.1.12 Inspection and Acceptance

The Head of the PE is required to appoint members of an Inspection and Acceptance Committee (IAC) for each major contract. The members should have the right expertise to be able accurately to judge progress and quality of the work. Notwithstanding the appointment of a PIT or Project Manager, who will manage the project on a day to day basis, it is the IAC who issue Interim / Progress / Completion / Final Certificates as required and who confirm that payment may be made. The appointment letter for IAC members for a project should make clear the duties of those members in line with Regulation 17 and insist that they satisfy themselves personally that work has been done in accordance with the contract before authorising payments.

Chapter 5 APPENDICES

5.1 Procurement Process for Projects



5.2 Procurement Plan Format

Ref. no.	Item	Priority	No. of units	Unit cost (KSH 000)	Total cost (KSH 000)	Proc meth	Single/ multi year	Aggregation	Budget avl.	Source funding
09M0125 Planned	CAT scanner	3	2	100,000	200,000	Open int'l	09/10-10/11	2 depts requirement	60% 90/10 40% 10/11	USAID
Actual		3	2	120,000	240,000	Open int'l	unchanged	Unchanged	additional from GoK	USAID + GoK

Each line then continues as follows:

Dates for completing key procurement processing activities									
	Date procurement process must start	Pre-qual	Bid docs prep'd	Invit to tender	Bid open	TC appr/ Notif of award	Sign contract	Complete delivery/ install/ testing	
Planned	1/9/09	1/12/09	10/12/09	2/1/10	16/2/10	14/3/10	1/4/10	1/9/10	
Actual	1/10/09	10/1/10	15/1/10	31/1/10	17/3/10	7/4/10	28/4/10	21/10/10	

5.3 Thesholds for Public Procurement in Kenya

Full details of all thresholds are given in the First Schedule to the Regulations but this is a summary of the thresholds for procurement of projects:

Method	Class of PE	Goods	Works	Services	Initiation	Award	Signing	Advertise
<i>Norm</i>		<i>KShs</i>	<i>KShs</i>	<i>KShs</i>	<i>Head of PE or head of user dept</i>	<i>tender committee</i>	<i>AO or Head of PE</i>	
International Open Tender	A & B C	1M-budget 0.5M-budget	<i>as goods</i>	<i>as goods</i>	"	"	"	Y*3 ¹
National Open Tender	A B C	1M/6M ² -budget 1M/4M-budget 0.5M/3M-budget	2M/6M-budget 2M/4M-budget 0.5M/3M-budget	1M/3M-budget 1M/2M-budget 0.5M/1M-budget	"	"	"	Y*2 ³ >6M/6M ⁴ Y*2 >4M/2M Y*2 >3M/3M
Restricted Tender complexity or special	A B C	20M-budget 5M-budget 0.5M-budget	<i>as goods</i>	<i>as goods</i>	"	"	"	N
Restricted Tender disproportionate effort or limited suppliers	A B C	1M-20M 1M-4M 0.5M-3M	2M-20M 2M-4M <i>as goods</i>	<i>as goods</i>	"	"	"	N
RFP		-	-	no limits	Head of PE or AO	"	"	Y*2 (*3 int'l)
Direct Procurement	A & B C	500K – budget 200K - budget	<i>as goods</i>	<i>as goods</i>	AO/Head of PE	tender committee	<i>as norm</i>	N

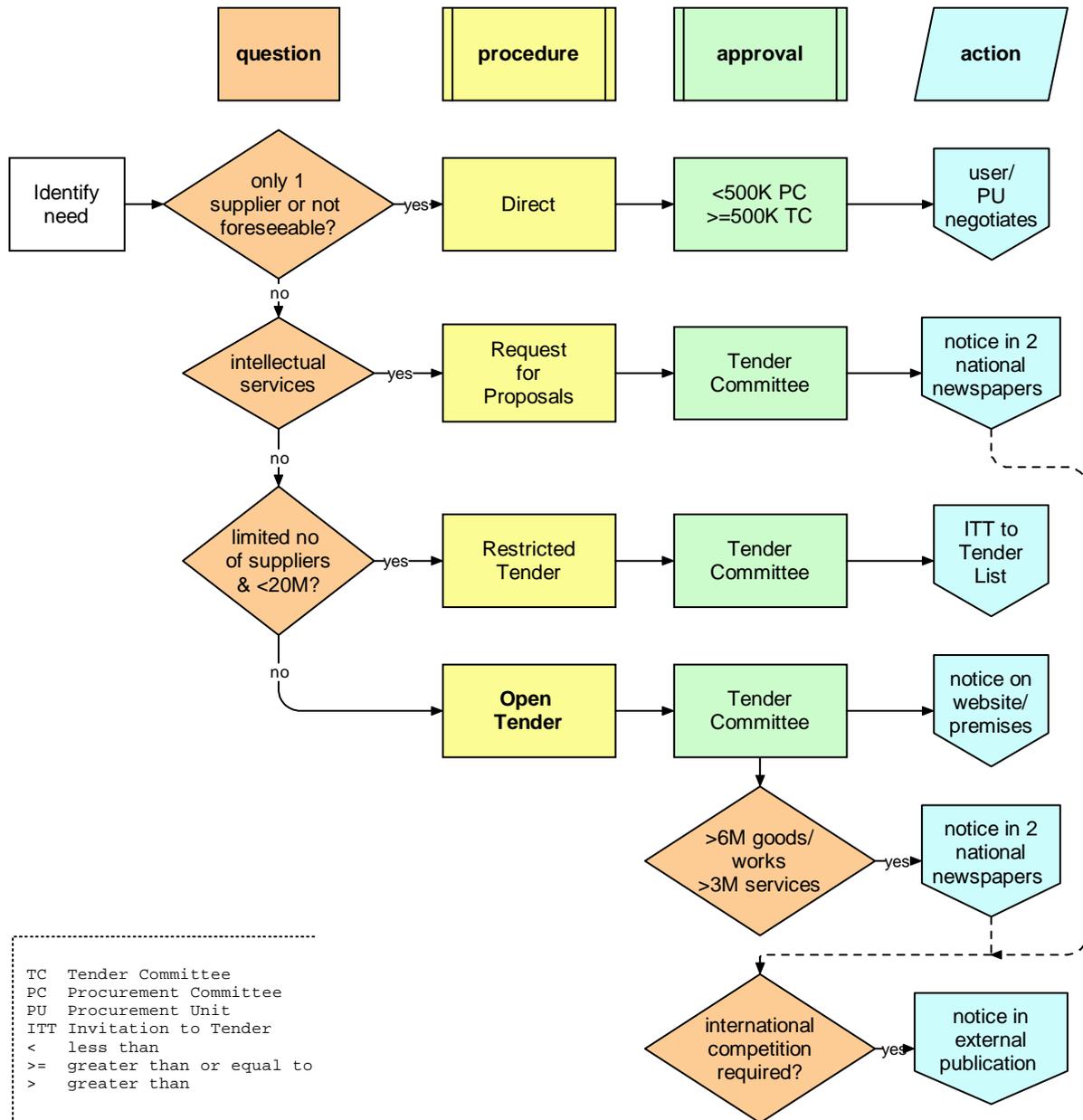
¹ Twice in national newspapers and at least once in an international publication

² Above higher sum requires advertising in press, between the sums use open tender without newspaper advertising (local newspapers/bulletins, notice boards, website, etc), below the lower sum use RFQ.

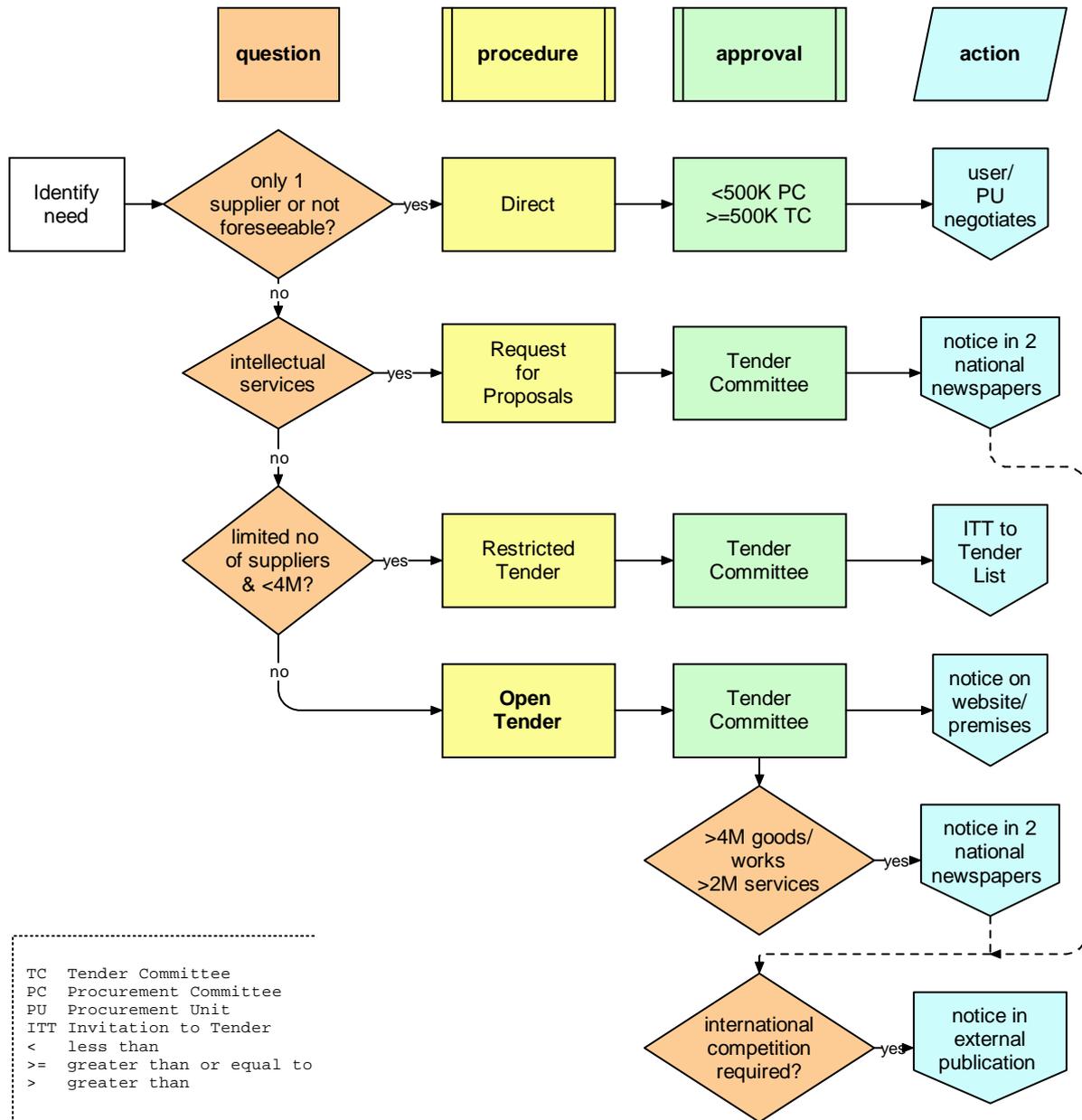
³ Twice in national newspapers

⁴ Higher limit for goods and works, lower limit for services

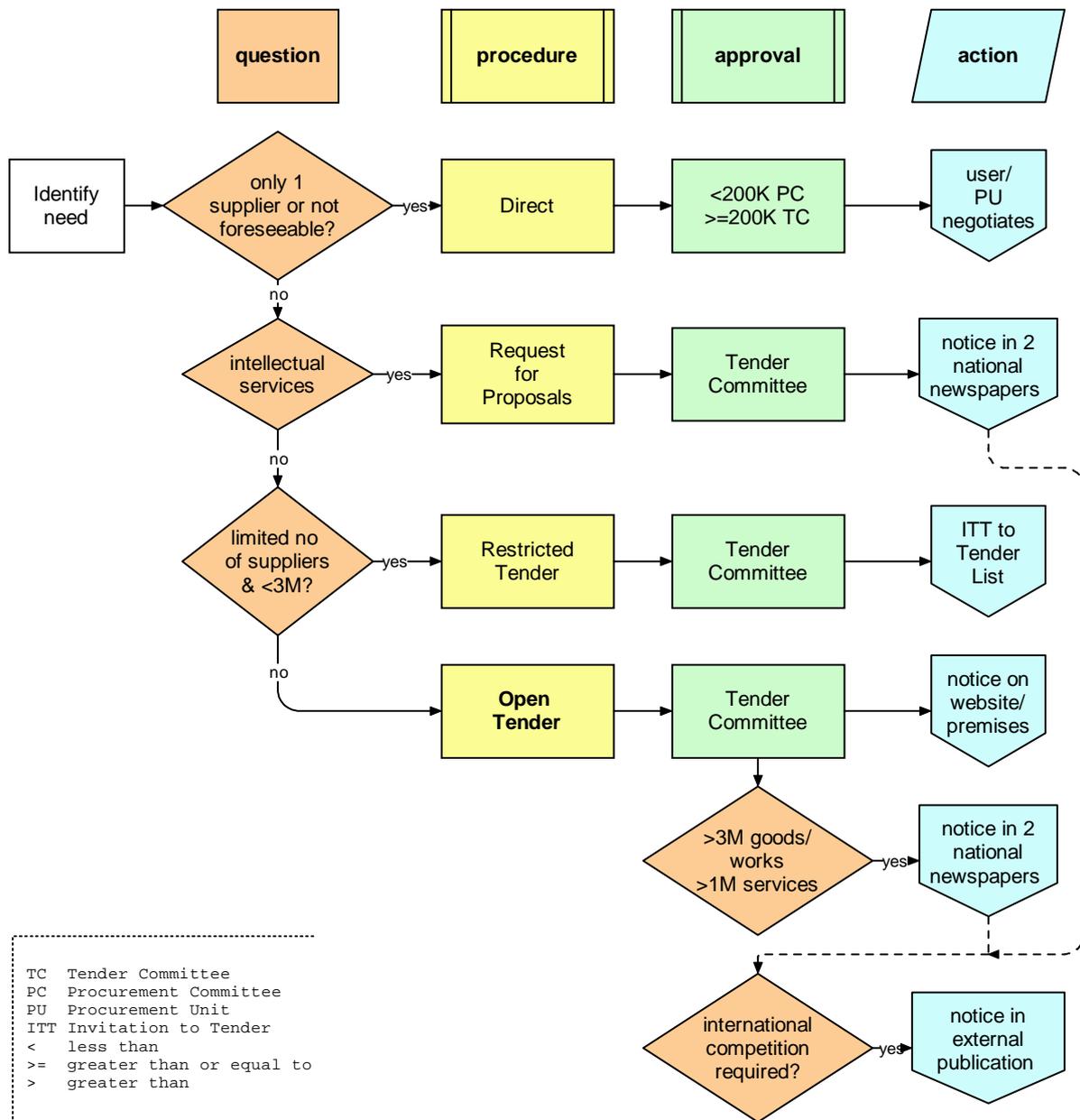
5.4 Kenya Public Procurement - Choice of Procedure, Class A Entity Projects



5.5 Kenya Public Procurement - Choice of Procedure, Class B Entity Projects



5.6 Kenya Public Procurement - Choice of Procedure, Class C Entity Projects



5.7 Standard Bidding Documents Available for Projects

- Specialized Goods
- Supply and Installation
- Works
- Design and Build (Turnkey)

Standard Bidding Documents include instructions to tenderers and standard contracts.

Standard Bidding Documents can be obtained from the PPOA website: www.ppoa.go.ke.

5.8 Contractor Performance Report Format Monthly

PE Contract ref.:	Start Date:	Contractual Completion Date:
Product Category No:	Contractor:	
Site:	Project and Contract Title:	
Original Contract Value:	Original Programme (weeks):	Actual Completion Date:
Completion Value (if agreed):	Final Programme (weeks):	Would you use them again? Yes / No ⁵
Signed (Project Manager):		Date:

⁵ delete as applicable

5.9 Contractor Performance Report Format Final

PE Contract ref.:	Start Date:	Contractual Completion Date:				
Product Category No:	Contractor:					
Site:	Project and Contract Title:					
Original Contract Value:	Original Programme (weeks):	Actual Completion Date:				
Completion Value (if agreed):	Final Programme (weeks):	Would you use them again? Yes / No ⁶				
Comments (<input checked="" type="checkbox"/> as appropriate)	QSM score: ⁷	5	4	3	2	1
Organisation						
Quality						
Personnel						
Environment						
Safety						
Commercial						
Manufacturing						
Technical						
Time						
Additional information (if necessary amplifying comments, e.g. excellent on-site management):						
Signed (Project Manager):					Date:	

⁶ delete as applicable

⁷ 5 = excellent, 4 = good, 3 = average, 2 = poor, 1 = extremely poor

NOTES

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