



**REPUBLIC OF KENYA**

**DRAFT PUBLIC PROCUREMENT AND ASSET DISPOSAL POLICY**

**OCTOBER 2019**

## FOREWORD

Public Procurement and Asset disposal system has evolved from an unregulated system to a legally regulated system that is in line with international standards. Notwithstanding this notable development, the Public Procurement system in Kenya still has gaps and therefore requires guidance on various fronts including; the legislative and regulatory framework, institutional framework, human resource development, public procurement operations, integrity, transparency, accountability and address emerging issues.

It is against this background that the National Public Procurement Policy is developed in line with the Constitution of Kenya, other relevant laws and international best practices. The Policy is anchored on the guiding principles as provided for in the Constitution of Kenya.

The overall objective of the public procurement and asset disposal policy is to achieve a standard public procurement and asset disposal system that is fair, equitable, transparent, competitive, sustainable and cost effective.

The National Public Procurement Policy framework spells out guidelines to govern Public Procurement and Asset Disposal system in areas of procurement planning, procurement processing, inventory and asset management, disposal of assets and contract management geared towards achieving value for money and transparency in the economy.

The policy draws from and builds on the previous experience and challenges in the management of public procurement processes and details policy interventions to address such perennial concerns of mis-procurement, delayed payments, inflated costs and cost overruns, project delays thus hindering achieving value for money.

The policy defines clearly on how public procurement shall be conducted at both levels of government taking into account the need to achieve the procurement impact by reducing costs involved.

Further, the policy is aimed at achieving targeted socio-economic goals through creation of opportunities for participation of disadvantaged and marginalised groups, and local industries in public procurement. In addition, the policy seeks to promote local content with a view to stimulate economic activity and further investment on local solutions.

The policy takes cognisance of the critical role played by key stakeholders in the implementation of this policy and will continuously engage with them with a view to improve public procurement and asset disposal system.

As a government we are committed to the full implementation of the policy

**Hon. (Amb) Ukur Yattani**  
**Ag. Cabinet Secretary /National Treasury & Planning**

## ACKNOWLEDGEMENTS

Public Procurement in Kenya plays a central role of driving the social economic development of the nation. Yet it is prone to risks which lead to possible loss of funds, materials, goods and services especially where sound procurement procedures and principles are not adhered to. The policy, the public procurement and asset disposal Act, 2015 together with the attendant Regulations, 2019, complete the requisite legal regime upon which public sector procurement will be premised.

The Government will continue to carry out reforms towards achieving sound Public Procurement system based on the principles of good governance, integrity, equality, equity, professionalism, value for money, transparency and accountability.

While Value for money remains a key objective of all public expenditures, there is need for simple and predictable public procurement and asset disposal processes, robust procurement planning, sound contract formation and management, transparent administrative review procedures, effective inventory management and stock control procedures, and appropriate measures to enhance risk management. For this reason, the National Public Procurement Policy framework has been developed and outlines government policy statements, strategies and objectives including a clear intent to support groups previously marginalized from mainstream public procurement.

I take this opportunity to recognize the stewardship of the public procurement directorate in executing the wide mandate of spearheading the public procurement policy at both levels of Government. Special mention also goes to the Regulator, PPRA for their immense contribution towards realization of this policy.

Development of this Policy framework is part of ongoing Public Finance Management reforms and all stakeholders are encouraged to play their part to make the public procurement system better. We look forward to engaging with each of the stakeholders on all procurement issues, and together building an efficient and effective Public Procurement System capable to serve Kenya better.

**Dr. Julius Muia, PhD, EBS**  
**Principal Secretary/National Treasury**

## ACRONYMS

AG	:	Attorney General
AO	:	Accounting Officer
KPI	:	Key Performance Indicator
M&E	:	Monitoring and Evaluation
MTEF	:	Midterm Expenditure Framework
PPRAB	:	Public Procurement Administrative Review Board
PPRA	:	Public Procurement Regulatory Authority
PE	:	Procuring Entity
PFM	:	Public Financial Management
SME	:	Small and Medium Enterprises

## DEFINITIONS

“**Accounting Officer**” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“**Assets**” mean movable and immovable property, tangible and intangible, including immovable property, stores, equipment, land, buildings, animals, inventory, stock, natural resources like wildlife, intellectual rights vested in the state or proprietary rights;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“**Contract Administration**” means management of terms of procurement or asset disposal contracts made with contractors or suppliers after tender award by a procuring entity, for the purpose of assuring compliance with obligations such as timely delivery, quality and quantity inspection, acceptance, payment, claims, dispute resolution and completion, among other terms;

“**Contractor**” means a person who enters into a procurement contract with a procuring entity, and includes the main contractor;

“**Compliance**” - Compliance means conforming to rules, policies and laws.

“**Conformity**” - compliance with standards, rules, or laws.

“**Corruption**” has the meaning assigned to it under section 2 of the Anti-Corruption and Economic Crimes Act 2003;

“**Disadvantaged group**” means persons denied by mainstream society access to resources and tools that are useful for their survival in a way that disadvantages them or individuals who have been subjected to prejudice or cultural bias because of their identities as members of groups or categories of persons without regard to their individual qualities, and includes enterprises in which a majority of the members or shareholders are youth, women, persons with disability or categories as shall be prescribed

“**Disposal**” means the divestiture of public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, destruction, auction or any other method however classified;

“**e-procurement**” means the process of procurement using electronic medium such as the internet or other information and communication technologies;

“**Equality**” - A situation where all persons are treated fairly and have the same opportunities;

“**Equity**” - the quality of being fair and impartial.

“**Financial Year**” has the meaning assigned to it under Article 260 of the Constitution;

“**Integrity**” Firm adherence to code of moral values and principles.

**“Inventory Management”** refers to the process of ordering, storing, and using a company's inventory. These include the management of raw materials, components, and finished products as well as warehousing and processing such items.

**“Key Performance Indicator”** is a measurable value that demonstrates how effectively an institution achieves key business objectives.

**“Monitoring”** observe and check the progress or quality of (something) over a period of time; keep under systematic review.

**“Person”** has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship;

**“Preference”** the right or opportunity to select a tenderer from an identified target group which is considered more desirable than another.

**“Procurement”** means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods including livestock or any combination and includes advisory, planning and processing in the supply chain system;

**“Professional”** means a person who has professional qualifications in a specialized field and who is engaged in the practice of a skill or trade, having undertaken the relevant formal academic and professional training including undertaking practical learning in the form of apprenticeship or tutelage under the guidance of a suitably qualified and experienced person in the field of training or tutelage;

**“Public Entity”** includes:

- a. the national government or any organ or department of the national government;
- b. a county government or any organ or department of a county government;
- c. the Judiciary and the courts;
- d. the Commissions established under the Constitution;
- e. the Independent Offices established under the Constitution;
- f. a state corporation within the meaning of the State Corporations Act; Cap. 446.
- g. the Central Bank of Kenya established under the Constitution;
- h. a public school within the meaning of the Basic Education Act, 2013; No. 14 of 2013;
- i. a public university within the meaning of the Universities Act, 2012; No. 42 of 2012;
- j. a city or urban area established under the Urban Areas and Cities Act, 2011; No. 13 of 2011;
- k. a company owned by a public entity;

- l. a county service delivery coordination unit under the National Government Co-ordination Act, 2013; No.1 of 2013.
- m. a constituency established under the Constitution;
- n. a Kenyan diplomatic mission under the state department responsible for foreign affairs;
- o. a pension fund for a public entity;
- p. a body that uses public assets in any form of contractual undertaking including public private partnership;
- q. a body in which the national or county government has controlling interest;
- r. a college or other educational institution maintained or assisted out of public funds;
- s. an entity prescribed as a public entity for the purpose of this paragraph; or
- t. any other entity or a prescribed class of public entities or particular public entities that uses public money for purposes of procurement or any other entity as declared under sections 4 and 5 of the Public Finance Management Act, 2012;

**“Public Money”** includes monetary resources appropriated to procuring entities through the budgetary process, as well as extra budgetary funds, including aid, grants and loans, put at the disposal of procuring entities by donors;

**“Public Procurement”** means procurement by procuring entities using public funds;

**“Risk”** means the probability or threat of damage, injury, liability, loss or any other negative occurrence resulting from external or internal vulnerabilities.

**“Risk Management”** means the process of identification, evaluation, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability or impact of unfortunate events or to maximize the realization of opportunities and what action should be taken.

**“Reservations”** means exclusive preference to procure goods, works and services set aside to a defined target group of tenderers within a specified threshold or region;

**“Services”** means any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, nonprofessional and commercial types of services as well as goods and works which are incidental to but not exceeding the value of those services;

**Stakeholder”** means a party that has an interest in an organization and can either affect or be affected by the business.

**“Standard”** means characteristics or set of characteristics for an item which for reasons of quality level or compatibility with other products is accepted by the manufacturers and users of that item as a required characteristic for all items of that type;

**“Supplier”** means a person who enters into a procurement contract with a procuring entity to supply goods, works or services;

**“Supply Chain Management”** means the design, planning, execution control and monitoring of supply chain activities which includes procurement, purchasing, logistics, transportation, warehousing, storage, stock control, contract management and distribution, with an objective of creating value to meet the objectives of the procuring entity;

**“Sustainable Procurement”** is the adoption and integration of Corporate Social Responsibility (CSR) principles into your procurement processes and decisions while also ensuring, they meet the requirements of your company and its stakeholders

**“Tender”** means an offer in writing by a candidate to supply goods, services or works at a price; or to acquire or dispose stores, equipment or other assets at a price, pursuant to an invitation to tender, request for quotation or proposal by a procuring entity;

**“Value for money”** means the undertaking by a procuring entity that results in a benefit accruing to that procuring entity defined in terms of cost, price, quality, quantity, timeliness and risk transfer

**“Works”** means a combination of goods and services for the construction, repair, renovation, extension, alteration, dismantling or demolition of buildings, roads or other structures and includes —

(a) the designing, building, installation, testing, commissioning and setting up of equipment and plant;

(b) site preparation; and (c) other incidental services; “woman” means a person of the female gender who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of the shareholders, members or persons and a majority of its directors are of the female gender;

## TABLE OF CONTENTS

FOREWORD .....	2
ACKNOWLEDGEMENT.....	3
ACRONYMS .....	4
DEFINITIONS .....	5
TABLE OF CONTENTS .....	9
1.0 INTRODUCTION .....	11
1.1 BACKGROUND.....	11
1.2 SITUATIONAL ANALYSIS .....	11
1.3 PURPOSE.....	12
1.3 SCOPE OF APPLICATION .....	12
1.4 POLICY, GOAL AND OBJECTIVES .....	13
2.0. GUIDING PRINCIPLES.....	14
2.1 GOOD GOVERNANCE .....	14
2.2 INTEGRITY .....	14
2.3 EQUALITY/EQUITY .....	14
2.4 PROFESSIONALISM .....	14
2.5 TRANSPARENCY AND ACCOUNTABILITY .....	15
2.6 COMPLIANCE AND CONFORMITY.....	15
2.7 MAXIMIZATION OF VALUE FOR MONEY .....	15
2.8 EFFICIENCY AND EFFECTIVENESS.....	15
2.9 RECOGNITION OF INTERNATIONAL TRADE TREATIES AND INTERESTS.....	15
2.10 SUSTAINABLE PROCUREMENT .....	15
3.0 PUBLIC PROCUREMENT INSTITUTIONAL FRAMEWORK.....	16
3.1 THE PARLIAMENT.....	16
3.2 THE CABINET .....	16
3.3 THE NATIONAL TREASURY.....	16
3.4 THE CABINET SECRETARY RESPONSIBLE FOR FINANCE.....	17
3.5 CABINET SECRETARIES .....	17
3.6 ACCOUNTING OFFICERS.....	17
3.7 PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD .....	17
3.8 PUBLIC PROCUREMENT REGULATORY AUTHORITY.....	17
3.9 KENYA INSTITUTE OF SUPPLIES MANAGEMENT(KISM).....	18
3.10 THE ATTORNEY GENERAL.....	18
3.11 COUNTY TREASURY.....	18
3.12 COUNTY EXECUTIVE MEMBER RESPONSIBLE FOR FINANCE .....	18
4.0 PREFERENCE AND RESERVATIONS SCHEMES.....	20
5.0 PROCUREMENT PLANNING.....	21
6.0 PROCUREMENT PROCESS.....	22

7.0	CONTRACT FORMATION AND MANAGEMENT.....	23
8.0.	INVENTORY AND ASSET MANAGEMENT.....	24
9.0	ASSET DISPOSAL.....	25
10.0	RECORDS MANAGEMENT.....	26
11.0	ETHICS IN PUBLIC PROCUREMENT .....	27
12.0	STAKEHOLDERS ENGAGEMENT.....	28
13.0	RISK MANAGEMENT IN PROCUREMENT .....	29
14.0	COMPLIANCE AND ENFORCEMENT.....	30
15.0	EMERGING ISSUES .....	31
16.0	POLICY IMPLEMENTATION,MONITORING,EVALUATION AND REVIEW.....	32
16.1	POLICY ADMINISTRATION AND IMPLEMENTATION.....	32
16.2	MONITORING OF POLICY IMPLEMENTATION .....	32
16.4	REVIEW OF THE POLICY.....	32

## **1.0 INTRODUCTION**

### **1.1 Background**

The Public Procurement and Asset Disposal System in Kenya has evolved from a system which had no regulations to a legally regulated procurement and asset disposal system in line with International Standards. Key hallmarks in the evolution of the Public Procurement and Asset Disposal were the Treasury Circulars in post-independence Kenya and the Supplies Manual of 1978.

The Government of Kenya has undertaken reforms over the years which commenced with the Review of the Public Procurement System in 1997. The Review identified various gaps that led to the enactment of the Exchequer and Audit (Public Procurement) Regulations, 2001, the Public Procurement and Disposal Act 2005, and the Public Procurement and Disposal Regulations, 2006. In 2010, Kenya promulgated a new Constitution. Article 227 of the Constitution of Kenya provides for a procurement and asset disposal system that is fair, equitable, transparent, competitive and cost-effective. To give effect to the Article, the Public Procurement and Asset Disposal Act, 2015, was enacted.

### **1.2 Situational Analysis**

The current public procurement and asset disposal system in Kenya has been strengthened in a number of aspects including the existence of an elaborate legal framework aligned to the Constitution of Kenya, and Vision 2030. The framework covers the public procurement and asset disposal cycle; establishment of institutions with clear mandates; decentralization of procurement giving procuring entities full autonomy to act within the law; and recognition of procurement as a strategic function in public entities.

Despite the reforms undertaken, the Public Procurement and Asset Disposal system in Kenya still has challenges. The levels of compliance with the legal framework and guidelines are generally low and the capacity for enforcement remains weak. Poor contract formation, management and implementation is characterized by unclear contract terms and conditions, nonperformance, unwarranted variations, delays and cost overruns that has led to inherent financial and operational risks often occasion loss of Government funds.

Similarly, the public procurement and Asset Disposal system faces ethical challenges occasioned by weak governance that impede competition, accountability, transparency and integrity principles. This partly contributes to the inflated cost which the government procures goods, works and services with the ultimate result being wastage of resources and loss of public funds.

In addition, records management in procuring entities is characterized by scattered, inaccurate and incomplete documentation and poor filing making it a challenge to audit public procurement and asset disposal processes.

For a long time, a large segment of society was economically disadvantaged due to unfair competition or discrimination in government procurement opportunities. In addition, local industries have faced stiff competition from well-established foreign firms thereby edging them out of business.

Poor procurement planning in procuring entities is a major contributory factor to inefficiencies in the delivery of goods works and services. The poor planning disrupts programs that may result in budget distortions and pending bills. A lot of wastage and increased cost are incurred due to unnecessary high stocks, poor storage and poor record keeping which is largely manual. Lack of standardization of procurement processes has led to unfairness, lack of transparency and accountability, hampers competition and hence compromises value for money. Further it creates room for corrupt practices and loss of government funds. Public procurement and asset disposal system is faced with numerous risks including but not limited to financial, economical, technological, legal, environmental, social and political risks. The occurrence of these risks often lead to loss of public resources which hampers service delivery.

The aforementioned challenges and the emerging issues in the dynamic business environment necessitate policy interventions on various fronts including; legislative and regulatory framework, institutional framework, capacity development, public procurement operational standards and governance.

It is against this background that the Public Procurement and Asset Disposal Policy is developed to guide and standardize the functioning of the public procurement and asset disposal system. The Policy will facilitate a sustainable, organized and well-regulated environment that upholds the guiding principles and objectives as outlined in the Constitution of Kenya, 2010.

### **1.3 Purpose**

The Public Procurement and Asset Disposal Policy has been developed to provide direction to all public entities and other stakeholders involved in public procurement and disposal activities.

It informs the Public Procurement and Asset Disposal legal framework which enables public entities to achieve value for money, fairness, competition, equity, equality, supplier diversity, transparency and accountability to ensure confidence in public procurement and asset disposal system.

## **1.4 Scope of Application**

The policy covers the entire public procurement and asset disposal system both in the National and County Governments, with their respective agencies/bodies/departments. It applies to all procuring entities using public funds for procurement of goods, works or services. It also covers procurement under bilateral /multilateral agreements where such agreements provide for use of country procurement system.

The governing principles outlined in this policy apply to all public entities. Public entities may establish additional internal policies, guidelines or procedures that are consistent with the framework to supplement the governing principles contained in this document.

The policy applies to procurement planning, procurement processing, contract management, inventory and asset management and disposal of assets as well as compliance and enforcement mechanisms.

The public procurement and asset disposal policy takes into consideration the Kenya Vision 2030, the corresponding medium-term plans and other government policies.

## **1.5 Policy Goal and Objectives**

The goal of the Policy is to achieve a robust public procurement and asset disposal system that is fair, equitable, transparent, competitive, sustainable and cost effective. The Policy objectives are:

- i) To ensure that public procurement and asset disposal is properly regulated through laws, rules and guidelines;
- ii) To stimulate and encourage socio-economic development;
- iii) To ensure ethical practices and promote professionalism in public procurement and asset disposal system;
- iv) To standardize the public procurement and asset disposal system;
- v) To ensure the establishment of dispute resolution mechanisms in public procurement and asset disposal processes;
- vi) To foster sustainable procurement practices;
- vii) To continuously improve the efficiency of procurement system by leveraging on technology;
- viii) To promote efficiency and effectiveness; transparency and accountability; fairness; equity and value for money in public procurement and asset disposal;

## **2.0. GUIDING PRINCIPLES**

Each Public Entity shall maintain high legal, ethical, managerial, and professional standards in the management of the resources entrusted to it as a publicly funded institution and will ensure that goods, works and services are procured cost effectively.

### **2.1 Good Governance**

Good governance entails a well-functioning public procurement and asset disposal system devoid of corrupt practices. It involves transparency, accountability and predictability in decision-making processes and oversight mechanisms to guard against arbitrariness and ensure prudent use of public resources.

Public entities shall establish systems and procedures to ensure procurement and asset disposal decisions are made in a systematic and structured manner. The entities shall ensure there is segregation of responsibilities in procurement and asset disposal processes.

### **2.2. Integrity**

Public officers and all other persons involved in procurement and asset disposal matters shall maintain a high standard of integrity in discharging their responsibilities and obligations in a professional and ethical manner.

### **2.3 Equality/Equity**

Public entities shall provide ample and equal opportunities for participation by interested and qualified suppliers of goods, works or services. Contractors/suppliers shall be provided with the same information and public officers shall not impose any personal bias or prejudices in their procurement and asset disposal decisions. All actions taken shall be impartial and based on the merits of the subject matter. Tender documents shall not contain any bias except as otherwise expressly allowed under the legal framework.

### **2.4 Professionalism**

Public Procurement and asset disposal function shall be managed by procurement professionals with requisite qualifications recognized in Kenya. The officers shall conduct themselves in line with the code of conduct for procurement professionals. Public entities shall foster the highest standards of professional conduct and ensure continuous professional development of their procurement staff.

## **2.5 Transparency and Accountability**

Public Procurement and asset disposal processes shall be open, fair, consistent, transparent and accountable with a view to obtaining value for money. Public sector resources shall be used in a responsible, efficient and effective manner.

## **2.6 Compliance and Conformity**

Public entities shall comply and conform to all applicable laws, regulations, trade agreements, policies, guidelines and procedures that relate to procurement and asset disposal and not engage in any activity to circumvent the clear intention of the law.

## **2.7 Maximization of Value for money**

Public procuring entities shall ensure value for money through optimum combination of total cost of ownership, quality and timeliness of the items being procured. Preventing wastage and fostering competition, transparency and accountability during the procurement and disposal processes are key conditions for achieving value for money.

## **2.8 Efficiency and Effectiveness**

Public Procurement and asset disposal processes should ensure optimal utilisation of resources, for the desired outcomes. It encompasses the performance of the procurement and disposal process as cost effectively as possible and in a timely manner.

## **2.9 Recognition of International Trade Treaties and Interests**

Kenya's external environment is significantly influenced by the changing international and regional trade arrangements. Public Procurement and Asset Disposal system shall recognize multilateral, regional and bilateral trade agreements to which Kenya is a signatory.

## **2.10 Sustainable Procurement**

Public entities shall adopt sustainable procurement to meet their needs for goods, works and services to achieve value for money on a whole life basis in terms of generating benefits not only to the organization but also to the society and the economy whilst minimizing damage to the environment.

### **3.0 PUBLIC PROCUREMENT AND ASSET DISPOSAL INSTITUTIONAL FRAMEWORK**

The existing legal and institutional frameworks will ensure effective implementation of the public procurement and asset disposal policy. The institutions shall undertake distinct and separate roles in legislation, policy formulation, implementation, professionalism, oversight, regulation and dispute resolution.

#### **3.1 The Parliament/County Assemblies**

The responsibilities of Parliament/County Assemblies with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Enact and amend procurement and asset disposal laws and regulations in line with the Constitution;
- ii) Provide oversight in the implementation of the procurement and asset disposal laws and regulations through review of statutory reports.
- ii) Approve and appropriate budgets to facilitate procurement of goods, works and services;

#### **3.2 The Cabinet**

The responsibilities of the Cabinet with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Approve public procurement and asset disposal policy
- ii) Set government strategic priorities in public procurement and asset disposal
- iii) Approve public procurement and asset disposal legislative proposals before submission to parliament;
- iv) Approve budget proposals before submission to parliament

#### **3.3 The National Treasury**

The responsibilities of the National Treasury with respect to Public Procurement and Asset Disposal include the following, among others;

- i. Public procurement and asset disposal policy formulation;
- ii. Design and prescribe an efficient procurement and asset disposal management system for both national and county governments;
- iii. Budget formulation

### **3.4 The Cabinet Secretary Responsible for Finance**

The responsibilities of the Cabinet Secretary with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Prescribe regulations and guidelines on implementation of public procurement and asset disposal policies in accordance with procurement law;
- ii) Submit proposed budget estimates to parliament for approval
- iii) Regular briefing to cabinet and parliament on implementation of public procurement and asset disposal policies, rules and procedures;

### **3.5 Cabinet Secretaries**

The responsibility of Cabinet Secretaries with respect to Public Procurement and Asset Disposal is to oversee implementation of public procurement and asset disposal policies to facilitate delivery of their mandates.

### **3.6 Accounting Officers**

The responsibilities of Accounting Officers with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Implementation of public procurement and asset disposal policies, rules and procedures;
- ii) Capacity building of Supply Chain Management Officers in their respective procuring entities;

### **3.7 Public Procurement Administrative Review Board**

The responsibilities of Public Procurement Administrative Review Board with respect to Public Procurement and Asset Disposal is to review, hear and determine public procurement and asset disposal disputes at National and County governments.

### **3.8 Public Procurement Regulatory Authority**

The responsibilities of PPRA with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Regulate the public procurement and asset disposal system, monitor and report on its functioning;
- ii) Enforce compliance with the public procurement and asset disposal law and provide technical support to procuring entities.

### **3.9 Kenya Institute of Supplies Management (KISM)**

The responsibilities of KISM with respect to Public Procurement and Asset Disposal include the following, among others;

- (a) establish, monitor, improve and publish the professional standards for supplies practitioners;
- (b) register procurement professionals and take such disciplinary measures as may be necessary to maintain proper standard of conduct among such persons;

### **3.10 The Attorney General**

The responsibilities of the Attorney General with respect to Public Procurement and Asset Disposal include the following, among others;

- i) Provide legal advice to government on public procurement and asset disposal matters;
- ii) Drafting of legislation pertaining to public procurement and asset disposal;
- iii) Represent accounting officers in judicial proceedings involving public procurement and asset disposal matters.

### **3.11 County Treasuries**

The responsibilities of the county treasuries with respect to Public Procurement and Asset Disposal include the following, among others;

- i. Implementation of Public Procurement and Asset Disposal policy, laws and regulations at county level;
- ii. Formulation of county Budget

### **3.12 County Executive Member Responsible for Finance**

The responsibilities of County Executive Member responsible for Finance with respect to Public Procurement and Asset Disposal include the following, among others;

- i. Oversee the implementation of public procurement and asset disposal policy in the county government;
- ii. Submit proposed budget estimates to county assembly
- iii. Regular briefing to county executive committee and county assembly on implementation of public procurement and asset disposal policies, rules and procedures;

## 4.0 PREFERENCE AND RESERVATIONS SCHEMES

The government being the largest buyer, has the potential of achieving targeted socio-economic goals through creation of opportunities for participation of disadvantaged and marginalised groups, and local industries in public procurement. In consideration of socio-economic development factors, the government shall put in place affirmative programmes and preference schemes to facilitate participation of disadvantaged groups, local contractors and promote locally manufactured products through public procurement and asset disposal.

### **Policy Statement**

The government shall promote the protection or advancement of regions, persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination as well as locally manufactured products through the application of preference and reservation schemes.

### **Objectives; -**

- To increase participation of the historically disadvantaged groups and micro, small and medium enterprises (MSME's) in public procurement and asset disposal opportunities;
- To stimulate and encourage the growth and development of local industries for socio-economic development.

### **Strategies; -**

- The government shall establish preference and reservation schemes that will benefit the target groups, local industries and regions;
- Public procuring entities shall apply preference and reservation schemes in accordance with the law.
- Apply sanctions to those procuring entities who fail to implement preference and reservations schemes including submission of statutory reports as required by the law.
- Develop capacity of citizen and local contractors through training, mentoring and transfer of knowledge.

## 5.0 PROCUREMENT PLANNING

Procurement planning is a critical tool that enables execution of the approved budget and ensures cost savings, efficient business operations and increased value for money. A procurement plan should be based on indicative or approved budget and informs cash flow projections. Where procuring entities engage in unplanned procurements or fail to adhere to the approved procurement plan, it disrupts other programs and may result in budget distortions and pending bills.

### **Policy Statement**

All procuring entities shall prepare a comprehensive and realistic procurement plan within their approved budget taking into consideration the provisions of the preferences and reservation schemes.

### **Objective; -**

- To promote efficiency and effectiveness in the use and application of public resources.

### **Strategies; -**

- Timely preparation of annual procurement plans in line with annual work plans and budgets;
- Timely execution of approved annual procurement plans;

## 6.0 PROCUREMENT PROCESS

Sound public procurement process should be efficient, competitive, fair, simple, transparent and accountable for effective service delivery. In order to standardize public procurement processes across all public entities, the law shall prescribe principles, basic rules, guidelines and procedures to govern the public procurement system.

### *Policy Statement*

Procuring entities shall obtain goods, works, and services through a process that is competitive, fair, transparent, accountable and cost effective. Where circumstances do not permit the use of a competitive process, the procurement law shall prescribe alternative procurement methods to be applied with proper justifications.

### *Objectives;*

- To promote efficiency and effectiveness, competitiveness, transparency and accountability, fairness, equity and value for money in public procurement
- To standardize the public procurement processes;
- To ensure the establishment for dispute resolution mechanism in procurement process;
- To facilitate sustainable procurement practices;
- To continuously improve the efficiency of procurement system by leveraging on technology;

### **Strategies**

The Government shall;

- leverage on technology for efficient, effective, transparent and accountable procurement system;
- develop and use standard tender documents and formats, manuals and public procurement guidelines;
- provide a framework to achieve economies of scale in public procurement.
- embrace open contracting data standards
- Ensure uniform and consistent application of the procurement and asset disposal law;
- Institute appropriate administrative dispute resolution framework;
- Develop sustainable procurement framework and guidelines

## 7.0 CONTRACT FORMATION AND MANAGEMENT

Contract management encompasses the life cycle of a contract and ensures the parties involved fulfill their contractual obligations. There is need to adopt a prudent contract formation and management which entails systematically and efficiently managing contract development, implementation, and administration for maximization of financial and operational performance and managing inherent risk.

### *Policy Statement*

Procuring entities shall ensure that contractual terms and conditions are clear and are managed efficiently in a manner that minimizes risks. Contractual arrangements shall portray fairness, transparency and accountability and ensure value for money.

### *Objective*

To implement public procurement contracts in a timely and cost-effective manner that achieves value for money while managing risks.

### *Strategies*

- Procuring entities shall enter into a written contract with a successful bidder in line with the award decision based on tender documents;
- Procuring entities shall institute mechanisms for effective contract management that ensure proper documentation, review, monitoring, and evaluation of projects, to mitigate against the inherent risks.
- Procuring entities shall ensure that performance and payment obligations are met in line with contract terms and conditions;
- Procuring entities shall ensure that an efficient and effective dispute resolution mechanism is in place;
- Procuring entities shall maintain data base of all procurement contracts.

## 8.0. INVENTORY AND ASSET MANAGEMENT

Inventory management is the process of managing stores/items procured by procuring entities and covers receipt, storage and distribution. Deliberate efforts should be put in place to prevent wastage, damage and loss, maintain optimal stock levels, ensure proper record keeping and obtain fair realizable value upon disposal.

### *Policy Statement*

Procuring entities shall manage and utilize their inventory, assets and stores efficiently for the purpose of ensuring continuity of operations and preventing wastage, loss, damage and lock up of funds.

### *Objective*

- To maintain inventory at optimal levels and ensure their safety and security in storage for proper utilization of resources and effective service delivery;
- To ensure proper documentation, safety and maintenance of public assets.

### **Strategies**

- Procuring entities shall ensure that procured items are stored in a secure and organized manner taking into account their safety and security in storage;
- Procuring Entities shall leverage on technology for efficient, effective and sound inventory/stock management;
- Procuring entities shall develop and maintain an up to date asset register.

## 9.0 ASSET DISPOSAL

Disposal involves the identification, valuation and putting in place measures for economic divestiture of public assets. When public assets become obsolete/surplus/unserviceable they shall be disposed in a timely manner to avoid incurring holding and maintenance costs and minimize loss of value.

Asset Disposal Planning allows government agencies to remove redundant assets that might otherwise reduce efficient and effective service delivery. It involves detailed assessment of assets identified as surplus/obsolete/unserviceable by the relevant departments and putting in place methods for their disposal.

### *Policy Statement*

Each procuring entity shall prepare and implement a comprehensive and realistic annual disposal plan for assets which are obsolete/surplus/unserviceable to be disposed off in the most economical, fair, transparent and accountable manner.

### *Objectives*

- To prevent loss of value, eliminate holding and maintenance costs of surplus/obsolete/unserviceable assets and obtain a fair residual value upon disposal;
- To establish and define standards, methods and/or restrictions for disposal of the assets in a legal, sustainable, accountable and cost-effective manner

### *Strategies; -*

- preparation and execution of annual disposal plans;
- Use appropriate disposal methods to ensure environmental sustainability and/or obtain the highest realizable value from surplus/obsolete/unserviceable assets;
- Develop asset disposal guidelines that will ensure uniform and consistent application of the law in disposal of Government and donor funded assets;
- Institute appropriate administrative dispute resolution framework;
- develop and use standard disposal documents and formats.

## 10.0 RECORDS MANAGEMENT

Sound management of public procurement, asset disposal and contract records is a critical component for good governance, effective administration, transparency, accountability and delivery of quality services. Good records management entails the maintenance and retention of up-to-date, complete, accurate, reliable, secure and accessible records.

### *Policy Statement*

Procuring entities shall maintain complete, accurate, authentic and accessible records pertaining to each procurement and contract management activity and transaction for a period as may be specified in the public procurement law and develop a Public Procurement Records Retention and Disposal Schedule.

### **Objective**

To provide guidance for efficient and effective creation, use, storage, maintenance of and access to all forms and types of public procurement and asset disposal records.

### **Strategies**

- Procuring entities shall adopt efficient and effective Records Management Systems;
- Public entities shall design systems and procedures for controlling, receiving, maintaining, securing and tracking movements of procurement and asset disposal records and documents.

## 11.0 ETHICS IN PUBLIC PROCUREMENT AND ASSET DISPOSAL

Ethical practices in public procurement and asset disposal are founded on values that preserve public confidence, public interest, fairness, impartiality, transparency, accountability, professionalism and ethical standards. To promote these values, the governance system should spell out penalties and sanctions to deter corrupt and unethical practices.

Weak governance in public procurement and asset disposal system impede competition, accountability, transparency and integrity principles; which ultimately raise the cost at which the government procures goods, works and services. This results in wastage of resources and loss of public funds. There is therefore need to promote professionalism, integrity, ethics, accountability and transparency in public procurement and asset disposal.

### Policy Statement

Persons involved in public procurement and asset disposal proceedings shall subscribe to ethical standards in accordance with the public procurement and asset disposal law.

### Objectives

- To ensure ethical practices in public procurement and asset disposal processes;
- To ensure professionalism in the procurement function

### Strategies; -

The government shall:

- establish a legal framework that prescribes sanctions and penalties against persons who breach the provisions of the public procurement and asset disposal law and other related legislations;
- establish a public procurement and asset disposal dispute resolution mechanism to deal with complaints;
- establish public procurement governance structures that are clear, understandable and coordinated;
- put in place appropriate systems and frameworks to monitor and evaluate public procurement performance and outcomes;
- Develop, implement and enforce a code of conduct and ethics for all persons involved in public procurement and asset disposal;
- Develop a comprehensive structured capacity development programmes in public procurement and asset disposal;

## 12.0 STAKEHOLDERS ENGAGEMENT

Stakeholders are individuals, groups of individuals or firms who have an interest or some aspect of rights or ownership that may impact or be impacted by the public procurement and asset disposal policy and can contribute to the work or the outcome of the public procurement process. There is therefore need to have synergetic relationships and inter-linkages amongst various stakeholders in order to achieve successful implementation of a vibrant public procurement and asset disposal system.

### Policy Statement

The Government shall develop a framework to effectively promote stakeholder's inter-linkages and relationships for the proper functioning of the public procurement and asset disposal system.

### Objective

To encourage collaborations and partnerships among key stakeholders in public procurement and asset disposal both at national and county levels of government.

### *Strategies*

- Establish clear communication channels and feedback mechanisms
- Embrace consultative approach on public procurement and asset disposal matters

## **13.0 RISK MANAGEMENT IN PUBLIC PROCUREMENT AND ASSET DISPOSAL**

Risk management entails measures which should be taken prior to and during the entire procurement and asset disposal process, contract management and inventory management to mitigate political, environmental, economic, technological, social and legal risks which may lead to loss of public funds.

### **Policy Statement**

Public entities shall put in place risk management framework covering all aspects of public procurement including procurement planning, processing, contract management, inventory management and asset disposal.

### **Objective**

To embrace risk management practices in the public procurement and asset disposal System

### **Strategies**

Public entities shall develop a comprehensive procurement and asset disposal risk management framework.

## **14.0 COMPLIANCE AND ENFORCEMENT**

All Persons involved in public procurement and asset disposal should comply with the laws, policies and regulations related to public procurement and asset disposal. Both administrative and legal mechanisms should be put in place to enforce compliance by organizations and persons involved in public procurement and asset disposal.

### **Policy Statement**

All persons involved in public procurement and asset disposal shall comply with all applicable laws, regulations, trade agreements, policies, directives and procedures.

### **Objective;**

- To enforce compliance and conformity with the laws, policies, regulations and directives related to public procurement and asset disposal.

### **Strategies;**

- The Government shall establish an institutional framework to monitor and enforce compliance to public procurement and asset disposal laws;
- The Government shall establish structures to monitor and evaluate the performance of the public procurement and asset disposal system;
- The public procurement and asset disposal legal framework shall provide for administrative and legal sanctions, and penalties against non-compliant persons.

## **15.0 EMERGING ISSUES**

Emerging issues in public procurement and asset disposal are new trends that impact on the procurement practices due to the dynamism of the business environment. While the current legal framework is elaborate, the government should keep abreast with emerging issues that may affect the public procurement and asset disposal system.

### **Policy Statement**

The Government shall continuously identify and address any emerging issues that may have an impact on the public procurement and asset disposal system.

### **Objective**

To ensure the public procurement and asset disposal system copes with changes in the socio-economic, legal, environmental, technological and political environment.

### **Strategies**

The government shall:

- encourage continuous research and innovation on emerging issues in public procurement and asset disposal system that promotes Kenyan solutions;
- regularly undertake review of the public procurement and asset disposal system;
- embrace continuous capacity building on emerging issues in the public procurement and asset disposal system.

## **16.0 POLICY ADMINISTRATION, IMPLEMENTATION, MONITORING, EVALUATION AND REVIEW**

For effective policy implementation, a logical and realistic framework is required, with associated programmes, resources and action plan. Actions must be purposefully linked and coordinated with one another and with sectoral initiatives of the Government and partners at national and county levels. To track and monitor the implementation of this policy, an effective Monitoring & Evaluation (M & E) framework is required.

### **16.1 Policy Administration and Implementation**

The National Treasury shall take the main responsibility for overseeing and coordinating the implementation of the public procurement and asset disposal policy in consultation with key stakeholders. To realize the outcomes set out in this policy, an appropriate implementation framework shall be put in place by the government and other key stakeholders. The implementation framework shall outline key interventions, activities, performance indicators, time lines and lead implementing agencies.

### **16.2 Monitoring of Policy Implementation**

Monitoring of Policy Implementation is a continuous exercise by key stakeholders. However, the National Treasury will establish an integrated M & E framework to help in real time tracking of the policy implementation across the Public Sector. The framework should include policy objectives, strategic interventions, key performance indicators and expected outcomes.

### **16.3 Evaluation**

The aim of evaluation will not only be to assess the status of implementation but also inform policy and administrative actions for improvement. The evaluation will be done after every three years.

### **16.4 Review of the Policy**

It is envisaged that this policy will be reviewed after every five years to accommodate the emerging issues, changing needs, priorities of the government and key stakeholders.