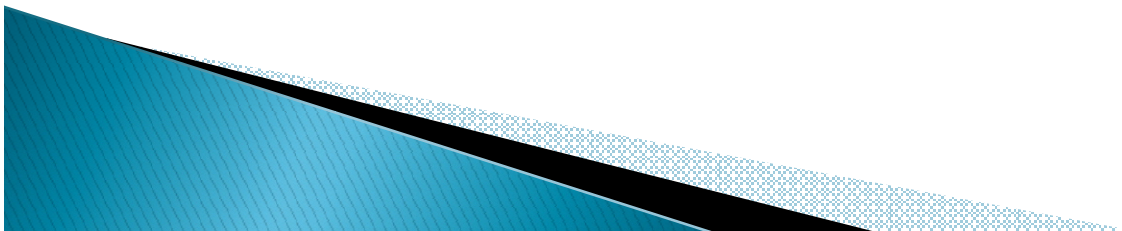


UNIVERSITY OF NAIROBI

WORKSHOP ON UON GRANTS OFFICE
STRATEGIC PLAN TO BE HELD FROM
WEDNESDAY AUGUST 24 - 26, 2011 AT
MIDLAND HOTEL NAKURU

TOPIC: PUBLIC PROCUREMENT LAW
AND PROCUREMENT PROCESS
IN THE UNIVERSITY OF NAIROBI

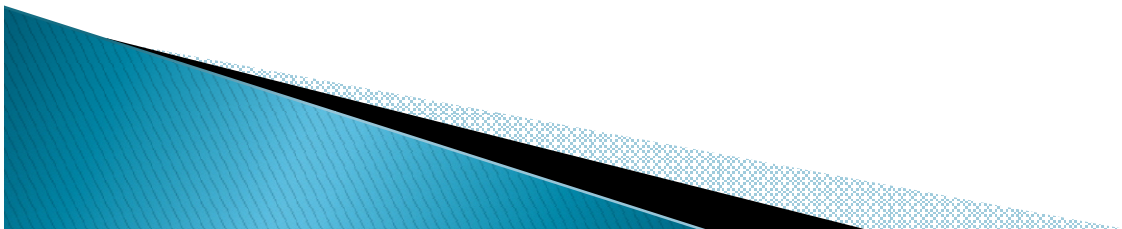
PRESENTER: JOSEPH M.K. MOKAYA,
PROCUREMENT MANAGER



INTRODUCTION

In the recent past Public Procurement has come into the limelight. This is not accidental. Some of the reasons for this greater attention are:–

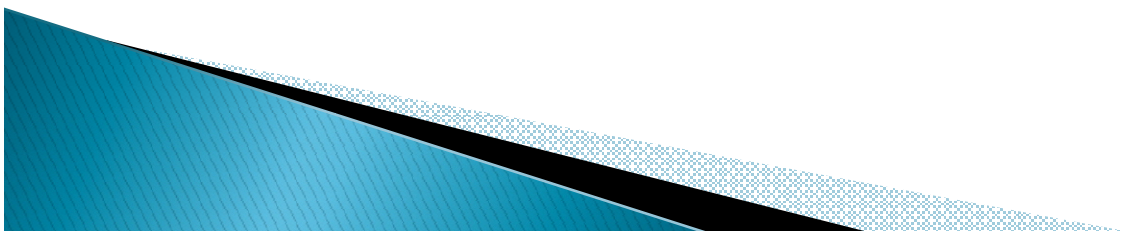
- i) External Pressure particularly donors fronted by World Bank.
- ii) The democratization process that began in 1980s through 1990s. The demand for accountable governments and Public institutions.



iii) Dwindling public resources compared to the ever increasing wants; time of plenty is no more (mali ya uma).

iv) The New Constitution recognizes the significance of Public Procurement. Among other things the Constitution demands for is being:-

- Fair
- Equitable
- Transparency
- Cost-effective



THE HISTORICAL EVOLUTION OF PUBLIC PROCUREMENT

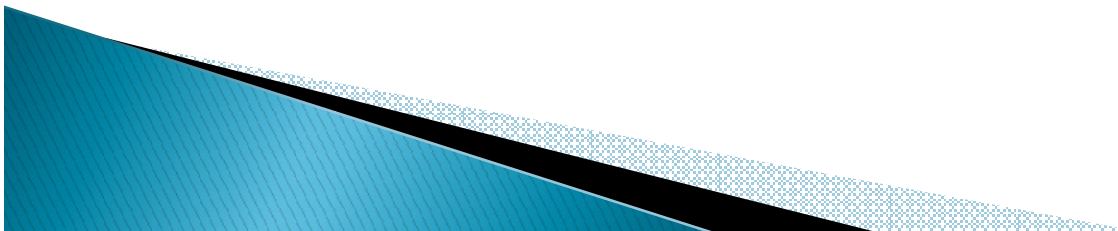
Public Procurement has evolved through four phases:-

- i) The Colonial Period – Through the exploitative colonial arrangement spearheaded by the “CROWN AGENT”
- ii) 1963 – 1978 – Public Procurement continued to be carried out by the Crown Agent without any codified procurement rules. Orders were made to the Crown Agent who did procurement on behalf of the Government.

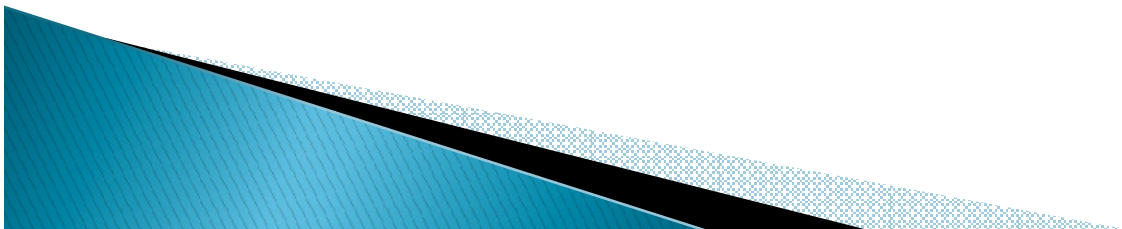


- iii) 1978 – 2001 – In 1978, with the assistance of the Crown Agent, the Government published the “Supplies Manual” that had to be used by the Government. During this period Treasury issued several circulars on procurement some which were confusing. The office of the President, Ministry of Public Works and the Local Government could also issue circulars on procurement.

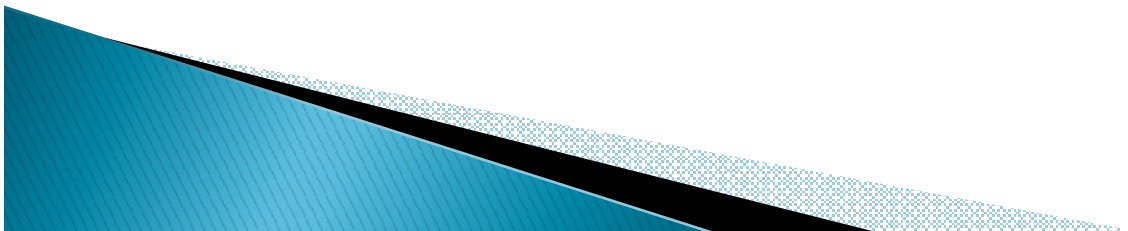
The most famous circular was the “Blue Book” on the District Development strategy that also stipulated how procurement should be carried out. This marked the era of impurity and corruption.



iv) 2001 – 2005 – Following the external pressure in 2001 the government made attempt to bring together procurement rules into one document, the Exchequer and Audit Act, 2001 (Public Procurement Regulations 2001). The most significant change was that Tender Committees were to be headed by external persons (the government could no longer trust its officers! The greatest shortcoming was that the regulations were not anchored on the Kenyan Law. The regulations could be changed/deleted by the Minister for Finance at will (Remember Hon. Mwiraria sending home all procurement officers).

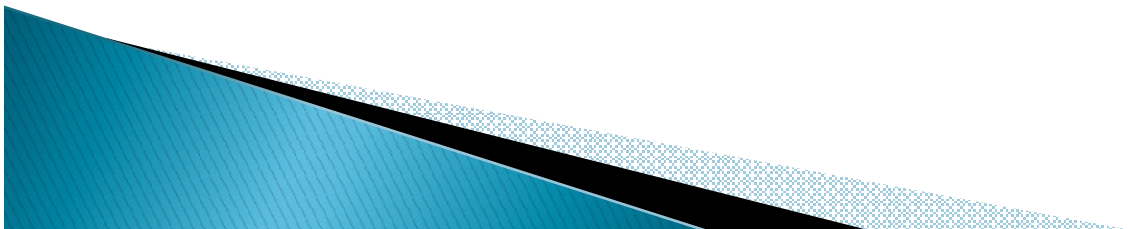


- ▶ 2005 – 2010 – the Public Procurement and Disposal Act was enacted in 2005. The law was however to wait for the Public Procurement and Disposal Regulations, 2006 to operationalise it. Public Procurement law hence became operational in 2007.
- ▶ August 2010, the New Constitution.



▶ For the first time, the new constitution has a section on Public Finance and Public Procurement. It defines the Principles of Public Procurement as:–

- a) Economy
- b) Competitive
- c) Fairness
- d) Transparency
- e) Accountability
- f) Value for money
- g) Public Confidence
- h) Integrity
- i) Equity



THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2005

The Public Procurement and Disposal Act, 2005 is divided into eleven parts;

i) Preliminaries

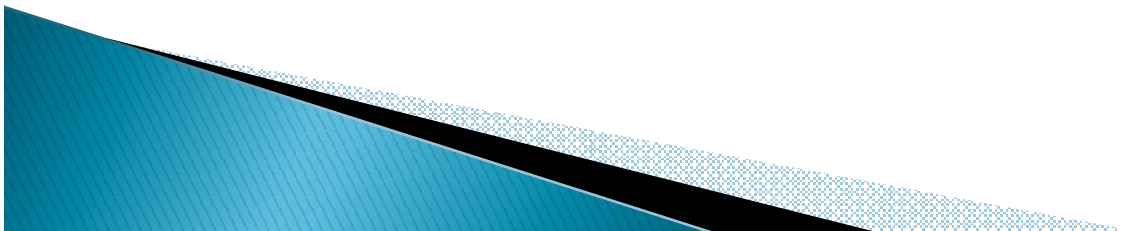
Where definitions of Terms and Purpose of the Act are cited. The Public Procurement and Disposal Act, 2005 takes precedence over all other laws except the Constitutions.

- ▶ The hierarchy of the Public Procurement law is thus:-
- ▶ Kenyan people
- ▶ Constitution
- ▶ Public Procurement and Disposal Act, 2005
- ▶ Public Procurement and Disposal Regulations, 2006
- ▶ The Government General Procurement Manual
- ▶ Internal Procurement Manuals e.g. UoN Procurement manual
- ▶ Internal Circulars.



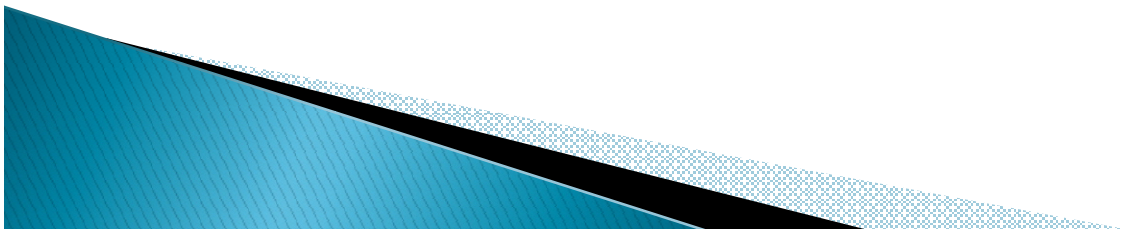
ii) Bodies Involved in Public Procurement

- ▶ Public Procurement Oversight authority
- ▶ Public Procurement Advisory Board
- ▶ Public procurement Administrative Review Board
- ▶ High Court



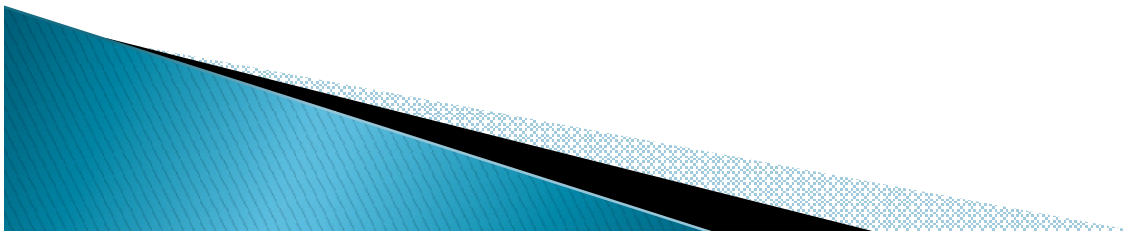
iii) Internal Organization of Public Entities Relating to Procurement

- ▶ Each Procurement entity is expected to execute procurement decisions in a corporate manner:
- ▶ Procurement unit
- ▶ Tender Committee
- ▶ Procurement Committees
- ▶ Technical Evaluation Committee Ad hoc
- ▶ Inspection and Acceptance Committee
- ▶ The only exception is the low value ($\leq 10,000/=$) where purchase can be done without going to a Committee.



- ▶ For values above 50 million two external observers are required in the Tender Committee.

The University has complied with above statutory requirement 100%. However, delays continue!

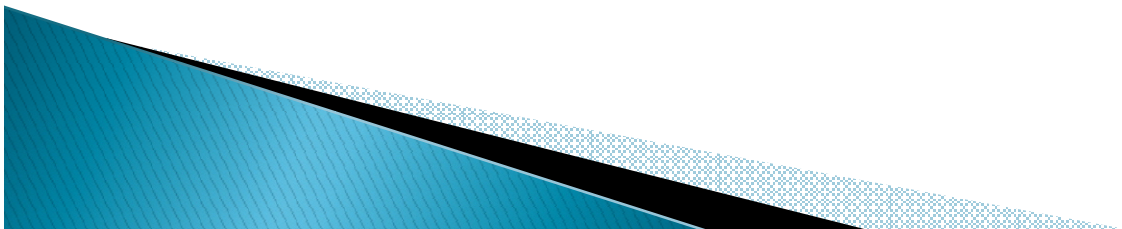


The responsibility to enforce compliance with the Public Procurement law lies with the:

- Vice-Chancellor
- Deputy Vice-Chancellors
- Principals of Colleges
- Deans, Directors
- Chairmen/Heads of Departments

The chief advisor is the Procurement Manager. He also is expected to enforce compliance of Public Procurement Law.

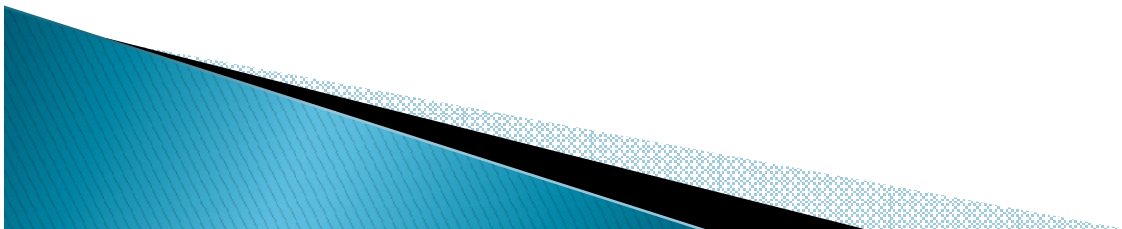
If a procurement entity is unable to carry out the procurement functions it can contract a **PROCURING AGENT**.



iv) General Procurement Rules

A few of the rules cited here include:

- Choice of Procurement Procedure – open tender is preferred method
- Split of tender – prohibited
- Inflating prices – surcharge or dismissal or imprisonment with fine
- Inappropriate influence on evaluations – punishable.

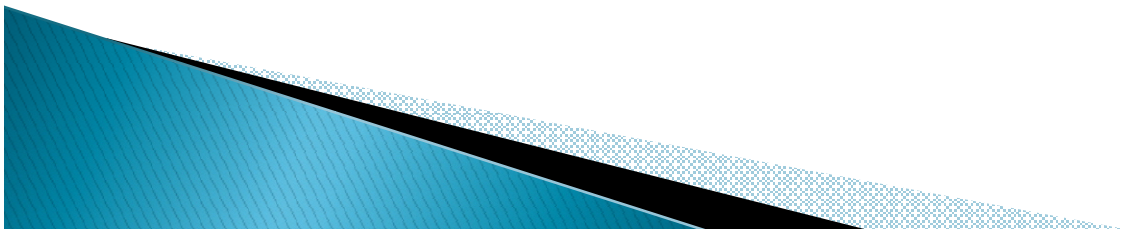


- Inducement – leads to automatic disqualification
- Termination of Procurement Proceedings – at any stage before signing of contract, must be reported to PPOA within 14 days of termination.

Some malpractices include:

- Collusion
- Conflict of interest
- Disclosure of confidential tender information before award

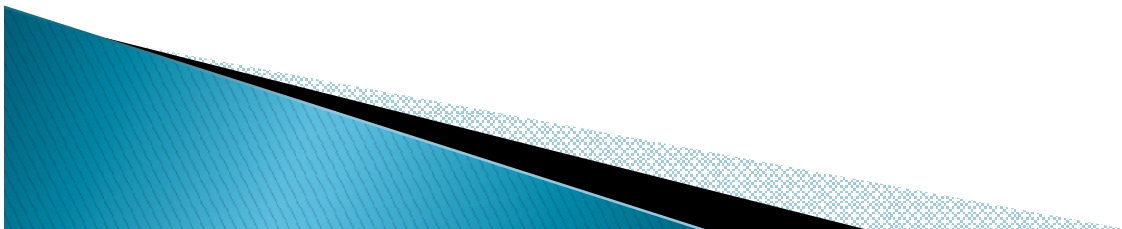
Interests on overdue amounts can be charged by suppliers



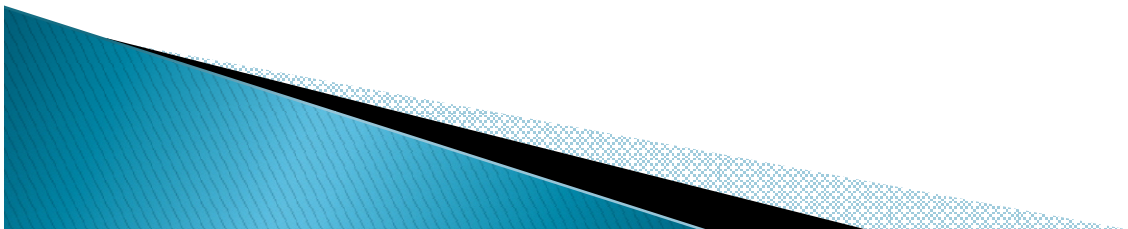
v) Open Tendering

This is the preferred method and one where no prior authority is required. Economic consideration must be done e.g. one advertisement costs about Kshs.200,000.00.

- ▶ Tender opening, Tender Opening Committee (TOC)



- ▶ Technical Evaluation, TEC
- ▶ Award by Tender Committee
- ▶ Notification of successful and unsuccessful bidders
- ▶ Signing of Contract
- ▶ 14 days appeal window
- ▶ Purchase of tender documents $\leq 5,000$.
- ▶ Bid Bond
- ▶ Performance Bond
- ▶ Contract Administration
- ▶ Certification – Certificates/Inspection and Acceptance reports.

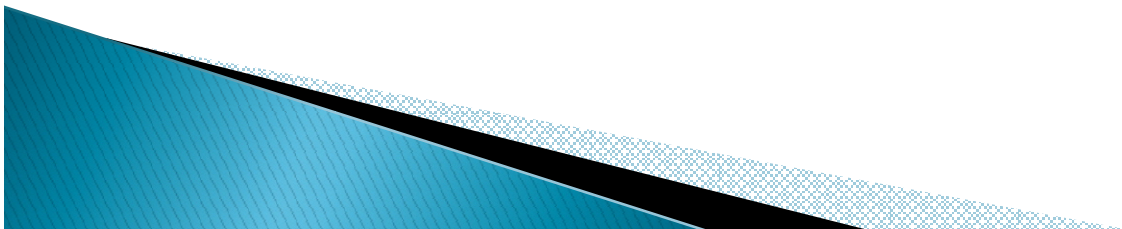


vi) Alternative Procurement Procedures

a) Restricted Tendering

- ▶ Where there is prequalified suppliers
- ▶ Where there are only a few known suppliers

b) Direct Procurement, also known as Single Sourcing – where there only one supplier. Can also be resorted to in cases of emergency where life and property is in danger if further delayed.



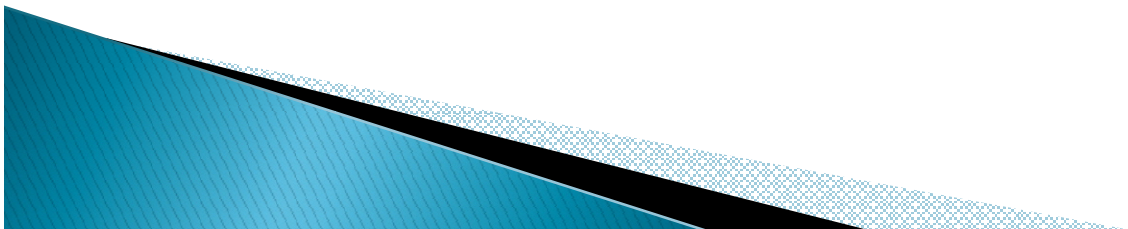
c) Request for Proposal

In consultancy or complex projects – this is a two step tendering:

- Expression of Interest
- Request for Technical and Financial Proposal

d) Request for Quotation

- Where goods are commonly in market and prices are fairly known – at least 3 quotations are required. University upgrades this to 5 quotations (TC)

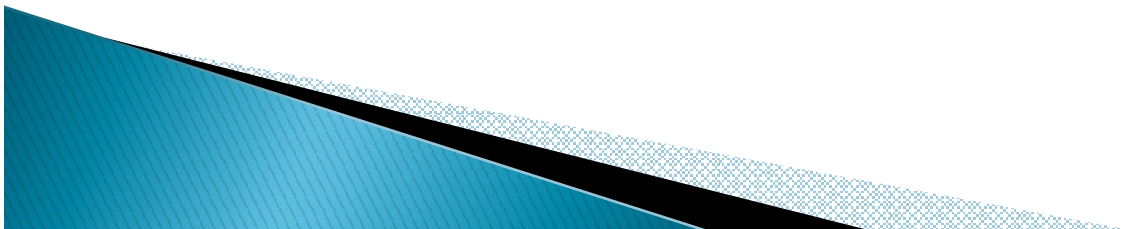


e) Low Value Items

- $\leq 10,000$. No committee decision is required but must ensure value for money.

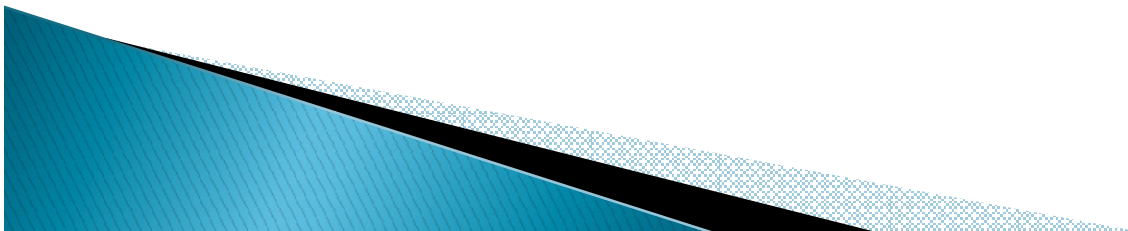
f) Specially permitted procurement procedure.

- Must get prior authority of PPOA.



vii) Administrative Review of Procurement Proceedings

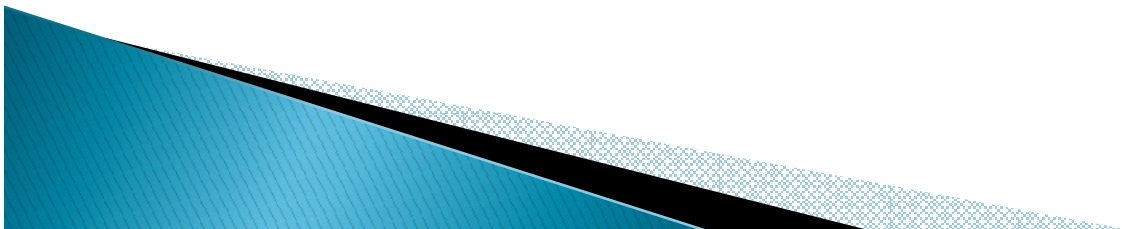
- Appeal window 14 days
- Supplier has right to petition if they are unsuccessful
- University has had one petition that was thrown out
- Several times suppliers write to Vice-Chancellor to know why they did not win a tender – they have a legal right to be given explanation



viii) PPOA Powers to Ensure Compliance

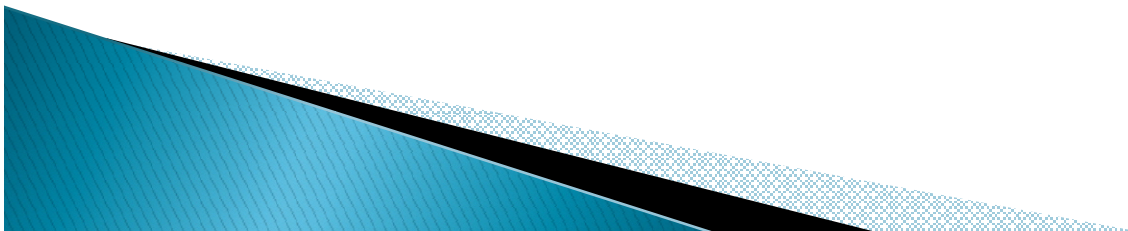
This is statutory requirement.

- ▶ All tenders of 5 million and above must be reported to PPOA
- ▶ Award of tenders to employees
- ▶ Disposal to employees
- ▶ Termination of tenders
- ▶ Variation of TEC report.



Other Public organs:-

- ▶ KACC
- ▶ Inspection Unit in Prime Minister's Office
- ▶ External Auditors, Auditor General Corporations
- ▶ Internal Audit

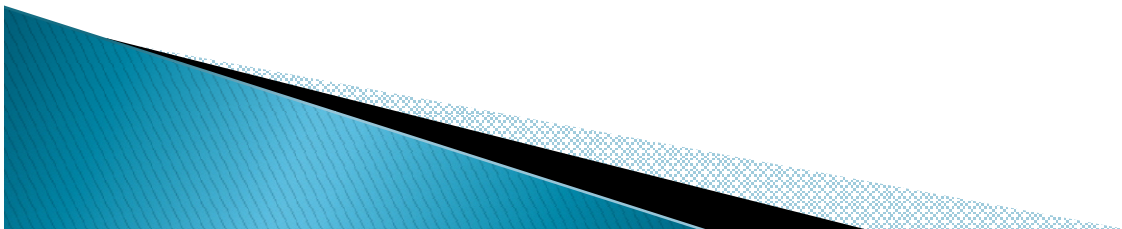


ix) Debarment

Is a serious matter and only PPOA can debar a supplier.

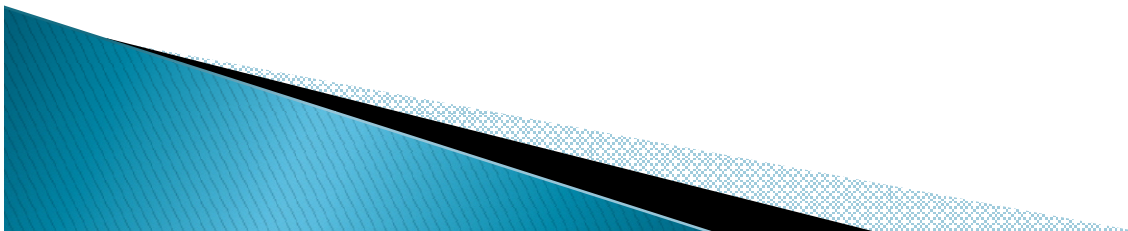
x) Disposal of Stores and Equipment

- ▶ Disposal Committee:
- ▶ Inspect
- ▶ Set reserve price
- ▶ Recommend method of disposal
- ▶ Accounting officer to approve report of Disposal Committee and then disposal is carried out
- ▶ Disposal to employees must be reported to PPOA within 14 days of occurrence giving reasons.



Disposal Methods:

- ▶ Sell through open tender option
- ▶ Transfer to needy departments
- ▶ Cannibalization
- ▶ Donation to public institutions
- ▶ Trade-in
- ▶ Destruction/Dumping – must observe environmental law



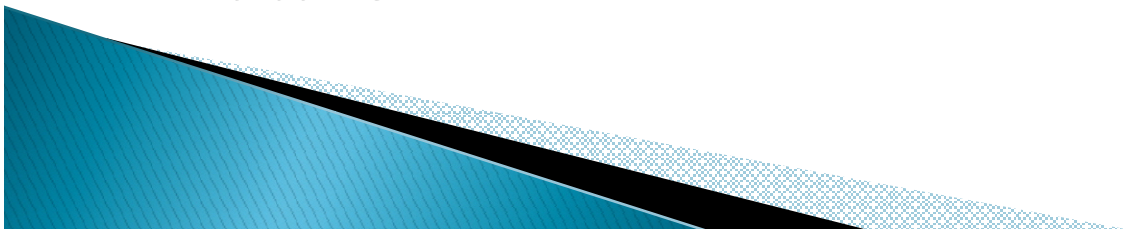
xi) Miscellaneous

- ▶ Regulations
- ▶ Transition provisions
- ▶ Applicable ethics etc.
- ▶ The above, then, is the summary of the Public Procurement and Disposal Act. The Public Procurement and Disposal Regulations, 2006 operationalise the Act and provide more detailed information.



PUBLIC PRIVATE PARTNERSHIP (PPP)

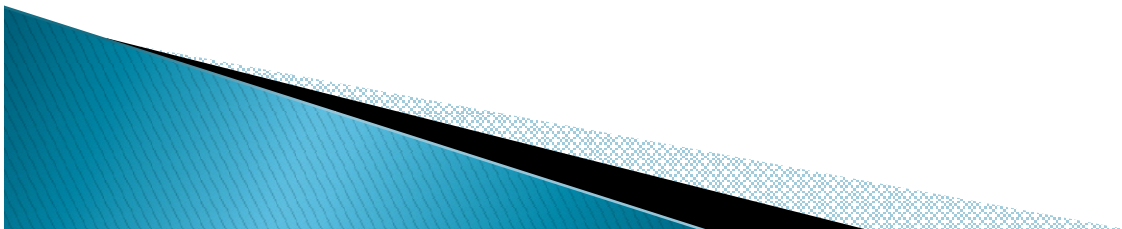
- ▶ The Public Procurement and Procurement Regulations 2009 (Public Private Partnership) provides procedure for Public Private Partnership. There is already controversy on the establishment of PPP Steering Committee at the Treasury that seems to run parallel to PPOA. Some issues of PPP require Cabinet approval. KU seems to be benefitting from PPP, however, the details on how this is done is not available to us. Most PPP have run into problems. The University through UNES made attempt but it did not come to fruition. PPP have been cited as a way for the future.



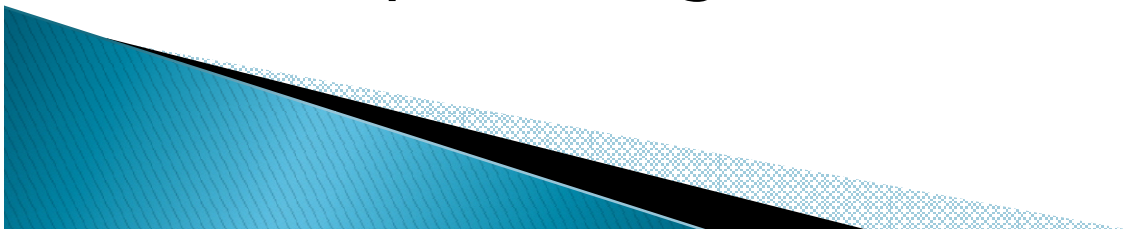
PROCUREMENT PROCESS IN THE UNIVERSITY

The procurement cycle in the university is as follows:–

- ▶ Procurement Plan
- ▶ Request to procure
- ▶ Approval of request; VC, DVCs, Principals of Colleges
- ▶ Sourcing by Procurement
- ▶ Evaluation of bids
- ▶ Confirmation of funding through AIE



- ▶ Approval by Tender Committee/Procurement Committee
- ▶ Notification of successful and unsuccessful bidders
- ▶ Signing of Contract
- ▶ Contract administration – this is largely a grey area that is glossed over by the Procurement Law.
- ▶ Stores administration and Warehousing seem left out by the Procurement Law. It is like after procuring the next step is disposal.



PROCUREMENT USING DONOR FUNDS

This is covered in Section (5) and (7) of the Public Procurement and Disposal Act, 2005:

- a) Section (5) in part states “..... if there is a conflict between this Act or the regulations made under this Act and any other Act or regulations, in matters relating to procurement and disposal, this Act or regulations made under this Act shall prevail”.
- b) On the other hand Section (7) is specific to donated funds and in part states “.... If there is a conflict between this Act, the regulations or any directions of the Authority and a condition imposed by the donor shall prevail with respect to a procurement that uses those funds and no others.



THANK YOU

