

Ethical standards for procurement personnel

1.0 Introduction

The *Public Procurement and Disposal of Public Assets (PPD) Act, 2017* and the *Public Procurement Regulations, 2004* contain, among other things, ethical standards that public officials involved in public procurement must comply with. In this article, the Public Procurement and Disposal of Assets Authority (PPDA) therefore compiled the ethical standards contained in the PPD Act and the regulations for distribution to public officials involved in public procurement. It is hoped that observance of the ethical standards will ensure the impartiality, transparency and effectiveness of public officials in the performance of their duties.

1.1 Purpose

This article has been prepared to provide practical, straightforward, and clear guidance to public officials involved in public procurement on how they should conduct themselves in the performance of their duties. The provisions of the PPD Act and the Public Procurement Regulations have been explained and simplified to make them user friendly to public officials. However, it is still advisable that public officials should have recourse to the full text of the provisions as provided in the PPD Act and the regulations.

The article also offers guidance to public officials involved in public procurement in solving ethical issues in the course of their duties.

1.2 Application and Scope

All public officials involved in public procurement are expected to adhere to the ethical standards during the whole procurement cycle, from initiation through to contract completion. These are the officials working in the Ministries, departments, agencies or organs of the Government or statutory corporations or other units, or any subdivision thereof engaged in the acquisition of goods, works or services. Public officials involved in procurement of donor funded projects are also expected to observe these ethical standards.

2.0 Definition of Ethics

The Oxford Learner's Dictionary, 6th Edition defines ethics as 'moral principles that control or influences a person's behaviour'. Thus, ethics involves morals, integrity, honourable behavior, and principles of rules of conduct. The ethical standards contained in the *PPD Act 2017* and the regulations set out rules and principles of good behavior for public officials involved in public procurement.

2.1 Ethical Standards

The following are the ethical standards that must be observed by public officials involved in public procurement:

(a) Duty to act fairly

Public officials involved in public procurement are required to discharge their duties fairly and impartially. This will ensure fair competitive access to public procurement by bidders.¹

(b) Principle of non-discrimination

Following on to the duty to act fairly, public officials involved in public procurement are required to treat all bidders in a non-discriminatory manner at all stages of the procurement. This means that there should not be any preferential treatment given to any of the bidders. Public officials should therefore provide the same information to all bidders in the course of procurement proceedings.² Thus, if any bidder seeks some clarifications on the bidding documents, the clarifications provided should be given to all the bidders who are participating in the procurement proceeding.

(c) Avoidance of conflict of interest

Public officials involved in public procurement must at all times avoid any conflict of interest and the appearance of impropriety in carrying out their duties. Public officials must at all times act in the public interest, that is to the advantage or interest of Malawians.³ Where a public official has any interest in the course of the procurement proceedings, that interest must be declared and the official should stop acting in that procurement proceeding.⁴ The interest may be pecuniary (monetary), or may be because of a relationship, with any of the bidders participating in the procurement proceedings, marital or direct birth relationship with the bidder or with bidder's legal practitioner or its officers, having been employed or

having held a financial position with a bidder during the last three years, and when the public official is negotiating or has an employment arrangement with a bidder.⁵

For those public officials involved in the evaluation and comparison of bids, it is very important that prior to commencing the evaluation, they should sign a declaration to the effect that they have no relationship as outlined above with any of the bidders.⁶

The procurement related activities that are subject to conflict restrictions include all activities from the initiation to contract completion such as:

- (i) Procurement planning, including preparation, review and approval of specifications or a statement of work.
- (ii) Assessment of requirements
- (iii) Preparation of procurement documents
- (iv) Evaluation and comparison of bids
- (v) Conduct of technical discussions or negotiations
- (vi) Selection or approval of bidder, and
- (vii) Administration of procurement contract

(d) Confidentiality and use of information

Public officials should not reveal the contents or any part of the contents of documents, communication or information that comes into their possession in the course of procurement proceedings.⁸ All information relating to the examination, evaluation, and comparison of bids must not be disclosed to

the bidders or to any person not involved officially in the examination, evaluation, and comparison of bids.⁹

Public officials should not use documents, communication, or information that comes into their possession for personal gain or for any other motive.¹⁰

However, public officials may disclose information in accordance with oversight, auditing or other laws, or when a competent court has ordered so.¹¹ For example; public officials cannot refuse to give information to the Director of Public Procurement or to the Auditor General.

(e) Duty not to commit or abet corruption

Public officials involved in public procurement should display high and exemplary standards of behavior because they are dealing with public funds. They should, therefore, not commit or abet corrupt or fraudulent practices. Engaging in these acts brings the procurement profession into disrepute.

(f) Gifts and hospitality

Public officials should take note that the amended *Corrupt Practices Act* that entered into force in 2004 has removed the concept of casual gifts. This concept was to the effect that any conventional hospitality on a modest scale or an unsolicited gift of modest value not exceeding MK500.00 could not be said to have been given or received corruptly. This therefore means that the value or modesty of the hospitality does not matter now for purposes of the law on corruption.

Further, the principle on avoidance of conflict of interest noted above requires public officials to avoid the appearance of impropriety.

It is therefore advisable that public officials involved in public procurement should not solicit or accept any gifts or any form of hospitality from current or potential bidders in order to avoid the appearance of impropriety.

Where a gift or hospitality may not lead to the appearance of impropriety or where it cannot be viewed by others as having an influence in making a government business decision as a result of accepting the gift or hospitality, it may be accepted. However, it is important that any public official who has received such gift or hospitality should submit a written report to his supervisors within 48 hours together with his or her justifications for receiving the gift or hospitality.

(g) Post-employment restrictions

Former public officials who were involved in a public procurement shall not participate in any manner as officers, employees or agents of any bidder in any negotiations or technical discussions leading to award, modification, or extension of a contract for such procurement.¹²

Further, such former public officials should not participate personally or substantially on behalf of the bidder in the performance of such contract.¹³

(h) Duty to report unethical conduct

It is important that violations of the ethical standards are reported in a timely manner. Public officials are required to report unethical conduct of other colleagues to their supervisors, the Anti-Corruption Bureau, the PPDA and other law enforcement authorities.

In cases of unethical conduct of his or her superiors, a public official should report to the Anti-Corruption Bureau, the, and other law enforcement authorities.

3.0 Sanctions for non-compliance with ethical standards

Public officials are required to strictly comply with the ethical standards outlined above. Serious sanctions may be imposed for non-compliance. These include;

(a) Prosecution

Public officials who do not comply may be prosecuted under the *Public Procurement and Disposal of Public Assets Act, 2017*, the *Corrupt Practices Act*, and any other written law in force in Malawi. Upon conviction, the public official may be sentenced to a term of imprisonment or to a fine or both. For example, under the *PPD Act* failure to disclose interest or revealing confidential information attracts a fine of MK50,000.00 and imprisonment for two years. Penalties under the *Corrupt Practices Act* may exceed 10 years.

(b) Dismissal from public service

If a public official is convicted because of non-compliance with the ethical standards, he or she may be dismissed from the public service.

(c) Administrative sanctions

Director of the PPDA may recommend to the relevant authorities the imposition of the following sanctions for breach of ethical standards;

- (i) Written warnings or reprimands
- (ii) Suspension or interdiction with or without pay
- (iii) Withdrawal of procurement-officer certification
- (iv) Termination of employment

NOTE:

This article has been written by the Public Procurement and Disposal of Assets Authority under the *Public Procurement and Disposal of Public Assets Act, 2017* and the *Public Procurement Regulations, 2004*. Since the article is a compilation in a simplified form of the principles as contained in the PPD Act and the regulations, it is expected that article will be amended accordingly any time there are changes to the Act and the regulations.

Any comments on this article should be submitted to the Public Procurement and Disposal of Assets Authority at the following address:

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References and citations:

1. Section 57 (1) (a) of the *PPD Act, 2017*
2. Section 41 (3)
3. Section 57 (1) (b) and (c)
4. Regulation 175(1) (a)-(c) of the *Public Procurement Regulations 2004*
5. Regulation 175 (1) above
6. Regulation 176
7. Section 18 (5)
8. Regulation 183 (3)
9. Regulation 183 (1)
10. Regulation 183 (1)
11. Regulation 177 (1) (a)
12. Regulation 177 (1) (b)

