

PUBLIC PROCUREMENT REGULATORY AUTHORITY

PPRA

Code of Ethics in Public Procurement
DETAILED GUIDANCE¹

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¹ This Guidance shall be read in conjunction with the “Code of Ethics in Public Procurement”; the aim of the Guidance is to detail each of the 12 Canons and elaborate on them.

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DEFINITIONS

Canon – Pillars that govern the Public Procurement Practitioner

Cooling off period – It is a 10 day stand still period after announcement of the award of a tender. No contract placement may be entertained. Period allows for bidders to reflect on the results and raise complaints if not satisfied with the award.

Conflict of interest - A member or an employee of a public body is guilty of corruption if he or an immediate member of his family has a direct or indirect interest in any company or undertaking with which such body proposes to deal, or he has a personal interest in any decision which such body is to make, and he, knowingly, fails to disclose the nature of such interest, or votes or participates in the proceedings of such body relating to such dealing or decision.

Deferral - A postponement of making a decision on the PE's recommendation and the returning of the evaluation report to the PE for additional information and/or revision of the evaluation process.

Procurement Practitioners - Means any person or a procurement personnel who provides input in whatsoever from contribution, in part or in full, or has been or will be involved in the process of public procurement, directly or indirectly.

Stand-down - A conditional approval of the PE's recommendation subject to submission of some documentation /information which is not likely to change the substance of the recommendation. This is basically an approval in principle.

Valuable Consideration - (a) any gift, benefit, loan, fee, reward or commission consisting of money or of any Copyright Government of Botswana valuable security or of other property or interest in property of any description;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any other service, or favour including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise whether conditional or unconditional, of any valuable consideration within the meaning of the provisions of any of the preceding paragraphs.

FOREWORD

Ethical behaviour or morality is an expression of a natural inclination towards achievement of human and societal values, well-being, peace and discipline. Individuals and groups of individuals must constantly strive for the best interest of their society: socio-economic progress and continuous betterment of the quality of life. This can only be attained through ethical conduct. Ethical behaviour is therefore a proactive dedication towards upholding societal values- an active pursuit for the achievement of welfare and prosperity. Ethical conduct is always the rational course of action.

In recognition of both the value of ethics in Public Procurement and the role of Public Procurement in attaining public values, the Public Procurement Regulatory Authority (PPRA) - issued the *Code of Ethics in Public Procurement* - in line with Section 86 (Code of Ethical behavior and declaration of interest) of the PP Act which provides “A member of the Board, Committee or sub-committee, a co-opted person, and employees of the Authority, a procuring entity, and any other person involved in procurement shall sign and adhere to a code of ethical behavior as may be prescribed.”

Compliance with the provisions of this Code of Ethics is mandatory for all procurement practitioners who are engaged in the service of Procuring Entities covered under Sections 3 and 144 of the PP Act. Section 3 provides for “(a) a ” and Section 144 provides as follows; “Any contribution by the Government in any form to an entity such as a parastatal, private entity, non-governmental body, charity or trust.”

The objective of the *Code of Ethics* can be summarized as follows:

- a. Uphold individual and institutional integrity and promote a professional and ethical culture in public procurement I; and
- b. Support the attainment of public procurement objectives.

While infringement of the provisions of this Code of Ethics can lead to proportionate disciplinary sanctions or potentially other legal consequences, emphasis is to be placed on its role in upgrading the status of the procurement profession in Botswana’s civil service and in providing a framework for the protection of procurement practitioners as per Section 149 of the PP Act concerning the granting of immunities.

To elaborate on the *Code of Ethics* and to ensure its uniform understanding and adoption, this *Guidance* is issued by the PPRA for adoption by all Procurement Practitioners, Public Entities and control and oversight agencies engaged in Public Procurement in Botswana. The 12 canons incorporated in this Code are here below explained in further detail and supported by illustrative examples which appear in boxes.

1.0 INTRODUCTION

2. The Public Procurement Regulatory Authority (PPRA) is mandated to ensure full compliance to the PP Act by Procuring Entities (PEs), procurement practitioners and contractors, for an efficient, transparent and accountable public procurement, to achieve the country's socio-economic objectives through public procurement, while delivering value for money for Government.
3. Section 8 of the PPA Act confers on the PPRA the mandate to ensure that all Procuring Entities (PEs), in making their decisions take into account the principles of public procurement, and to advise them on all aspects of the procurement particularly on the application of the provisions of the Act.
4. In line with the above, the Board, in collaboration with the World Bank, developed a Code of Ethics in Public Procurement as anticipated and required by Section 86 (Code of Ethics) of the PP Act which obliges procurement practitioners to sign a code of ethical behaviour and a declaration of business interest form.

1.1 VALUES

1. To uphold individual and institutional integrity and promote a professional and ethical culture in public procurement
2. The Code of Ethics encourages and promotes the safeguarding of all public procurement principles by public procurement practitioners as espoused in the PP Act. To enhance understanding, the Code of Ethics by explaining how to implement each canon in the Code and provides illustrative examples.

1.2 PURPOSE

1. All procurement practitioners are required to sign the Code of Ethics whether they are involved wholly or partially, in any phase of the procurement including but not limited to procurement planning, market research, technical, project management, financial, legal, economics, logistics e.t.c.
2. To support the attainment of public procurement objectives.
3. Infringement of the Code of Ethics by public procurement practitioners shall be dealt with in accordance with the provisions of the PP Act, Sections 147, 148 and 149 and where applicable the Corruption and Economic Crime Act and other administrative sanctions provided under Section 27, 36 and 37 of the Public Service Act and Public Service Charter.

Compliance with the provisions of this Code of Ethic is mandatory for all procurement practitioners who are engaged in the service of Procuring Entities covered under Sections 3 and 144 of the PP Act. For completeness Section 3 provides for "a) a Department; (b) a public body, parastatal and statutory body, except where exempted by the Minister by Order published in the Gazette;" and Section 144 provides as follows;

“Any contribution by the Government in any form to an entity such as a parastatal, private entity, non-governmental body, charity or trust.”

4. All the above mentioned are duty bound to comply with the provisions of the code of ethics

Public Procurement Ethical Canons

1. Demonstrate utmost loyalty to the Republic of Botswana and uphold at paramount importance Public Procurement Objectives and Principles in every action, conduct or decision taken in the line of duty.

While serving in any Public Procurement function, the Procurement Practitioner shall always exhibit a deep understanding of compliance with the public procurement policies, laws and regulations of Botswana and of the under-lying public values embodied therein. Practitioners shall persevere in supporting the employer in furthering its best interest and objectives and shall refrain from any behaviour, decision, action or inaction that undermines these interests. The ultimate public values revolve around good governance and sustainable socio-economic progress in full respect of health and safety and the welfare of the society of Botswana. Procurement Practitioners shall never compromise such values and shall always strive to optimize their attainment.

The Objectives of Public Procurement as set out in the Act and Regulations can be summarized as follows:

1. Protection of the integrity of the public procurement process in Botswana: Procurement Practitioners shall always execute their duties to the highest standards of integrity- personal integrity, integrity of the organization, its resources and its reputation. Procurement Practitioners shall be honest in all their business relations.
2. Delivery of efficient and effective service to the public: Procurement Practitioners shall strive at all times to put into effect public policy and strategies in a manner that is conducive to the delivery of reliable and valuable public services.
3. Achievement of value-for-money: In every procurement activity- whether micro or macro- Procurement Practitioners shall ensure that the price being paid corresponds to the value obtained through the contract. Procurement Practitioners shall ensure that there is wide competition among suppliers in all tenders, where applicable, in order to achieve value for money.
4. Increase of business opportunities: Procurement Practitioners shall plan and execute each procurement activity with the objective to optimize competition and to offer contractual opportunities to the widest possible segment of the economy.
5. Support to citizens and local businesses: Procurement Practitioners shall strive to promote local and citizen contractors by implementing prescribed empowerment schemes. This shall ensure increased

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contractual opportunities for local businesses and citizen-owned companies and creation of new markets for start-up local or citizen owned businesses.

6. Promoting Fair and Equitable treatment of all contractors: Procurement Practitioners shall ensure that all bidders are treated fairly and justly in the interest of good governance and the maintenance of a level playing field in all procurement operations. There shall be utmost transparency in all business dealings.

No project may be procured and/or implemented whereby its design or execution poses potential threat to public health or safety. For example, you shall always include detailed provisions on health and safety in specifications for construction projects. If a contractor constructing a project does not respect such standards, you must not hesitate to impose remedial actions under the contract.

Example 1 - Health and Safety

When planning for a procurement activity, conduct a market study as may be necessary, to verify availability, technical characteristics, market pricing, etc. and cause accurate cost estimation to be made. When deciding on the award of the resulting contract, Procurement Practitioners shall compare

with market research findings and cost estimation in order to ensure that the prices charged correspond to the value to be obtained.

Example 2 - Value for Money

When planning for a procurement activity, Procurement Practitioners shall conceive the design and planning with the aim of full attainment of the public service outcomes that are desired as a result of this procurement; the ultimate aim is to render a safe and user-friendly road with shortened travel times

or a school conducive to learning and creativity or a sustainable waste treatment plant with sufficient capacity projections and minimal maintenance needs, etc. Value to citizens shall always be maximized in every procurement process.

Example 3 - Effective and Efficient Service Delivery

2. Respect organizational hierarchy and accept the authority of supervisors and senior managers with prudence that is substantiated by public procurement rules and/or conducive to the proper application of relevant laws, regulations or this code.

The procurement system has different key stakeholders, ranging from the Procurement Practitioners (as individuals), Procuring Units, Procuring Entities, Evaluation Committees, Accounting Officers, POUs, PPRA, oversight agencies, etc. These stakeholders, operate in a structured and organized system with levels of hierarchy and authority that need to be respected for the system to operate successfully.

For instance, in being respectful to a supervisor or senior official, Procurement Practitioners shall understand instructions, discuss them at the required level of depth and thereafter execute such instructions. However, at the same time, such instructions shall not be given in the first place if they contradict legal provisions. If Procurement Practitioners believe that an instruction falls beyond the scope of the Act or Regulations or outside the authority of their supervisors, they shall raise their concerns to the supervisor issuing such instruction and shall discuss the same until it is resolved. If no resolution can be reached, then Procurement Practitioners shall escalate the matter in accordance with the established internal institutional process for complaints. Subsequent failure in resolving such matter which clearly compromises the correct application of the legal framework or industry or ethical standards imposes an obligation to exercise the right in “whistle blowing” through the Tip-off Anonymous Service of the PPRA. Whistleblowing is an obligation that shall be exercised as is necessitated by the nature and impact of the observed offense especially those which cannot be addressed effectively through the internal institutional complaints’ procedure.

It is not uncommon that you may be contacted by a senior official to specify a certain brand or model. Such requests- as long as they do not comply with the Act or Regulations- must not be obeyed. You shall strive to explain the reasoning because in several instances such requests are the result of ignorance of the stipulations of the Act and Regulations rather than bad faith. If you could not convince the official with your reasoning, you shall raise your concerns with your immediate supervisor for appropriate action.

If in your capacity as a member of an Evaluation Committee you are approached by a senior official to accept a late bid, or even overlook some deviations in a certain bid then you must refrain from discussing any matter related to the evaluation process with that officer. You must further inform your supervisor of the potential breach of confidentiality in the evaluation process and explain the rules that govern the acceptance of bids and the evaluation process. In case such request comes from your immediate supervisor a similar approach must be followed which if not successful allows you to escalate the matter

to a higher level official or to the official issuing the offensive instruction. Should this too fail, you shall

whistle blow to oversight agencies.

Example 4 - Interference with Procurement Work and Whistleblowing

3. Fulfil the responsibilities of their roles to the best of their ability, knowledge and judgment.

The terms and conditions of employment and Scheme of Service as well as provisions of the PP Act, Regulations and , Operations Manual dictate role responsibilities that must be adhered to in public procurement . Such provisions are designed in order to make the Public Procurement System operate successfully with proper division of roles, elimination of overlaps and conflicts of interest. It is imperative that such provisions are adhered to by each role player in the Public Procurement System in order to ensure that the system functions properly and successfully.

It is not uncommon that Procurement Practitioners perceive conflict among each other's duties such as responsibility for identifying the needs, elaborating them or finalizing the specifications, responsibility for deciding amounts of liquidated damages to a contractor, authority for approving consultant's reports, etc. When such conflicts occur, you shall consult with your supervisor for clearing the overlap.

Example 5 - Role Conflicts

It is wrong to “let go” a certain role function with the assumption that some other colleague has such a function or will exercise such a role. Several mistakes in reports go un-noticed because the team members supervising the consultant do not exercise their role in full; many bid deviations are not spotted because evaluation committee members believe that others will be inspecting the bid more thoroughly. You should take your role responsibilities in full with the required seriousness and level of detail.

Example 6 - Role Responsibility is serious business

4. Acquire the necessary knowledge and skills to execute duties and be well acquainted with and abide by relevant Laws, Decrees, Regulations, Guidelines and Public Procurement Principles.

It is the responsibility of the organization to provide learning opportunities that will enable the Procurement Practitioner to acquire the necessary knowledge and skills to conduct his/her duties and role responsibilities highlighted in Canon 3 and it is the responsibility of the Procurement Practitioner to take up relevant learning opportunities. Such organization-provided training can facilitate but not replace the individual's

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internalization of knowledge, skills and learning which are pre-requisite conditions for success in the procurement function and subsequently for career advancement.

The Procurement profession is based on continuous learning and refinement of competencies through case by case analysis and exposure. It is imperative that Procurement Practitioners continue to pursue knowledge, skills, competencies and experiences throughout their careers in order to guide their analytical approach. Simultaneously, Procurement Practitioners are expected to actively support the advancement of their colleagues by sharing experiences and knowledge, tools and techniques that are beneficial for the conduct of their roles. In addition, Procurement Practitioners must actively contribute to organizational learning and progress through knowledge management systems.

Public Procurement is a sector governed by a multitude of principles which must be respected and properly applied. The rationale underpinning such principles is the focus on achieving the goals while respecting the procedural rules of Public Procurement. The general principles of Public Procurement are as follows:

1. Essential standards of ethical conduct: No decision, behaviour or action has any merit or value if it does not fully comply with the *PP Act and its Regulations*.
2. Open, fair and transparent tendering: Every procurement activity should be opened up transparently and fairly for competition as per the provisions of the Act and the Regulations. Procurement Practitioners should strive to ensure that the procurement process does not limit the effective openness of the process or the fair treatment of participants or circumvent the effective transparency of this process.
3. Integrity, impartiality, anti-corruption: The cornerstone of every procurement practice is integrity without which the professional practice degenerates. In every step of the procurement process, Procurement Practitioners shall ensure that no bias impairs their judgments and no stakeholder engages in any unethical act.
4. Authority, responsibility and accountability: As detailed in Canons 1, 2 and 3, the Public Procurement System is structured and organized in order to facilitate the operation of the system on one hand and to permit accountability on the other. Procurement Practitioners shall have the courage to assume all their responsibilities, stand by their opinions which are supported by evidence.
5. Fairness: Procurement Practitioners shall strive to ensure that every participant and stakeholder is treated fairly and all tenderers are equally treated in a just manner. Welfare, one of the ultimate goals of the Public Procurement System in Botswana, cannot be effectively attained without fairness of the underlying acts and practices.
6. Oversight and Compliance: Procurement Practitioners shall fully support all oversight bodies in charge of monitoring compliance and/or performance of the Public Procurement System.

One of the areas that is prone to mistakes is the setting of qualification criteria where you may stipulate conditions for participation that are not directly linked to contract performance or are disproportionate. You shall ensure that every qualification criterion is directly linked to the subject-matter of the contract, complies with legislation, and is proportionate to the nature and size of the contract. As such, you will be able to reach effective openness, fairness and competition.

Example 7 - Qualification Criteria and Competition

You will face several situations where some procurement principles are in conflict. While openness and publicity are two principles yet the Regulations allow restricted bidding, Quotations or Direct Procurement which are neither publicized nor open. In such a case, the Regulations will prescribe how the conflict can be resolved through precise stipulation of the conditions of use of less competitive or restricted methods of procurement.

Example 8 - Conflicting Constraints

5. Uphold the value of honesty in all dealings, report any unethical act and its perpetrators and fully respect and support accountability systems.

Honesty is a virtue that must be demonstrated by every Procurement Practitioner in all his/her dealings. Honesty requires avoiding any form of lying, never deceiving others, never withholding information and always pursuing the truth. In being honest, however, the Procurement Practitioner must observe the provisions of the law that require confidentiality.

Procurement Practitioners need to assume a proactive active role in combatting unethical acts. Unethical acts are all such acts that contradict the provisions of the *Code of Ethics* and this *Guidance*. Once in doubt that a certain dealing involves an unethical act, Procurement Practitioners shall strive to timely collect information aiming at confirming if their doubts are legitimate, and they must report any firm evidence thus collected to their superiors and/or competent authorities or where deemed more appropriate to the context through whistleblowing to the Tipp-Off Anonymous Service of the PPRA. The PPRA Whistleblowing Policy is intended to address concerns that fall outside the scope of PPRA Grievance Procedures and which, although not exhaustive, include the following:

1. Conduct which is an offence or breach of the PP Act;
2. Disclosures related to miscarriage of justice;
3. Health and safety risks, including risk to the public as well as other employees;
4. Damage to the environment;
5. The un-authorized use of organisation's resources;
6. Possible fraud and corruption;
7. Sexual or physical abuse;
8. Other unethical conduct;
9. Abuse of power, or other abuse of the organisation's powers and authority for any un-authorized use or personal gain; and
10. Deliberate breach of the organisation's policies and or procedures.

Default in the correct application of the Act, Regulations or organizational procedures for personal gain or self-interest along-with other unethical acts of the nature described above do not only ruin the public efforts, resources, and reputation but also undermine the economy, demoralise the society and ruin societal trust.

Should a Procurement Practitioner commit a mistake or error in the conduct of their daily work, they shall disclose the same along with all particulars to their superior. The PP Act Section 149 provides immunity from prosecution of the procurement practitioners for acts or omissions undertaken in the course of their duties in good faith.

“Everyone else is doing it!” “Civil Servants’ salaries are very low!” “I am working very hard and saved the Government a large sum!” “It is just a small lie with no consequences!” “What my boss doesn’t know won’t hurt him!” “He received a small gift he deserved!” We deceive ourselves and others every time we use such statements. There is no compromise in ethics! All the above statements are used to mask bribery, fraud and corruption! Bribery, fraud and corruption are crimes against yourself, your people and the welfare of society.

Example 9 – Deception to self and others!

Dishonesty includes withholding information and/or deceiving others. If you make a mistake in evaluation, discover this mistake (whether in due time or late), you shall expose this mistake to permit correcting it and learning from it. Errors in evaluation are very difficult to detect even among highly competent reviewers, yet they are easily detectable by the affected bidder. Some evaluation mistakes are indeed spotted by bidders themselves complaining about the outcome; yet others remain unknown for a very long time or forever. You don’t know what you don’t know; but should you know, it is your obligation to act upon your knowledge.

Example 10 – Mistakes in Bid Evaluation

6. Never attempt to withhold or conceal information, data, record of proceedings or documents from authorized personnel, oversight agencies and audit bodies.

Being honest and truthful necessitates the disclosure of all information, data, proceedings and documents to internal and external authorized persons and agencies. By authorized, it is meant all such persons or entities assigned by the law with the mandate to conduct supervisory, control, audit or oversight responsibilities.

Public Oversight Agencies are defined by the Act to include the following: Attorney General's Chambers, the Auditor General's Office, the Directorate on Corruption and Economic Crime, the Office of the Ombudsman and any other institution charged with a responsibility to oversee the activities of other Government departments.

An appeal of award decision is under scrutiny by the Tribunal. All documentation has been furnished to the Tribunal including Procurement Documents, Clarification correspondence with the bidders, Pre-Bid meeting minutes, bids, opening and evaluation reports, clarifications sought from bidders with respective answers, etc. It is not an easy task for the Board to review the award decision if you do not cooperate fully with the Tribunal to furnish them with relevant information if so requested.

Example 11 - Cooperation for effective review

7. Disseminate in a transparent manner non-confidential information, data, record of proceedings or documents equally and simultaneously to the public and concerned stakeholders.

Public trust is fortified with transparency and destroyed by non-transparent practices. Where applicable, the ultimate beneficiaries of public services are entitled to know and understand all matters related to strategic planning, procurement planning, budget allocations, procurement activities and expenditure. Procurement Practitioners shall furnish all such information in an easily identifiable and understandable manner. In the age of open data, information provided to the public will facilitate the role of the general public and civil society organizations in upholding the integrity of the Public Procurement System.

While Public Procurement is based on the principle of transparency and while the Procurement Practitioner must make sure that all non-confidential information, data, proceedings and documents are published to all stakeholders simultaneously, they must refrain from the unethical practice of premature disclosure or of privileged premature disclosure that may grant a certain person or entity unfair competitive advantage over others. Given the sensitivity of such measures, system security and data protection safeguards must be put in place to prevent abuse or leakage of information.

Transparency also requires that procurement decisions are substantiated to concerned stakeholders in due time. Unsuccessful bidders are entitled to timely understand the reasons behind their inability to secure the award; the public should be made aware of any changes to contract values and durations as well as major changes in scope.

The principles of openness, fairness and equal treatment to all bidders and potential bidders require that they receive the same information concurrently so that the procurement process is a level playing field. Should you receive questions about a certain opportunity, you shall never provide an answer to one party (or groups of parties) without informing the rest; all answers shall be provided in writing and at the same time. In cases of restricted bidding, answers must be provided as above to all

shortlisted contractors.

Example 12 – Equitable treatment

Understanding procurement performance reports and Government expenditure reporting is not an easy task especially for the unacquainted citizens and entities. Reporting to the public shall be transparent in form, content and essence. Procurement reports shall be unambiguous, clear and

honest in a manner understandable by the average citizen as well as useful to the citizen and the more knowledgeable entities. A procurement practitioner shall not disseminate ambiguous information deliberately.

Example 13 - Transparency in essence

You are certain that a new piece of legislation will be enacted very soon; this legislation will require every contractor to engage in Environmental Impact Assessment before starting construction works.

Still, you kept silent on this information and mentioned in your procurement document: “bidders shall-at their own responsibility- be acquainted with current and forthcoming legislation and shall take account of the same in pricing their bids; no price adjustment will be accepted for new or changes in legislation.” Such opportunistic attitude based on the concealment of relevant and valuable information and the inclusion of such a clause is rated as unethical.

Example 14 - The unethical nature of opportunism and superior knowledge

8. Preserve confidential information, data or documents about procurement proceedings from any form of disclosure until such a time as such information, data, proceedings or documents becomes due for disclosure as per pertinent Laws, Decrees and Regulations.

Propriety business information received from bidders shall not be disclosed and shall be preserved from disclosure. Similarly information acquired by virtue of association with procurement activities shall not be used towards personal advantage for the period specified in accordance with standing rules. In this

regard Procurement Practitioners must acquaint themselves with the provisions of Section 22, 87 and Regulation 123 of the PP Act as well as the details of the PPRA Intellectual Property Policy.

Contents of bidding documents or bid evaluation results are two examples of information and documents that must be preserved in confidence and must not be prematurely disclosed to the bidders or the public. Their disclosure is restricted to review, audit and oversight agencies. All procurement information, data, proceedings and documents that are not confidential must be disclosed only when they are due for disclosure as stipulated in the Act, Regulations or Operations Manual based on the procurement procedure adopted.

If a bidder receives the Terms of Reference for a consultancy contract before other competitors, such bidder will have been offered an undue competitive advantage over others and will be able to benefit from a much longer time than others to prepare its proposal. The competitive process is now voided of fairness, and such corrupt act will tarnish the integrity of the process. If you face such a situation, the perpetrators must be uncovered and the procurement process cancelled no matter at which stage it is.

Example 15 - Leakage of Terms of Reference

9. Conduct work with due diligence, always maintaining records and documentation in an easily traceable and retrievable form in order to facilitate review and audit.

The exercise of due diligence and the duty of care in the practice of the profession are required from every Procurement Practitioner. Due diligence ensures that procurement procedures and processes are applied systematically through the use of appropriate knowledge, skills and competencies. Due diligence also necessitates the exercise of appropriate effort and scrutiny in decision making to ensure that decisions are sound and justified.

The importance of due diligence in Public Procurement is further amplified by the fact that there may be cases where the procurement regulatory framework may be silent or stopping short of prescribing a fit-for-all ruling thereby offering flexibility to the procurement professionals in taking the most relevant decision. The decision in such cases ought to be governed by the spirit of the law and the circumstances within which the decision is made. It is in such areas that the integrity and professionalism of procurement practitioners are at a premium.

Although all procurement-related decisions must be well documented, it is vital that Procurement Practitioners' decisions based on professional judgment are substantiated by well documented details that indicate the logic used in deriving their decisions in order to offer a clear and unambiguous audit trail of such decision. In making such decisions, Procurement Practitioners shall be guided by the

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provisions of Sections 63 and 64 of the PP Act in the case of bid adjudication as well as the provisions of the *Code of Ethic* and this *Guidance*.

Depending on the situation and the phase of the procurement cycle where such decision is required, and as may be permitted by rules and regulations concerning confidentiality, Procurement Practitioners-when undecided or in doubt- shall consult with colleagues, supervisors, the legal advisor or control bodies. Although borderline decisions are case-sensitive, it is imperative that there is some form of uniformity of decisions across similar situations.

Examples of decisions where due diligence and professional judgment are required include the following: setting clear qualification and evaluation criteria; the stipulation of some payment schedule; the setting of insurance requirements; the decision concerning major/minor deviations in a bid; the mode of calculation of liquidated damages; variations to the contract; extending the time for completion; agreeing on an amicable settlement in case of dispute; etc. It is imperative that any colleague, supervisor or auditor be able to immediately understand the logic behind your decisions without further need to consult with you.

Example 16 - Importance of documenting discretionary decisions

In an evaluation report for the procurement of vehicles and specialized mobile equipment, you considered that a bidder is technically not compliant. However, you did not document your decision in detail: you did not provide a commentary on each specification criterion whether the bid is compliant or not and why it is not compliant. This bidder raised a complaint to the Accounting Officer requesting explanation why its bid was rejected and requested that the Accounting Officer highlights all deviations in its bid.

The Accounting Officer has 20 days to respond before the dispute is referred to the Tribunal

. The specifications for this procurement may include numerous criteria! With no proper documentation at the evaluation stage, the Accounting Officer would require a re-evaluation of the bid with due recording of deviations and related explanations!

Example 17 - Due record of findings during evaluation

10. Avoid any form of discrimination, bias or conflict of interest in the conduct of the procurement process and in arriving at related recommendations and decisions, never pursue individual interests of any form whether directly or indirectly, and maintain impartiality in the pursuit of established public values and goals.

Procurement Practitioners shall avoid any form of bias or conflict of interest in the planning and execution of each step of the procurement process. The CEC Act stipulates that conflict of interest is classified as an act of corruption “a member or an employee of a public body is guilty of corruption if he or an immediate member of his family has a direct or indirect interest in any company or undertaking with which such body proposes to deal, or he has a personal interest in any decision which such body is to make, and he, knowingly, fails to disclose the nature of such interest, or votes or participates in the proceedings of such body relating to such dealing or decision.”

Procurement Practitioners must deeply understand the types of biases that inhibit human judgment and adversely impact ethical behaviour and shall exercise every care in avoiding them. Bias can generate negative emotions and can induce a Procurement Practitioner to favour or disfavour a bidder or a contracted provider. All bidders or providers under contract must be treated impartially and with due respect. Procurement Practitioners shall strive to maintain good working relationships with bidders and potential bidders within the boundaries of sound professional relationships and the requirements of this *Guidance*.

Upon being appointed to any of the Board Committees (as well as the evaluation committees composed by the Procuring Entities), a Procurement Practitioner must immediately report any situation of conflict of interest that may tarnish his/her participation or may be perceived as such, sign the declaration of interest form (Form O), indicating the interest giving exact details of how such conflict of interest situation arises or could arise and immediately excuse him/herself from the deliberations in relation to the specific procurement in question.

It is not the first time that you evaluate this supplier’s bid. This supplier is a recurrent winner in several bids in the past and has performed well in previous contracts. This time, you tend to skim through the bid assuming that this bid is as good like the previous ones. This bias in favour of this bid is called the such an event, you shall never attempt to acquire any information about such an activity or to influence confirmation (or perceptual bias). The same case can apply in reverse if you have an unfavourable the course of action opinion about a current supplier who happens to submit a bid for a new procurement activity. Such biases impair our judgments and can lead to unethical acts if not immediately resolved.

Example18 -The Perceptual Bias

You are reviewing the design submitted by a consultant for the construction of a public hospital. This consultant is the top ranked consultant in Botswana and is in joint venture with a leading design firm from Europe. Both have an excellent track record leading you to avoid meticulously inspecting their work assuming that it is surely of top quality and meets your requirements. Such optimism is obviously unacceptable and unethical; such an optimism bias severely cripples our rational decision making capacities and must be avoided.

Example 19 - The Optimism Bias

As a member of an evaluation committee assessing bids for road construction, you may feel inclined to evaluate favourably a bidder coming from your own hometown; a bidder whose owner is a prominent political figure in a political party you belong to; a bidder whose firm employs your daughter; a bidder in which your cousin is a General Manager; etc. All these situations are classified as Conflict of Interest situations where your bias towards the bidder is unethical and must be resolved through immediate reporting to the chairperson of the committee, withdrawal from the committee, and an assessment by the Appointing Authority as to what degree of re-evaluation is required.

Example 20 - Conflict of Interest

11. Never accept or solicit any form of valuable consideration- whether direct or indirect- from any contractor or an interested party.

Valuable consideration as defined by the CEC Act means:

- (a) Any gift, benefit, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) Any office, employment or contract;
- (c) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) Any other service, or favour including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) The exercise or forbearance from the exercise of any right or any power or duty; and (f) Any offer, undertaking or promise whether conditional or unconditional, of any valuable consideration within the meaning of the provisions of any of the preceding paragraphs.

The receipt or solicitation of any form of valuable considerations as defined above by Procurement Practitioners from private persons or entities for the purpose of facilitating the latter party's business or granting it some advantages constitutes an act of corruption punishable under the law.

Acts of corruption can be direct and may as well be indirect. Indirect corruption acts may involve the use of a third party as a medium for the exchange (e.g. hiring one's son in a firm in exchange for being awarded a major contract or other official dealings; offering of shares in a firm to an official's wife; soliciting paid vacations for an official's family in exchange for positive consideration in future tenders; etc.).

Accepting courtesy gifts from bidders, potential bidders (contractors) and providers under contract may seem at a first instance acceptable and inconsequential; however, the cumulative effect pursuant to a deeper assessment may prove otherwise. Even among the prudent and ethical practitioners, those who accept such gifts tend to develop a bias in favour of the concerned offeror over time- a bias that can be potentially as grave as granting this person preferential treatment. Many times, such returned courtesy or preferential treatments are unconscious and unintentional, yet still unethical! Therefore, you need to follow the in-house instructions as to how to deal with petty gifts.

Example 21 – Why “Zero tolerance” to gifts?

12. Be an excellent team player demonstrating commitment, cooperation, trust and good faith while, at the same time, taking every decision autonomously based on factual evidence.

Procurement activities are mostly performed as a team function (procurement planning, requirements definition and elaboration, bid evaluation, contract management, acceptance, etc.). A Procurement Practitioner must be an excellent team player endowed by the qualities of:

- Devotion: Procurement Practitioners shall always preserve at paramount importance the ultimate goal of the procurement- the attainment of which requires that they put aside or forego their self-interests;
- Cooperation: attaining the joint public good requires Procurement Practitioners' utmost effort- full and dedicated cooperation with the rest of their colleagues in the pursuit of success;

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- Trust: Procurement Practitioners shall be consistent in creating a culture of trust in dealing with their colleagues and peers in joint cooperation initiatives; trust is contagious and when in its rightful place, it contributes greatly to success;
- Good faith: Procurement Practitioners shall never be manipulative or abusive in their dealings with others and shall always demonstrate sincerity and good will at all times.

Procurement Practitioners must be aware of the risks of crowd behaviour, where team members may engage in substandard acts assuming that blame is diluted because of the size of the team. Additionally, Procurement Practitioners shall also be aware of the risks of uniformity and conformity where team members decide to let go of their opinions for the sake of obtaining unanimous votes or to conform to the rest of the team. Finally, Procurement Practitioners shall be aware that overrated trust or trust in the wrong person may have serious negative consequences; Procurement Practitioners shall be prudent enough to know when to be skeptical and to pursue their skepticism until they find the truth and obtain factual evidence.

Once a Procurement Practitioner makes a decision- whether individually or along with other team members- his/her signature on any document signifies that the document is fully acceptable to him/her (apart from any reservation which must be specifically indicated) and that he/she fully comprehends the responsibility attached to such a signature. Any such signature is construed to have been made autonomously and in free will. Public Procurement must be practiced with autonomy where Procurement Practitioners' decisions must not be affected by authority or hierarchy while at the same time conforming to legal provisions, the Act, Regulations, Operations Manual, Official guidance and instruction, the *Code of Ethics*, and this *Guidance*.

You along with four other colleagues are evaluating proposals for the design of a power plant. This committee is always in charge of major bid evaluations, and you have excellent working relationships among one another. Your sincere opinion is that Bid X needs to be rejected because the Team Leader does not possess the minimum qualifications; your colleague- to the contrary- believes otherwise and recommends that Bid X be given topmost scores. Your senior colleague is in the evaluation committee. In pursuit of conformity to his opinion, you let go of your remarks and agree to his opinion without attempting to arrive at common grounds. Wrong! You shall insist on writing your own reservations in the Report.

Example 22 - the unethical risks of conformity

CONCLUSION

Public Procurement Management is increasingly becoming a complex team function that must be staffed by well-coordinated and certified “professionals”. Procurement Practitioners must recognize that:

1. Public Procurement is a practice in which practitioners are unequivocally required to comprehend and apply a clear body of knowledge that is based, on one part, on the legal texts and, on the other part, on sound professional judgement;
2. Public Procurement Practitioners are required to keep abreast with advancements in the field of Public Procurement through personal development, acquisition of intellectual abilities and continuous learning;
3. Public Procurement is one of the most impactful practices of the public sector affecting all citizens, economy, environment and welfare in a country and beyond;
4. Practicing Public Procurement requires adherence to the provisions of the PP Act, Regulations and the *Code of Ethics* and this *Guidance*. In as much as the law provides for sanctions to be imposed on persons contravening the provisions of the Law and the Code of Ethics yet it, at the same time, also provides protection from prosecution in the case of acts or omissions pursued in good faith;
5. Public Procurement must be practiced with autonomy where the decisions of every civil servant must not be affected by authority or hierarchy while at the same time conforming to legal provisions, guidelines and sound professional practice.

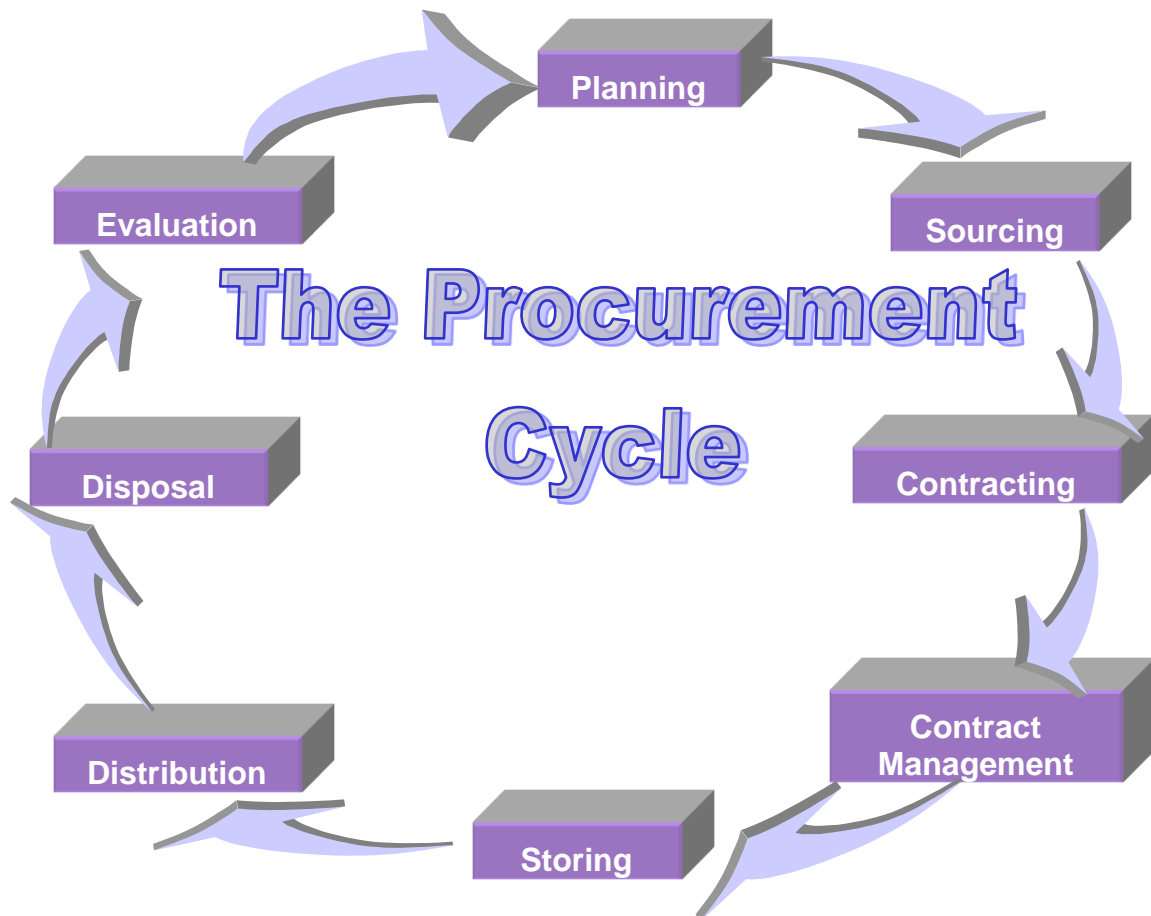
Advancing Public Procurement in Botswana relies mainly on the advancement of the practice through research, modernization, continuous development and certification. Practice codification, regulatory modernization, institutionalization of certification schemes and advancing efficient and effective accountability systems are of paramount importance.

The above are responsibilities not only of policy makers or executive powers in Botswana, but also of procuring units, procuring entity managers and procurement practitioners. The role that Procurement Practitioners should exercise includes the following:

- a. Fortifying the profession against any attempts to downgrade it or diminish its status. This requires adherence to its principles and objectives and observation of its constraints at all times;
- b. Pursuing knowledge and skills persistently;
- c. Contributing to knowledge sharing and team building;
- d. Educating stakeholders; and
- e. Supporting central institutional systems and mechanisms whether regulatory, control or audit;

Practitioners’ wholehearted conviction and adoption of the *Code of Ethics* and this *Guidance* are vital for good governance in the Republic of Botswana, the advancement of its economy, the protection of its environment and the advancement of its society.

ATTACHEMENT 1: Common Risks in the Public Procurement Process



The risks associated with different stages of procurement includes but are not limited to the under listed:

1. Planning – including specification

- a. Development of a demand that is not necessary for self-gain or other fraudulent purposes.
- b. Divulging information to some potential bidders before publishing procurement plans.

2. Sourcing – invitation and evaluation

- a. Divulging information on terms of reference before tender floating.

- b. The use of preferred bidders' specifications as the PEs requirements in a tender.
- c. Divulging confidential tender information to bidders before the tender is awarded.
- d. Failure to declare conflict of interest where it exists.
- e. Failure to ensure there is wide competition among suppliers in the procurement and asset disposal process without reasonable justification

3. -Contracting – contract award

- a. Failure to comply with contract conditions.
- b. Receiving substandard products to the detriment of the users.
- c. Soliciting favours from contractors in order to place orders for the users.

4. Contract Management

- a. Receiving products that are already left with short expiry period to the detriment of the users.
- b. Poor contract management.
- c. Delaying contractor payments expecting inducement.

5. Storing

- a. Receiving expired/substandard/ faulty or defective products to the detriment of users
- b. Receiving less than expected.
- c. Excessive reorders of unnecessary stock.

6. Distribution

- a. Unauthorised distribution of assets.

7. Disposal

- a. The use of disposal methods unfit for the goods in question.

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- b. Unauthorised disposal of assets.

8. Evaluation (of process)

- a. Obscured evaluation of project performance
- b. Obscured evaluation of contractor performance

APPROVAL

This code has been approved by the Executive Management and shall be subject to review from time to time.

Designation	Name	Signature
Acting Chief Executive Officer	Tumelo Motsumi	