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THE UNITED REPUBLIC OF TANZANIA



CHAPTER 410

THE PUBLIC PROCUREMENT ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION 2022

This Revised Edition of the Public Procurement Act, Chapter 410, has been revised up to and including 15th June, 2022 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

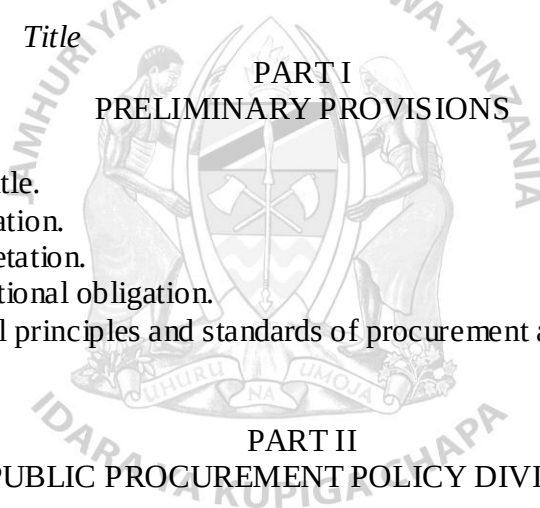
Dodoma,
22nd June, 2022

ELIEZER MBUKI FELESHI,
Attorney General

 CHAPTER 410

THE PUBLIC PROCUREMENT ACT

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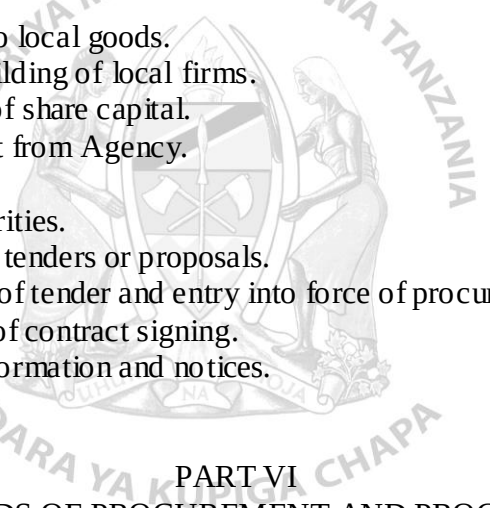
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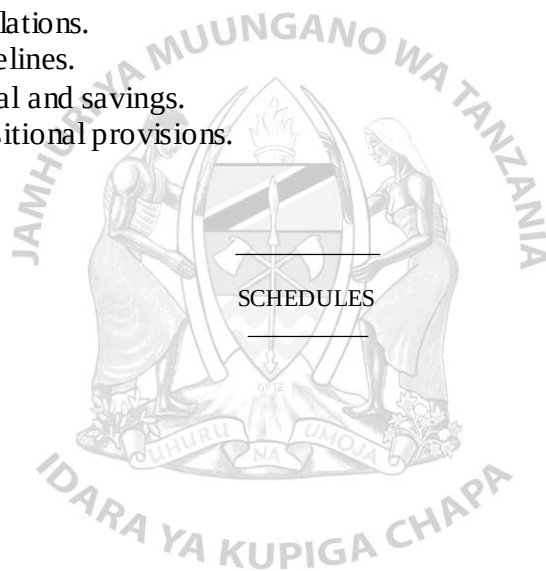
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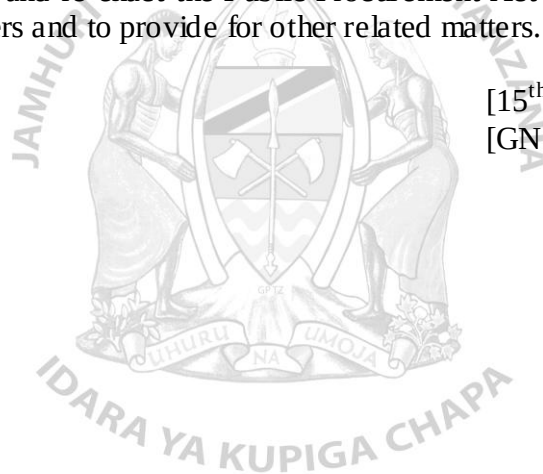
THE PUBLIC PROCUREMENT ACT

An Act to make better provisions for the regulation of public procurement, to provide for repeal of the Public Procurement Act, 2004 and re-enact the Public Procurement Act and consequential matters and to provide for other related matters.

[15th September, 2013]

[GN. No. 445 of 2013]

Acts Nos.
7 of 2011
4 of 2013
3 of 2014
5 of 2016
9 of 2018
GN. No.
329 of 2016

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Public Procurement Act.

Application

2.-(1) This Act shall apply to-

- (a) all procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- (b) non-Government entities, for procurement financed from specific public finances; and
- (c) public-private partnership projects, in their relevant stages.

(2) The defence and national security organs shall comply with this Act subject to subsections (3) and (4).

(3) The defence and national security organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively.

(4) The defence and national security organs shall agree annually with the Authority on the category of items to be included in the restricted list and on restricted procurement methods set out in this Act or regulations made under this Act which applies to each category of item on the restricted list.

(5) Subject to section 4(1), the extent to which this Act, regulations and rules made under it conflict with other laws, regulations or rules on matters relating to public procurement and disposal of public assets by tender, the provisions of this Act, regulations and rules made under it shall prevail.

Interpretation
Act No.
5 of 2016
s. 2
Cap. 348
Cap. 4
s. 8

3. In this Act unless the context otherwise requires-

“accounting officer” means a Government officer appointed in accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention;

“Agency” means Government Procurement Services Agency;

“an associate” means a person who-

- (a) is in partnership with the public officer; or
- (b) in the case of a body corporate is a controller of the body corporate or the public officer and any person who is in association with him;

“Appeals Authority” means the Appeals Authority established under section 88;

“approving authority” means an accounting officer or tender board of a public body;

“Authority” means the Public Procurement Regulatory Authority;

“Board” means the Board of Directors of the Public Procurement Regulatory Authority established

under section 21;

“coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;

“competent authority” means a person, body of person, organs or an agency competent to take actions as may be referred to or directed to it by the Authority under this Act;

“competitive selection” means the method of procurement whereby consultants or providers of services are invited by the procuring entity to compete with each other in submitting either unpriced or priced tenders, where the tenders are evaluated either on the basis of quality or on the basis of a combination of quality and cost;

“collusive practices” means impairing or harming, or threatening to impair or harm directly or indirectly, any part or the property of the party for the purpose of influencing improperly the action or a part or in connection with public procurement or Government contracting or in furtherance of a corrupt practice or a fraudulent practice;

“competitive tendering” or “tendering” means the method of procurement whereby suppliers, contractors or consultants are invited by the procuring entity to compete with each other in submitting priced tenders for goods, works or services;

“consultant” means a firm, company, corporation, organisation, partnership or an individual person engaged in or able to be engaged in the business of providing services in architecture, economics, engineering, surveying or any field of professional services, and who is, according to the context, a potential party or the party to a

- contract with the procuring entity;
- Cap. 103 “consultancy services” means activities of an intellectual and advisory nature that do not lead to a measurable physical output and includes design, supervision, training, advisory, auditing, software development and similar services;
- “contracting authority” shall have a meaning ascribed to it under the Public Private Partnership Act;
- “contractor” means a firm, company, corporation, organisation, partnership or an individual person engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovation, and who is, according to the context, a potential party or the part to a procurement contract with the procuring entity;
- “corrupt practice” means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;
- Cap. 61 “defence and national security organs” has the meaning ascribed to it under the National Security Council Act;
- “department” in relation to a Ministry of the Government or other public authority or public body, includes any division or unit by whatever name known of that ministry, authority or other body;
- “digital signature” means an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and parameters such that the identity of the signer and the integrity of the data can be verified;
- Cap. 257 “disposal” means the divestiture of public assets including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means, including sale, hire-purchase, licences, tenancies, rental, lease, franchise, auction or any combination however classified other than those regulated by the Public Corporation Act;

- “disposal process” means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from tenderers, examination and evaluation of those offers and award of contract;
- “e-procurement” means the use of information and communication technology by the Government in conducting procurement functions;
- “emergency procurement” means procurement of goods, works or services essentially to meet an emergency situation which cannot be done through normal procurement process;
- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;
- “goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;
- “Government” means the Government of the United Republic of Tanzania;
- “guidelines” means directives issued by the Public Procurement Regulatory Authority under this Act;
- “false representation” means a misrepresentation of fact made by one party to another with intent to deceive and with the knowledge that it is false;
- “highest evaluated price” means the price offered by a tenderer for revenue collection services or for the asset to be disposed of, that is found to be the

highest after considering relevant factors specified in the tender documents and apportioning weight for such factors;

“Independent Government Department” means a department of the Government that is not under the direct control of the parent Ministry;

“life-saving health commodities” includes medicines, medical devices and health supplies that effectively address leading avoidable causes of death during pregnancy, childbirth and childhood as may be modified by the Minister in consultation with the Minister responsible for health by order published in the *Gazette*;

“local firm” means a firm whose majority share capital is owned by citizens of the United Republic;

“local government authority” means a local government authority established under the Local Government (District Authority) Act or local government authority established under the Local Government (Urban Authority) Act;

“lowest evaluated cost” means the price offered by a tenderer that is found to be the lowest price after consideration of all relevant factors and the calculation of any weighing for these factors, provided that such factors have been specified in the tender documents;

“Minister” means the Minister for the time being responsible for finance;

“non-consultancy services” means any object of procurement other than goods, works and consultancy services;

“obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;

“parastatal organisation” means-

(a) a body corporate established by or under any Act other than the Companies Act;

(b) any corporation registered under the Companies Act, in which not less than fifty percent of the share capital is owned by the

Caps. 287 and
288

Cap. 212

Government or by another parastatal organisation, or in the case of a company which is limited by guarantee, where the Government has undertaken to meet fifty percent or more of the liabilities of that company; or

Cap. 245 (c) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act;

Cap. 348 “Pay-master General” has the meaning ascribed to it under the Public Finance Act;

“person” includes any association of persons whether incorporated or not;

“post-qualification” means a due diligence procedure applied after tenders have been evaluated prior to award of contract, to determine whether or not the lowest evaluated tenderer has the experience, capability and resources to carry out the contract effectively;

“pre-qualification” means a formal procedure whereby suppliers, contractors or consultants are invited to submit details of their resources, and capabilities which are screened prior to invitation to tender on the basis of meeting the minimum criteria on experience, resources, capacity and financial standing;

“procuring entity” means a public body and any other body, or unit established and mandated by Government to carry out public functions;

“procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation, award and management of

contracts;

“procurement contract” means any licence, permit, or other concession or authority issued by a public body or entered into between a public body and a supplier, contractor or consultant, resulting from procurement proceedings for carrying out construction or other related works or for the supply of any goods or services;

“procurement expert or specialist” means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement and has been certified or registered by the Procurement Supplies Professional and Technician Board;

“Procurement Management Unit” means a division or department in each procuring entity responsible for the execution of the procurement functions;

“procurement proceedings” means the proceedings to be followed by a procuring entity or any approving authority when engaging in procurement;

“procurement process” means the successive stages in the procurement cycle, including planning, choice of procedures, measures to solicit offers from tenderers, examination and evaluation of those offers, award of contract and contract management;

“Procurement Professional Body” means the Procurement and Supplies Professionals and Technicians Board;

“public asset” means any property owned by the public body tangible and intangible, including but not limited to physical property, land, shares or proprietary rights;

“public body or public authority” means-

(a) any Ministry, department or agency of the Government;

(b) anybody corporate or statutory body or authority established by the Government any company registered under the Companies

Act;

(c) being a company in which the Government or an agency of the Government, is in the position to influence the policy of the company; or

(d) any local government authority;

“public funds” means monetary resources appropriated to procuring entities through budgetary processes, including the Consolidated Fund, grants, loans and credits put at the disposal of the procuring entities by local or foreign donors and revenues generated by the procuring entities;

“public officer” or “officer” means-

(a) any person holding or acting in an office of emolument in the public service;

(b) a person holding or acting in the office of a Minister in the Government;

(c) an employee of anybody corporate referred to in the definition of public body or public authority; or

(d) a person who has been a public officer;

“Public Private Partnership” shall have the meaning ascribed to it under the Public Private Partnership Act;

“services” means both consultancy and non-consultancy services;

“solicited private partnership projects” means proposals for public private partnership projects that are initiated by public bodies and represent Government’s priority programs;

“specification” means a description of any commodity or works by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics or to any substance or material of, or with which, or the manner in which, any commodity or works may be manufactured, produced, processed, treated, built or installed;

“successful tender” means a tender evaluated and selected by the procuring entity as-

- (a) offering the lowest evaluated cost and has the capacity and capability to execute the contract, in case the method of procurement used was competitive tendering;
 - (b) being the most responsive to the needs of the procuring entity where procurement used was competitive quotations, single source procurement, competitive selection or where goods or services of minor value were procured; or
 - (c) the highest evaluated price;
- “supplier” means company, corporation, organisation, partnership or individual person supplying goods or services, hiring equipment or providing transport services and who is, according to the contract, a potential party or the party to a procurement contract with the procuring entity;
- “tender” means an offer, proposal or quotation made by a supplier, contractor or consultant in response to a request by a procuring entity;
- “tender document” means a written or electronic document or request for proposal inviting tenderers to participate in procuring or disposal by tender proceeding and includes document inviting potential tenderer for pre-qualification;
- “tenderer” means any natural or legal person or group of such persons participating or intending to participate in procurement proceeding with a view to submitting a tender in order to conclude a contract and includes a supplier, contractor service provider or asset buyer;
- “terms of reference” means the statement issued by the procuring entity giving the definition of the objectives, goals and scope of the services, including where applicable, the means to be used;
- “unsolicited private partnership projects” means a proposals that are initiated by a private sector party to a public institution for consideration as public private partnership project;
- “value for money” means the maximum benefit from

goods, works or services procured with the resources available worth the cost incurred;

“works” means-

- (a) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;
- (b) any other civil works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing; and
- (c) service which is tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations:

Provided that, contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the services covered by the contract.

International
obligation

4.-(1) To the extent that this Act conflicts with an obligation of the United Republic under or arising out of-

- (a) any treaty or other form of agreement to which the Government is a party with one or more other states or political sub-divisions of such states; or
- (b) any grant agreement entered into by the Government with an inter-governmental or international financing institution in which the Government is the beneficiary,

the requirement of such treaty or agreement shall prevail, but in all other respects, the procurement shall be governed by this Act.

(2) Where the Government enters into any treaty or other form of agreement which favours an external beneficiary, then-

- (a) procurement made through contributions made by the Government shall be undertaken in the United Republic through national

suppliers, contractors or consultants;

(b) all relevant insurances shall be placed with companies registered in the United Republic;

(c) supplies shall be transported in carriers registered in the United Republic.

(3) Where, for reasons of limitations of capacity, national suppliers, contractors or consultants are unable to satisfy wholly or in part, the specific procurement requirements, they shall be offered a preferential opportunity to participate in the procurement or disposal by tender process of the beneficiary entity, in conjunction with firms in that country, and where applicable, to offer such requirements from third sources.

(4) A derogation from the application of subsections (1) and (2) may be applied to the Authority by the competent agency responsible for the procurement or disposal in question with supporting documentation and justification.

General
principles and
standards of
procurement
and disposal by
tender
Act No.
5 of 2016
s. 3

4A.-(1) All public procurement and disposal by tender shall be conducted in accordance with the basic principles set out in this Act.

(2) Subject to this Act, all procurement and disposal shall be conducted in a manner that maximizes integrity, competition, accountability, economy, efficiency, transparency and achieves value for money.

(3) Procuring entities shall, in the execution of their duties, undertake to achieve the highest standards of equity, taking into account-

(a) equality of opportunity to all tenderers;

(b) fairness of treatment to all parties; and

(c) the need to obtain the best value for money in terms of price, quality and delivery, having regards to prescribed specifications and criteria.

PART II

PUBLIC PROCUREMENT POLICY DIVISION

Establishment
of Public
Procurement
Policy Division

5.-(1) There shall be established, under the Ministry responsible for finance a Public Procurement Policy Division.

(2) The Public Procurement Policy Division shall be headed by a person with appropriate academic and professional qualifications and experience of not less than ten years in procurement related functions.

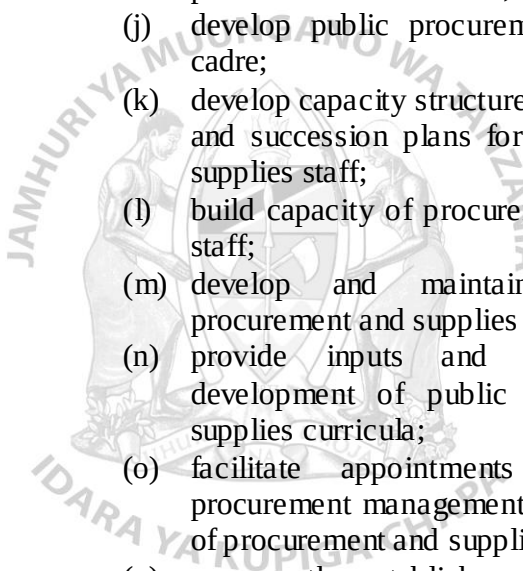
Functions of
Public
Procurement
Policy Division
Act No.
5 of 2016
s. 4

6.-(1) The functions of the Public Procurement Policy Division shall be to-

- (a) develop a National Procurement Policy;
- (b) review procurement policies, regulations, circulars and other related directives with a view of updating the same;
- (c) monitor the implementation of Public Procurement Policies;
- (d) advise the Central Government, local governments and statutory bodies on issues related to procurement policies; and
- (e) develop and manage procurement cadre.

(2) For the purpose of subsection (1), the Public Procurement Policy Division shall-

- (a) design and implement public procurement advisory mechanisms;
- (b) monitor, evaluate and review public procurement systems;
- (c) study and mainstream best public procurement systems;
- (d) analyse public procurement policy issues and challenges, advise, provide guidance and follow-up on their implementation;
- (e) develop, implement, monitor and evaluate mechanisms for involvement of small and medium scale enterprises in public procurement markets;
- (f) conduct research and other studies on public procurement and advise;

- 
- (g) harmonise public procurement systems in the country and monitor their implementation;
 - (h) advise on applications for retrospective approval;
 - (i) monitor and evaluate performance of public procurement institutions;
 - (j) develop public procurement and supplies cadre;
 - (k) develop capacity structure, human resources and succession plans for procurement and supplies staff;
 - (l) build capacity of procurement and supplies staff;
 - (m) develop and maintain database for procurement and supplies staff;
 - (n) provide inputs and advise for the development of public procurement and supplies curricula;
 - (o) facilitate appointments of heads of procurement management units and transfer of procurement and supplies staff;
 - (p) manage the establishment of procurement management units;
 - (q) liaise with training institutions on issues related to capacity building of procurement staff;
 - (r) link the Government with stakeholders on issues related to public sector procurement; and
 - (s) liaise with procurement professional bodies on matters related to professionalization of the procurement cadre.

PART III

THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Establishment
of Authority

7.-(1) There is established an Authority to be known as the Public Procurement Regulatory Authority.

(2) The Authority shall have all the powers necessary or expedient for the performance of its functions and shall-

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, be capable of-
 - (i) suing and be sued;
 - (ii) holding, purchasing and otherwise acquiring and disposing of movable or immovable property; and
 - (iii) entering into any contract or other transactions;
- (c) exercise the powers and perform the functions conferred upon it by or under this Act; and
- (d) do or suffer to do all acts and things, which a body corporate may lawfully perform, do or suffer to be done.

(3) The application of the common seal of the Authority on any document shall be authenticated by the signature of the Chief Executive Officer.

(4) A document purporting to be an instrument issued by the Authority sealed with the seal of the Authority and authenticated in accordance with subsection (3), shall be deemed to be an instrument of the Authority and shall be received as evidence without further proof.

(5) Notwithstanding the preceding provisions of this section, and the Authority having the status of a body corporate, the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Authority.

(6) Where the Attorney General intervenes in any matter in pursuance of subsection (5), the provisions of the Government Proceedings Act shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Cap. 5

Objectives of
Authority

8. The objectives of the Authority shall be to-

- (a) ensure the application of fair, competitive, transparent, non-discriminatory and value for

- money procurement standards and practices;
- (b) set standards for the public procurement systems in the United Republic;
- (c) monitor compliance of procuring entities; and
- (d) build, in collaboration with Public Procurement Policy Division and other relevant professional bodies, procurement capacity in the United Republic.

Functions of
Authority
Acts Nos.
3 of 2014
s. 21;
5 of 2016
s. 5;
9 of 2018
s. 22
Cap. 4
s. 8

Cap. 103

- 9.-(1)** The functions of the Authority shall be to-
- (a) advise Government, local government authorities and statutory bodies on procurement principles and practices;
 - (b) monitor and report on the performance of the public procurement systems in the United Republic and advise on desirable changes;
 - (c) regulate procurement of consultancies transaction advisors and private part in respect of public private partnership projects in accordance with the regulations made under the Public Private Partnership Act and guidelines issued by the Authority in collaboration with the Public Private Partnership Centre;
 - (d) in collaboration with the Office of Attorney General and professional bodies, prepare, update and issue authorised versions of the standardized tendering documents, procedural forms and any other documents to procuring entities;
 - (e) ensure in collaboration with relevant professional bodies, that any deviation from the use of the standardised tendering documents, procedural forms and any other attendant documents is effected only after prior written approval of the Authority;
 - (f) issue guidelines under this Act;
 - (g) organise and maintain a system for the publication of data on public procurement

- opportunities, awards and any other information of public interest as may be determined by the Authority;
- (h) conduct periodic inspections of the records and proceedings of the procuring entities to ensure full and correct application of this Act;
 - (i) monitor the award and implementation of public contracts with a view to ensuring that-
 - (i) such contracts are awarded impartially and on merit;
 - (ii) the circumstances in which each contract is awarded or terminated, do not involve impropriety or irregularity;
 - (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each contract conforms to the terms thereof;
 - (j) institute-
 - (i) procurement audits during the tender preparatory process;
 - (ii) contract audits in the course of execution of an awarded tender; and
 - (iii) performance audit after the completion of the contract in respect of any procurement as may be required;
 - (k) determine, develop, introduce, maintain and update related system to support public procurement by means of information and communication technologies including the use of public electronic procurement;
 - (l) agree on a list, which shall be reviewed annually, of services and supplies in common use by more than one procuring entity which may be subject to common procurement;
 - (m) administer and enforce compliance with the

provisions of this Act, regulations and guidelines issued under this Act;

- (n) build capacity to stakeholders engaged in public procurements issues;
- (o) obtain price information for standardised common use items and services from relevant public bodies with a view to ensuring that the price conform with the prevailing market prices;
- (p) undertake research and surveys nationally and internationally on procurement matters; and
- (q) undertake any activity that may be necessary for the execution of its functions.

(2) For the purposes of discharging its functions under this Act, the Authority shall be entitled-

- (a) to be advised of the award and the variation of any public contract by the procuring entity responsible for such contract;
- (b) subject to section 12, to have access to all books, records, documents, or other property belonging to the procuring entity, tenderer whether in the possession of any officer of a procuring entity or a tenderer;
- (c) to have access to any premises or location where work on a public contract has been or is being or is to be carried out;
- (d) in relation to any matter which is the subject of investigation by the Authority, to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed license whether in the possession of any public officer or any other person;
- (e) have access to any premises or location where it has reason to believe that any book, records, document or any other property referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;

- (f) within reasonable hours to enter any premises occupied by any person in order to make an enquiry or to inspect document, record or property as it considers necessary to any matter being investigated by it; and
- (g) subject to the provisions of sections 10 and 11, to retain any such document, record or other property referred to in paragraph (f).

(3) Where-

- (a) the Authority has authorised a member of staff of the Authority to enter premises; and
- (b) the authorised officer is refused or prevented from gaining entry to the premise,

a magistrate may, on application, have power to issue a warrant authorising any police officer to forcibly enter the premises to conduct the search and make copies or take extracts of documents therein.

(4) For the purposes of subsection (2), the Authority shall have power to require any procuring entity to furnish the Authority information with regard to the award of any public contract and such other information in relation thereto as the Authority considers desirable.

(5) For the purposes of paragraphs (d) and (e) of subsection (2), the Authority shall have power to require any public officer or any other person to furnish, in a manner and at such time as may be specified by the Authority, information with regard to the grant, issue, suspension or revocation of any prescribed licence and any other information in relation thereto as the Authority considers desirable.

Scope of
investigations
by Authority
Act No.
5 of 2016
s. 6

10.-(1) Subject to subsection (2), the Authority may, if it considers necessary or desirable, conduct an investigation into any or all of the following matters:

- (a) the registration of contractors, suppliers or consultants in relation to the specific procurement;
- (b) tender procedures relating to contracts

awarded by the public bodies;

- (c) the award of any public contract;
- (d) the implementation of the terms of any public contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed license;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of any prescribed license.

(2) The Authority shall, with a prior written direction of the Paymaster General, investigate-

- (a) any public contract or any matters concerning any contract entered into for the purposes of defence or for the supply of equipment to the security forces;
- (b) the grant or issue of any prescribed licence for the purposes of defence or for the supply of equipment to the security forces and any report or comment thereon shall be made to the Pay-Master General or the Minister or to both.

(3) During the conduct of investigation, the Authority may order the suspension of proceedings or implementation of any matter under investigation.

Initiation of investigation

11. An investigation carried out pursuant to section 10 may be undertaken by the Authority on its own initiative or as a result of representations made to it, if in its opinion, such investigation is warranted.

Procedure in respect of investigation

12. The Authority may adopt whatever procedure it considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from a person or persons and in a manner and make enquiries as it thinks fit.

Evidence

13.-(1) Subject to the provisions of subsection (3) and section 10(1), the Authority may, at any time, require any officer or member of a public body or any

other person who, in its opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish information and produce any document under his control.

(2) The Authority may summon before it-

(a) any person who has made representations to it; or

(b) any officer, member or employee of a public body, or any other person who, in the opinion of the Authority, is capable to furnish information relating to the investigation.

(3) A person shall not, for the purposes of an investigation, be compelled to give an evidence or produce any document or thing, which he may not be compelled to give or produce in proceedings in any court of law.

Restriction of
disclosure of
certain matters

14.-(1) Where the Pay-Master General is acting on his own initiative or at the direction of the Minister-

(a) gives notice that the disclosure by the Authority or its employees of any document or information specified in the notice, or any class of document or information so specified, shall-

(i) involve the disclosure of the deliberations or decision of the Government or the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest;

(ii) prejudice the relations of the United Republic with the government of any other country or with any international organisation; or

(iii) prejudice the detection of offences,
the Authority, its employees or any member of its staff shall not communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified;

(b) certifies that, the giving of any information or the answering of any question or production of any document would prejudice the security or defense of the United Republic, the Authority or its employees or staff shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided for in subsection (1), no regulation which authorises or requires the refusal to answer any question or the withholding of any information, document or thing on the ground that the answering of the question or the disclosure of the information, document or thing may be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Authority or its staff.

Procedure after
investigation

15.-(1) The Authority shall, after conducting investigation under this Act and in writing, inform the Pay-Master General and the relevant competent authority or the accounting officer of the public body concerned of the result of that investigation and make recommendations as it considers necessary in respect of the matter on which investigation was conducted.

(2) The Chief Executive Officer of the Authority may, where report of the Authority reflects adversely upon any person, so far as practicable, inform that person of the substance of the report.

Disciplinary
action against
public officer

16.-(1) The Authority shall, where during the course of its investigation or on the conclusion thereof, it finds the evidence of breach of duty, misconduct or criminal offence on the part of an officer or member of a public body, refer the matter to the competent authority.

(2) The Authority shall refer the matter to the person or persons competent to take disciplinary or any other appropriate proceedings against the officer or member and submit a special report to the Minister.

Proceedings of
Authority

17. The proceedings of the Authority or its committees shall not be rendered void for want of form.

Powers of
Authority
Act No.
5 of 2016
s. 7

18.-(1) The Authority shall, in the exercise of its regulatory functions, have powers to-

- (a) require any information, document, record and report in respect of any aspect of the public procurement process where a breach, wrong-doing, mismanagement or collusion has been alleged, reported or proven against any procuring entity or tenderer;
 - (b) summon witnesses, call for the production of books of accounts, plans, documents and examine witnesses and parties concerned on oath;
 - (c) commission or undertake investigations and institute procurement, contract and performance audits;
 - (d) cause to be inspected any procurement transaction to ensure compliance with tender award by a procuring entity;
 - (e) act upon complaints by procuring entities, or any other entity or person;
 - (f) commission any studies relevant to the determination of award of contracts; and
 - (g) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere.
- (2) The Authority may-
- (a) require the chairman of a tender board or accounting officer of a public body-
 - (i) to furnish any information or produce any record or any document relating to a contract; and
 - (ii) to answer all relevant questions; and
 - (b) examine such records or other documents and take copies or extracts therefrom.

Cancellation of
procurement
proceedings

19.-(1) Notwithstanding anything to the contrary provided for in any other written law, the Authority

shall, after conducting an investigation is reasonably satisfied that there is a breach of this Act, the regulations or any guideline-

(a) direct the procuring entity to take such actions as are necessary to rectify the contravention; or

(b) terminate the procurement proceedings.

(2) The Authority shall, within seven days prior to making a decision under subsection (1)(b), give the procuring entity and any other person whom it believes that his legal rights may be adversely affected by the decision an opportunity to make representations.

(3) The Authority shall incur no liability towards the procuring entity or any other person or body interested in the tender under review or investigation by virtue of invoking its powers under this section.

Action on
recommendation
of Authority
Act No.
5 of 2016
s. 8

20.-(1) The Authority shall, where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, recommend to the competent authority-

(a) the suspension of funds disbursements to any procurement financed by specific public funds where a breach has been established, to non-Government entities, or require the refund of the lost funds by such entities;

(b) the replacement of the head of a Procurement Management Unit, the chairman, or any member of a tender board, as the case may be;

(c) the disciplining of the accounting officer, chairman or a member of the tender board, the head of Procurement Management Unit, a member of evaluation committee or any other officer concerned with the procurement process in issue; and

(d) the temporary transfer of the procurement functions of a procuring entity to a third party procurement agent.

(2) The competent authority shall respond in writing to the Authority's recommendations on the

actions taken within fourteen days from the date of receipt of such recommendations.

(3) The Authority shall, in its Annual Performance Evaluation Report include-

- (a) its audited findings and complaints investigated;
- (b) its recommended corrective measures in each case;
- (c) the response and actions taken by-
 - (i) respective competent authority; or
 - (ii) relevant law enforcement and oversight agencies; and
- (d) any remedial measures taken.

Establishment
and composition
of Board of
Directors

21.-(1) There is established a Board to be known as the Board of Directors of the Public Procurement Regulatory Authority.

(2) The Board shall be the governing body of the Authority.

(3) The Chairman and members of the Board shall be appointed from amongst persons of good standing and recognised for their high levels of professional, competence and integrity.

(4) The First Schedule to this Act shall have effect regarding the composition, appointment and procedures of the Board.

Committees of
Board of
Directors

22.-(1) The Board may establish such committees that may be necessary for the better carrying out of the functions of the Authority, but, in any case the committees shall not exceed five.

(2) The Board shall determine the terms of reference of the committees, their composition and their terms and conditions of service.

Appointment
of Chief
Executive
Officer
Act No.
5 of 2016

23.-(1) There shall be a Chief Executive of the Authority who shall be appointed by the President on such terms and conditions as the President determines on contract of four years subject to renewal for only one further term.

s. 9

(2) The Chief Executive Officer shall be appointed from amongst professionals with at least ten years of experience in either engineering, architecture, law, procurement and supplies management, quantity surveying, business administration, economic development planning or in any other related field, and shall have academic qualifications and experience in such fields including proven record of procurement experience.

(3) Subject to the general supervision and direction of the Board, the Chief Executive Officer shall be responsible for the-

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) administration, organisation and control of the officers and staff of the Authority; and
- (d) promotion of training and disciplining of the officers and staff of the Authority in accordance with their terms and conditions of appointment.

(4) The Chief Executive Officer shall be the accounting officer of the Authority and in discharging the duty imposed under this section, he shall, with necessary variations, be guided by the laws governing employment in the public service.

Directors,
consultants and
other staff of
Authority
Cap. 4
s. 8

24.-(1) The Authority shall employ Directors who shall be principal assistants to the Chief Executive Officer, other officers and staff of such number and titles as may be necessary for the efficient discharge of the functions of the Authority on such terms and conditions as may be determined by the Board.

(2) The Authority may appoint consultants and experts of the Authority in various disciplines on such terms and conditions as the Authority may decide or determine.

(3) The Authority shall establish a competitive selection procedure for the appointment of all

employees, consultants and experts.

(4) The Authority shall, comply with the competitive selection procedure established under subsection (3), whenever it appoints employees, consultants or experts.

(5) A person who was the chairman or a member of the Board, the Chief Executive Officer or an employee of the Authority shall not, during a period of twelve months after the expiration or termination of the term of office with the Authority-

(a) enter into any contract of employment or supply of services to any person or organisation who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority; or

(b) acquire or hold any financial interest, whether as an employee, partner, shareholder, officer or joint venture, in any business or organisation supplying services to any person or organisation who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority.

Funds of
Authority
Act No.
5 of 2016
s. 10

25.-(1) The funds of the Authority shall consist of-

- (a) money appropriated by the Parliament;
- (b) loans or grants;
- (c) revenues collected from goods or services that are rendered by the Authority; and
- (d) any other money received or made available to the Authority for the purposes of its functions;

(2) The Authority may charge and collect fees on documents.

(3) There shall be paid from the funds of the

Authority-

- (a) the salaries, allowances of the staff of the Authority;
 - (b) reasonable travelling, transport and subsistence allowance for members of any committee of the Authority when engaged on the business of the Authority, at such rates as the Minister may determine; and
 - (c) any other expenses incurred by the Authority in the performance of its functions.
- (4) The Authority may invest, in such manner as it considers fit, such amount of its funds which it does not immediately require for the performance of its functions.

Books of accounts

26.-(1) The Authority shall maintain proper books of accounts and other records relating to its accounts and prepare an annual statement of accounts including the income and expenditure account and the balance sheet.

(2) The books of accounts and other records shall be open for inspection by the Minister or any person duly authorised by him in that behalf.

Audit of accounts

27.-(1) The accounts of the Authority shall be audited by the Controller and Auditor General.

(2) The Controller and Auditor General or other person appointed by him in connection with the auditing of the accounts of the Authority under this Act shall have the same rights, privileges and authorities in connection with such audit as the rights, privileges and authorities the Controller and Auditor General has in connection with the auditing of Government accounts.

(3) The auditor to the Authority shall, for the performance of his duties under subsection (1), have access to all books of accounts, records, returns, reports and other documents relating to the Authority accounts at all reasonable times.

(4) The auditor to the Authority shall, in respect of each financial year, certify whether or not-

- (a) he has received all the explanations and other information necessary for the performance of his duties;
- (b) the accounts of the Authority have been properly kept; and
- (c) according to the explanations and other information received, and the books of account, records, returns, reports and other documents relating to the Authority accounts produced to him, the accounts of the Authority reflect a true and accurate financial position of the Authority.

(5) The accounts of the Authority as certified by the Controller and Auditor General or any other person appointed by him on his behalf together with the audit report shall be forwarded annually to the Board and the Minister.

(6) The Minister shall cause the accounts and the audit report received under subsection (5) to be laid before the Parliament within three months of receiving the report or at the next sitting of the Parliament, whichever comes first.

Annual
Management
Plan and budget
Act No.
4 of 2013
s. 42
Cap. 4
s. 8

28.-(1) The Chief Executive Officer shall, not later than three months before the end of each financial year, prepare and submit to the Board an Annual Management Plan which includes a budget for its approval for the next financial year.

(2) The Chief Executive Officer may, at any time before the end of a financial year, prepare and submit to the Board for approval any estimates supplementary to the budget of the current financial year.

(3) An expenditure shall not be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the fiscal year in which the expenditure is to be incurred, or in the supplementary budget for that year.

(4) Upon approval of an annual budget or any supplementary budget, the Board shall submit such

budget to the Minister for approval.

Annual report
Cap. 4
s. 8

29.-(1) The Authority shall, within three months after the end of each financial year, submit to-

(a) the Minister, an Annual Performance Evaluation Report in respect of that year's activities consisting of-

(i) evaluation of the operations of the Authority and the annual management plan;

(ii) an evaluation of operations of procuring entities in respect to compliance;

(iii) audit findings, complaints investigated and corrective actions taken; and

(iv) any other information the Board may direct; and

(b) the Controller and Auditor General, the accounts of the Authority for the financial year and the Annual Performance Evaluation Report.

(2) The Minister shall lay before the Parliament the Annual Performance Evaluation Report within three months from the date of his receiving the report, or at the next sitting of the Parliament, whichever event comes first.

(3) The Authority may, where circumstances require, prepare a special report on any matter relating to procurement to be submitted to the Minister.

Internal audits
and periodic
audit reports

30. The head of internal audit shall be responsible for the internal auditing of the Authority's operations and shall submit to the Audit Committee with a copy to the Chief Executive Officer, quarterly report in respect of every three months of a financial year.

PART IV INSTITUTIONAL ARRANGEMENTS

Tender boards

31.-(1) Except where it is provided otherwise in

this Act, or regulations under this Act, each public body shall establish a tender board for procurement of goods, services, works and disposal of public asset by tender.

(2) The composition of tender board, the method of appointment of its members, and the procedures to be followed by such tender boards other than local government authority tender board, shall be as prescribed in the Second Schedule to this Act.

Cap. 290

(3) The composition of local government authority tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be prescribed in regulations made pursuant to the provisions of the Local Government Finances Act.

(4) The regulations made pursuant to subsection (3) shall, *inter alia*, provide for the procedure under which a local government authority through its committee responsible for finance and planning shall perform its oversight function on public procurement matters.

(5) Members of the tender board shall be appointed on the basis of their technical competence required for the discharge of the functions of the tender board.

(6) A member of the tender board or committee thereof, who is a member of a company, firm or other body or is a partner or is in the employment of a person or a company or other body or is married to a person who has submitted an offer for the supply of goods or for the provision of services, execution of works or acquisition of public assets by tender in connection therewith which is the subject of consideration by the tender board, shall disclose the fact and shall not take part in the consideration or discussion of or vote on any question relating to such offer.

Notification to
Authority of
composition of
tender board

32.-(1) The accounting officer shall inform the Authority of the composition of the tender board and the qualifications of its members not later than fourteen days from the date of its appointment.

(2) Where the organisational structure of a particular procuring entity is too small to be able to constitute a tender board, the Authority shall prescribe the procedure to be followed.

Functions of
tender boards
and budget
approving
authority

33.-(1) The functions of the tender board shall be to-

- (a) deliberate on the recommendations from the Procurement Management Unit and approve award of contracts;
- (b) review all applications for variations, addenda or amendments to ongoing contracts;
- (c) approve tendering and contract documents, approve procurement and disposal by tender procedures; and
- (d) ensure that best practices in relation to procurement and disposal by tender are strictly adhered by procuring entities.

(2) The budget approving authority shall, in respect of procurement, be responsible for-

- (a) reviewing and approving of Annual Procurement Plan based on its budget and action plan;
- (b) reviewing of quarterly procurement report submitted by the accounting officer;
- (c) ensuring that the organisation complies with the provisions of the Act and regulations;
- (d) ensuring that the authority's recommendations with respect to established wrong-doings in procurement activities are implemented; and
- (e) disciplining of the staff implicated on wrong-doings under subparagraph (d).

(3) The budget approving authority may request the Authority to carry out procurement audits or investigations where it is not satisfied with the implementation of any procurement in the organisation.

Powers of
tender boards

34. In the exercise of their powers under this Act, tender boards may-

Award of
contracts
Act No.
5 of 2016
s. 11

- (a) request for any professional or technical advice from any appropriate body or person in Tanzania or elsewhere;
- (b) examine such records or other documents and take copies or extracts therefrom; and
- (c) do all such acts and things as they may be considered reasonable and justifiable to the attainment of their objects.

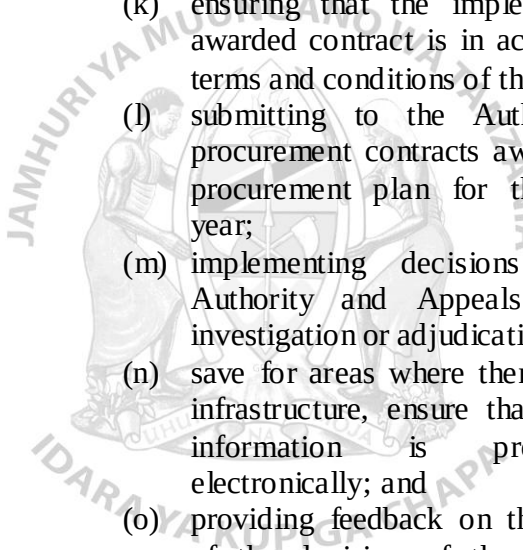
35.-(1) Notwithstanding any other enactment, no public body shall-

- (a) advertise, invite, solicit or call for tenders or proposals in respect of a contract unless authorised by the accounting officer; and
 - (b) award any contract unless the necessary approvals have been granted.
- (2) A person or firm shall not sign a contract with any public body unless the award has been approved by the tender board.
- (3) The acceptance of a tender shall be communicated in writing by a registered post or electronically to a successful tenderer by the accounting officer.

Functions and
powers of
accounting
officer
Act No.
5 of 2016
s. 12

36.-(1) The accounting officer shall have the overall responsibility for the execution of the procurement process in the procuring entity, and in particular, shall be responsible for-

- (a) establishing a tender board in accordance with this Act;
- (b) appointing the members of the tender board specified in the Second Schedule;
- (c) causing to be established a Procurement Management Unit staffed to an appropriate level;
- (d) approving all procurement opportunities;
- (e) appointing the evaluation committee and negotiation team;
- (f) communicating award decisions;
- (g) certifying the availability of funds to

- 
- support the procurement activities;
- (h) signing contracts for the procurement activities on behalf of the procuring entity;
 - (i) handling complaints by suppliers, contractors or consultants;
 - (j) submitting a copy of complaints and reports of the finding to the Authority;
 - (k) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award;
 - (l) submitting to the Authority details of procurement contracts awarded and annual procurement plan for the next financial year;
 - (m) implementing decisions made by the Authority and Appeals Authority after investigation or adjudication of a complaint;
 - (n) save for areas where there is no electronic infrastructure, ensure that all procurement information is promptly posted electronically; and
 - (o) providing feedback on the implementation of the decision of the Authority or the Appeals Authority within fourteen days of receiving the decision.

(2) The accounting officer may request for any professional or technical advice from any appropriate body or person in Tanzania or elsewhere where his entity does not have the required technical experts.

(3) The accounting officer may, before communicating award decision, require the tender board to provide a briefing of the award of a particular tender and may require the Chairman, any member of tender board or evaluation team or the Procurement Management Unit to produce any record or other documents relating to any tender and to answer all relevant questions.

(4) Where the accounting officer is not satisfied with the decision of the tender board, he shall-

- (a) return the decision to the tender board for

review giving written reasons for the dissatisfaction; and

- (b) where not satisfied with the outcome of the review, refer the matter to the Authority for advice.

(5) The accounting officer shall be responsible for procurement decisions made by his procuring entity.

Establishment
and composition
of Procurement
Management
Unit

37.-(1) There shall be established in every procuring entity a Procurement Management Unit staffed to an appropriate level.

(2) The Procurement Management Unit shall consist of procurement and other technical specialists together with the necessary supporting and administrative staff.

(3) The Procurement Management Unit shall be headed by a person with appropriate academic and professional qualifications and experience in procurement functions registered by the Procurement Professional Body.

(4) The Head of the Procurement Management Unit shall report directly to the accounting officer of the procuring entity.

(5) The accounting officer shall ensure that the Procurement Management Unit has a sub-vote and is allocated fund in the budget to carry out its responsibilities under this Act.

Functions of
Procurement
Management
Unit
Cap. 4
s. 8

38. The Procurement Management Unit shall-

- (a) manage all procurement and disposal by tender activities of the procuring entity except adjudication and the award of contract;
- (b) support the functioning of the tender board;
- (c) implement the decisions of the tender board;
- (d) act as a secretariat to the tender board;
- (e) plan the procurement and disposal by tender activities of the procuring entity;
- (f) recommend procurement and disposal by tender procedures;

- (g) check and prepare statements of requirements;
- (h) prepare tendering documents;
- (i) prepare advertisements of tender opportunities;
- (j) prepare contract documents;
- (k) issue approved contract documents;
- (l) maintain and archive records of the procurement and disposal process;
- (m) maintain a list or register of all contracts awarded;
- (n) prepare monthly reports for the tender board;
- (o) prepare and submit to the management meeting quarterly reports on the implementation of the annual procurement plan;
- (p) co-ordinate the procurement and disposal activities of all the departments of the procuring entity; and
- (q) prepare other reports as may be required.

User department

39.-(1) The user department of a procuring entity shall perform the following functions:

- (a) liaise with and assist the Procurement Management Unit throughout the procurement or disposal by tender process to the point of contract placement;
- (b) initiate procurement and disposal by tender requirements and forward them to the Procurement Management Unit;
- (c) prepare technical inputs to statements of requirements and or terms of reference for procurement requirements to the Procurement Management Unit;
- (d) propose technical specifications to the Procurement Management Unit when necessary;
- (e) participate in tender evaluation;
- (f) certify for payments to suppliers, contractors

- or consultants;
- (g) report any departure from the terms and conditions of an awarded contract to the Procurement Management Unit;
 - (h) forward details of any required contract amendments to the Procurement Management Unit for action;
 - (i) maintain and archive records of contracts management;
 - (j) prepare any reports required for submission to the Procurement Management Unit, the tender board or the accounting officer;
 - (k) oversee contract implementation including reviewing and approving technical reports, design or any outputs as per contract; and
 - (l) liaise with the Procurement Management Unit during budgeting.
- (2) The user department shall prepare a schedule of requirements for procurement as part of the budget process, which shall be submitted to the Procurement Management Unit for compilation of annual procurement plan.

Evaluation
Committee
Cap. 4
s. 8

40.-(1) There shall be formed for each tender an evaluation committee which shall conduct the evaluation and report to the Procurement Management Unit.

(2) The membership of the evaluation committee shall be recommended by the Procurement Management Unit, in accordance with regulations made under this Act, and approved by the accounting officer.

(3) The number of the members of the evaluation committee shall depend on the value and complexity of the procurement as specified in the regulations made under this Act.

(4) Members shall be of an appropriate level of expertise and experience, depending on the value and complexity of the procurement requirement.

(5) Members of the evaluation committee may be sourced outside the procuring entity, where the required skills or experience are not available within the

procuring entity or where members are indisposed or have a conflict of interest.

(6) All members of the evaluation committee shall sign the Code of Ethics provided under the regulations made under the Act, declaring that they do not have a conflict of interest in the procurement requirement.

(7) The meetings of the evaluation committee, the conduct of the evaluation and the evaluation methodologies shall be executed in accordance with the regulations and guidelines made under this Act.

Independence
of functions and
powers

41. Subject to the provisions of this Act, the accounting officer, the tender board, the Procurement Management Unit, the user department and the Evaluation Committee shall act independently in relation to their respective functions and powers.

Delegation of
powers by
accounting
officer

42.-(1) An accounting officer may, in accordance with the terms and conditions specified in the regulations made under this Act, delegate the procurement function of the procuring entity to-

- (a) a sub-division of that entity;
- (b) another procuring entity; or
- (c) a third party procurement agency.

(2) An accounting officer may delegate to a head of department within the same procuring entity, his authority to procure up to a limit not exceeding that which is specified in the regulations and such delegation shall be made in writing in accordance with the procedures stipulated in the regulations.

Third party
procurement

43.-(1) Where there is lack of technical capacity and, subject to the procedures laid down in the regulations, a procuring entity may engage the Agency or third party procurement services.

(2) The accounting officer of a procuring entity shall, in deciding to invite third party procurement services-

- (a) ensure that funds are available to pay in full

- and on time for those services; or
(b) follow the procedures laid down in the regulations.

Procurement
procedure for
Authority and
Appeals
Authority

44.-(1) Procurement activities of the Authority and of the Appeals Authority shall be contracted out to the Agency in accordance with procedures stipulated in the regulations made under this Act.

(2) Without prejudice to subsection (1), procurement of minor value items not exceeding the limits prescribed in the regulations shall be procured by the Authority or the Appeals Authority.

Disagreements
in decisions

45. Disagreements between a tender board and an accounting officer, a tender board and a Procurement Management Unit and an evaluation committee or a user department concerning any decision pertaining to the recommendation for the award of contract, application or interpretation of any procurement method, process or practice save for section 36(4), shall be resolved in accordance with the procedures set out in the regulations made under this Act.

Confidentiality
of documents

46.-(1) A person having an official duty or being employed in the administration of this Act or engaged as a consultant to the procuring entity shall consider and deal with all documents and information relating to the functions of the procuring entity as confidential.

(2) Subject to section 10, no person in possession of or control over any document or information relating to any business or transaction of the procuring entity shall communicate or attempt to communicate any information contained in such document or pass on such documents to any person other than the accounting officer, a member of the tender board or the Procurement Management Unit.

PART V
SPECIFIC PRINCIPLES OF PUBLIC PROCUREMENT

Repealed

47. [Repealed by Act No. 5 of 2016 s. 14.]Duties of
procuring
entities

48.-(1) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods, works or services, it shall be the duty of-

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(a) the accounting officer designated as such under the Public Finance Act;

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(b) the accounting officer designated as such under the Local Government Finances Act; or

(c) in respect of any other public body, the chief executive officer of that public body,

to ensure the procurement of goods, works or services is in accordance with the procedures prescribed under this Act or regulations.

(2) The head of internal audit of each public body shall, in his quarterly audit report, include a report on whether this Act and regulations made under it has been complied with and the accounting officer upon receiving such report shall submit a copy thereof to the Authority.

(3) The external auditor of every public body shall, in his annual report, state whether subsection (1) has been complied with.

(4) Subject to subsection (5), every accounting officer shall be accountable for failing to comply with the provisions of subsection (1).

(5) Where an accounting officer satisfies the Authority that he had, in accordance with the provisions of any rules or regulations made under this Act, delegated his functions under subsection (1) to any other person or committee, then such other person or every member of the committee shall also be accountable for the failure to comply with the provisions of subsection (1).

(6) The Authority shall, in the case of any failure to comply with the provisions of subsection (1), take

appropriate corrective or punitive measures as it may consider necessary.

Approval of
annual
procurement
plan

49.-(1) A procuring entity shall prepare its annual procurement plan in a rational manner and in particular shall-

- (a) avoid emergency procurement wherever possible;
- (b) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;
- (c) avoid splitting of procurement to defeat the use of appropriate procurement methods unless such splitting is to enable wider participation of local consultants, suppliers or contractors in which case the Authority shall determine such an undertaking; and
- (d) integrate its procurement budget with its expenditure programme.

(2) The annual procurement plan shall be approved by an appropriate budget approving authority.

(3) The procuring entity shall observe the approved annual procurement plan and any unplanned procurement shall get a prior written approval of the accounting officer.

Procurement of
common use
items and
services
Act No.
5 of 2016
s. 15

50.-(1) The procuring entity shall, for the purpose of efficiency of procurement process and reduction of procurement transaction costs within and across public bodies, engage or open framework agreements in accordance with the procedures prescribed in the regulations where it is determined that-

- (a) the need for the subject matter of procurement is expected to arise on a repeated basis during a given period of time;
- (b) by virtue of the nature of the subject matter of the procurement, the need for it may arise on an urgent basis during a given period of time; and

(c) other grounds and circumstances that justify recourse to a framework agreement procedure.

(2) The Agency shall, in collaboration with the Authority set procedures for procurement of common use items and services by procuring entities through framework agreements.

(3) For the purpose of this section, “open framework agreement” means an agreement containing specified terms and conditions but does not contain agreed price.

Qualifications
of tenderers

51.-(1) Tenderers shall, in order to participate in procurement proceedings, have to qualify by meeting appropriate criteria set out in accordance with this Act and regulations made under it.

(2) Local tenderers wishing to participate in any procurement proceeding shall satisfy all relevant requirements for registration with appropriate statutory bodies in Tanzania.

(3) Foreign tenderers wishing to participate in the proceedings are exempted from the requirement of subsection (2), but where as a result of the procurement proceedings, any foreign tenderer is selected as having submitted the lowest evaluated responsive tender or the best ranked proposal, such a tenderer shall register with the appropriate professional statutory body and shall be required to submit evidence of registration as an approved supplier, contractor or consultant in Tanzania.

(4) Subject to sections 53 and 54 of this Act, any qualification criteria shall be made known to, and apply equally to all tenderers, and a procuring entity shall impose no discriminatory criteria, requirement or procedure with respect to the qualifications of any tenderer.

Pre-qualification
proceedings

52.-(1) A procuring entity may engage in pre-qualification proceedings with a view to identifying tenderers prior to inviting tenders for the procurement of

goods, works or services.

(2) The circumstances and procedures for pre-qualification shall be prescribed in the regulations made under this Act.

Post-
qualification

53.-(1) The procuring entity shall, where tenderers have not been pre-qualified, determine whether the tenderer whose tender or proposal has been determined to offer the lowest evaluated tender, in the case of procurement or the highest evaluated tender in the case of disposal of public assets by tender, has the legal capacity, capability and resources to carry out effectively the contract as offered in the tender before communicating the award decision.

(2) The criteria to be met shall be set out in the tendering documents and if the tenderer does not meet any of these criteria, the tender shall be rejected and the procuring entity shall make a similar determination for the next lowest evaluated tenderer, in the case of procurement or the next highest evaluated tender, in the case of disposal of public assets by tender.

(3) In case of a foreign company, the procuring entity shall seek the reference of legal existence of the tenderer from Tanzania Diplomatic Mission abroad or from any other reliable source.

(4) A procuring entity shall require a tenderer who has submitted a lowest evaluated tender in the case of procurement or highest evaluated tender in the case of disposal by tender to demonstrate again its qualifications before the award of contract is confirmed.

(5) The criteria and procedures to be used in subsection (4) shall be the same as those used in the pre-qualification proceedings set out in section 52 of this Act and shall be specified in the tendering documents prepared by the procuring entity.

(6) The procuring entity shall, where tenderer with the lowest or highest evaluated tender fails to post-qualify, reject its tender and select the next lowest or highest evaluated tender from the remaining tenders, provided that the procuring entity has a right to reject all

remaining tenders in accordance with section 59.

National
preferences
Cap. 4
s. 8

54.-(1) Tenderers shall be allowed to participate in procurement proceedings without regard to their nationality, except where the procuring entity has limited participation in procurement proceedings on the basis of nationality in accordance with this Act, the regulations, or any provisions of any other written law.

(2) The procuring entity shall, when procuring goods, works or services by means of international or national tendering, or when evaluating and comparing tenders, grant a margin of preference for the benefit of tenders for certain goods manufactured, mined, extracted or grown in the United Republic, for works by Tanzania contractors or services provided by Tanzania consultants, provided that this is clearly stated in the tender documents subject to the provisions prescribed in the regulations made under this Act.

(3) Tanzania contractors or consultants shall be eligible to be granted a margin of preference as provided for in subsection (2) only if they meet the following criteria:

(a) for individual companies-

- (i) are incorporated or registered in the United Republic;
- (ii) majority of the paid up share capital of the company is owned either by the Government or by citizens of Tanzania; or
- (iii) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic company will accrue or be paid to persons who are not citizens of Tanzania or to companies which would not be eligible under this section;

(b) for joint ventures of local companies-

- (i) individual member companies are

incorporated or registered in the United Republic;

(ii) majority of the paid up share capital of the individual companies are held by citizens of Tanzania;

(iii) the joint venture itself is registered in Tanzania; or

(iv) do not have arrangement whereby any major part of the net profits will accrue or be paid to persons who are not citizens of Tanzania or to companies which would not be eligible under this section; and

(c) for partners or individual persons trading as contractors or consultants the majority are held by citizens of Tanzania.

(4) For all procurement under international and national competitive tendering, incentives set out in the regulations made under this Act, shall be used to encourage foreign firms to team up with Tanzanian tenderers in the form of joint venture or subcontracting arrangements in the tender process and in the execution of the contract.

Exclusive
preference to
local persons or
firms

55.-(1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement of works, goods or services that has a value not exceeding a threshold specified in the regulations shall be reserved exclusively for local persons or firms.

(2) Where the procuring entity does not proceed with the local person or firm set-aside under subsection (1), and procures on unrestricted basis, the procuring entity shall include in the procurement file the reason or reasons for the unrestricted procurement.

(3) Where procuring entity receives only one acceptable offer from a responsible local person or firm in response to procurement set-aside, the procuring entity may consider to make an award to that person or firm.

(4) Where the procuring entity receives no

acceptable offers from responsible local persons or firms, the set aside procurement shall be withdrawn and if the requirements are still valid, new offers shall be resolicited on unrestricted basis.

Inclusion of
local firms and
experts in
consultancy
contracts
Act No.
5 of 2016
s. 16

55A.-(1) Foreign firms competing to be awarded non-emergency consultancy assignments whether by tender or any other means recognized in this Act shall be required to include local experts and firms in their teams.

(2) In the evaluation of foreign firms, procuring entities shall ensure that the principle of mandatory inclusion of local experts and local firms in non-emergency assignments has been observed and shall be apportioned a weight to reflect its intensity and level.

(3) A procuring entity shall, for the purpose of subsection (1), assign weights as follows:

(a) in the criteria for participation of local firms, assignment of maximum weight of fifteen percent shall be included in the request for proposal, and firms that demonstrate inclusion of local firms of at least fifty percent are granted a full score; and

(b) in the criteria for participation of national experts, assignment of maximum weight of ten percent shall be included in the request for proposal, and firms that demonstrate that at least fifty percent of their key staff who are Tanzanians, are granted a full score.

Use of local
experts in
goods, works
and non-
consultancy
services
contract
Act No.
5 of 2016
s. 16

55B. When applying the margin of preference in respect of works or non-consultancy services, a procuring entity shall comply with the guidelines issued by the Authority, and shall consider-

(a) in addition to shareholding structure in the joint venture, the extent of inclusion of key local staff in the joint venture; and

(b) the extent of use of materials locally manufactured, produced or mined.

Preference to

55C. In contracts for goods and related services

local goods
Act No.
5 of 2016
s. 16

to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the regulations.

Capacity
building of local
firms
Act No.
5 of 2016
s. 16

55D.-(1) A procuring entity shall, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.

(2) Where individual firms lack the capacity to execute the contracts, the firms may form joint ventures with a view to enhancing their capacity.

(3) The Minister may make regulations prescribing procedures for capacity building of local firms under this section.

Ownership of
share capital
Act No.
5 of 2016
s. 16
GN. No.
329 of 2016
par. 2

55E. Notwithstanding any other provision to the contrary, local firm under sections 55A, 55B, 55C and 55D shall have a share capital which is wholly owned by citizens of the United Republic.

Procurement
from Agency

56. A procuring entity shall procure from the Agency following a procedure to be prescribed in the regulations made under this Act.

Language

57.-(1) Pre-qualification documents and tender documents shall be written in English and tenders shall be invited in that language except as provided for in subsection (2).

(2) Where a procuring entity has limited participation to national competitive tendering or to Tanzania nationals only, tender documents may be written in either Kiswahili language or English language and tenders may be requested for in either of the languages.

Tender
securities

58.-(1) Where a procuring entity requires tenderers who are submitting tenders to provide any form of tender security or bid securing declaration, such requirement shall apply equally to all tenderers.

(2) A successful tenderer shall be required to submit performance guarantees, subject to the conditions specified in the regulations.

(3) Subject to the provisions of subsections (1) and (2), the types of securities shall be specified in the regulations.

(4) The Authority shall issue guidelines, to be updated from time to time, on the minimum values and modalities for provision of tender security and other forms of guarantees or bonds.

Rejection of
tenders or
proposal
Act No.
5 of 2016
s. 17

59.-(1) Tender documents and request for proposals may provide that procuring entities reject all tenders or all proposals.

(2) The rejection of all tenders or all proposals under this section shall be justified where-

- (a) there is lack of effective competition;
- (b) tenders or proposals are not substantially responsive to the tender documents or to the request for proposals;
- (c) the economic or technical data of the project have been altered;
- (d) tenders or proposals involve costs substantially higher than the original budget or estimates;
- (e) exceptional circumstances render normal performance of the contract impossible;
- (f) tenders received contain serious irregularities resulting in interference with the normal play of market forces; or
- (g) funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available.

(3) The lack of competition shall not be determined solely on the basis of the number of tenderers or persons who made proposals, and where all tenders or

proposals are rejected, the procuring entity shall review the causes justifying the rejection and shall consider-

- (a) making revision to the conditions of contract, design and specifications, scope of the contract, or a combination of these before inviting new tenders; or
- (b) revising the request for proposals, including the short list, and the budget.

(4) Where the rejection of all tenders or all proposals is due to lack of competition, wider advertising shall be considered and where the rejection is due to most of the tenders or proposals being non-responsive, new tenders or new proposals may be invited from the initially pre-qualified firms, or with the prior agreement of the appropriate tender board, from only those who submitted tenders or proposals in the first instance.

(5) The appropriate tender board's prior approval shall be sought before rejecting all tenders or all proposals, soliciting new tenders or proposals or entering into negotiations with the lowest evaluated tenderer.

Acceptance of
tender and entry
into force of
procurement
contract
Act No.
5 of 2016
s. 18

60.-(1) Subject to the provisions of section 59, the tender or proposal that has been ascertained to be the successful tender or proposal pursuant to the provision of this Act shall be accepted.

(2) The accounting officer shall be notified by the tender board of its award decision within three working days of making the decision.

(3) Upon receipt of notification, the accounting officer shall, immediately thereafter, issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them seven working days within which to submit complaints thereof, if any.

(4) Subject to subsection (3), the accounting officer of a local government authority shall, before issuing a notice of intention to award a contract, submit the award decision to the Committee responsible for finance and planning, for scrutiny, and where the

Committee is dissatisfied with the decision of the tender board, it shall request the Authority to conduct an investigation pursuant to section 33(3).

(5) Where no complaints have been lodged pursuant to subsection (3), the accounting officer shall issue a notice of acceptance to the successful tenderer.

(6) The notifications referred to in subsection (3) shall be communicated in a written or electronic form as prescribed in the tender document and be signed by accounting officer.

(7) Where a tender, offer or proposal has been accepted by the accounting officer, the procuring entity and the person whose tender, offer or proposal has been accepted shall enter into a formal contract for the supply of goods, provision of services or undertaking of works.

(8) A formal contract shall be in such form and contain such terms, conditions and provisions as contained in the tender document.

(9) Any formal contract above the thresholds specified in the regulations arising out of the acceptance of a tender, offer or proposal under this Act shall be vetted by the Attorney General before being signed by the parties.

(10) Contracts below specified thresholds in the regulations shall be vetted by legal officers employed by respective procuring entities.

(11) A procurement contract shall enter into force when the formal contract is signed by the parties to the contract.

(12) The accounting officer shall, within thirty days from the date of award, notify the Authority, the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made.

(13) The parties may use hand written or digital signatures in signing contracts specified under subsection (9).

(14) The accounting officer shall, within thirty days after the communication of award, notify

unsuccessful tenderers, the name of the person to whom the contract is awarded and the contract amount.

Witnessing of
contract signing
Act No.
5 of 2016
s. 19

60A.-(1) Witnessing of signing of a contract shall be done in accordance with the law or any other relevant legal instrument which establishes the procuring entity concerned.

Cap. 12

(2) Where the law or a legal instrument does not provide for the manner of witnessing the signing of contracts, any person enumerated under the Notaries Public and Commissioner for Oaths Act shall be eligible to witness the signing of contracts.

Records,
information and
notices

61.-(1) A procuring entity shall maintain a record of its procurement proceedings in which it is involved, including decisions taken and the reasons for it and such record shall be kept for a period of not less than five years from the date of completion of the contract and be made available when required to the Minister and the Controller and Auditor General.

(2) The record referred to in subsection (1) may, under special circumstances, be kept beyond the period specified in that subsection in the manner and duration prescribed in the regulations.

(3) A list of tenderers who submitted tenders and the prices tendered, as read out at the time of opening the tenders in public, may be made available to tenderers and to the general public.

Blacklisting

62.-(1) The Authority shall have power to blacklist a tenderer for a specified time from participating in public procurement proceedings and notify all procuring entities on such actions.

(2) A tenderer who has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign institutions shall automatically be blacklisted from participating in public procurement in the United Republic-

(a) in the case of fraud and corruption, for such

period as is debarred by that foreign country, international organisation or foreign institution plus a further period of ten years; and

- (b) in the case other than fraud or corruption, for such period as is debarred by that foreign country, international organisation or foreign institution plus a further period of five years.

(3) A tenderer shall be debarred and blacklisted from participating in public procurement or disposal proceedings if-

- (a) fraud or corrupt practices is established against the tenderer in accordance with the provisions of this Act;
- (b) the tenderer fails to abide with a bid securing declaration;
- (c) the tenderer breaches a procurement contract; or
- (d) the tenderer makes false representation about his qualifications during tender proceeding.

(4) The Authority may debar and blacklist a tenderer from participating in public procurement on other grounds as may be deemed necessary by the Authority.

(5) Subject to subsections (3) and (4), the procedure for debarment shall be stipulated in the regulations.

(6) A tenderer blacklisted pursuant to this section may appeal against the decision to the Appeals Authority within twenty one days from the date when he became aware or should have become aware of such decision.

(7) The Authority shall keep and maintain a register of all blacklisted firms in accordance with this Act.

(8) A tenderer blacklisted under this section shall not be permitted to start a new supplies, contracting or consulting firm during that period.

(9) Procuring entities shall not procure from, contract with or engage a tenderer who has been blacklisted from participating in public procurement

proceedings pursuant to this Act.

(10) The Authority shall inform the relevant professional bodies upon debarring and blacklisting a tenderer.

(11) For purpose of this section, the word “tenderer” includes directors of a company or firm.

PART VI METHODS OF PROCUREMENT AND PROCESSES

e-procurement
Act No.
5 of 2016
s. 20

63. Procuring entities shall ensure that procurement or disposal by tender is implemented and reported through electronic procedures or manually where electronic facility is not available.

Selection of
methods of
procurement
Act No.
5 of 2016
s. 21

64.-(1) Procuring entity engaging in the procurement of goods, works, services, non consultancy services or disposal by tender shall apply competitive tendering, using the methods prescribed in the regulations depending on the type and value of the procurement or disposal and, in any case, the successful tenderer shall be the tenderer evaluated to have the capacity and capability to supply the goods, to provide the services or to undertake the assignment or the highest evaluated offer in case of services for revenue collection or disposal of public assets.

(2) In circumstances where-

- (a) suppliers, contractors or consultants have already been pre-qualified pursuant to section 52;
- (b) there is an urgent need for the goods, works, or services such that it would be impracticable to engage in open national or international tendering on competitive selection; or
- (c) there is need to achieve certain social objectives by calling for the participation of local communities including special groups,

the procuring entity shall set aside a specific percentage of the procurement volume in accordance with procedures set out in the regulations.

- (3) For the purposes of subsection (2)-
 - (a) circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor caused by dilatory conduct on its part;
 - (b) the procuring entity shall include in the records required under section 61 a statement of the grounds for its decision and the circumstances leading to, or justifying the restriction; and
 - (c) “special groups” includes women, youth, elderly and person with disability.
- (4) The procurement of commodities such as grain and other food stuff, animal feeds, fuel, fertilizer, the market price of which fluctuate seasonally depending upon demand and supply at any particular time, shall be carried out on a seasonal basis using methods prescribed in the regulations.
- (5) The use of force account may be justified where-
 - (a) the works are small, scattered and in remote location for which qualified construction firms are unlikely to tender at a reasonable prices;
 - (b) work is required to be carried out without disrupting ongoing operations; or
 - (c) there is an emergency that needs immediate attention.
- (6) For the purposes of subsection (5), “force account” means a process where works are carried out by a public or semi public departments or agencies by using its personnel and equipment or in collaboration with any other public or private entity.

Emergency
procurement
Act No.
5 of 2016
s. 22

65.-(1) Emergency procurement may be made where the accounting officer determines that it is in the public interest that goods, works or services be procured as a matter of emergency.

(2) For the purpose of subsection (1), emergency procurement shall meet one of the following criteria:

- (a) compelling emergency that creates threat to

life, health, welfare or safety of the public by reason of major natural disaster, epidemic, riot, war, fire or such other reasons of similar nature; or

(b) situation whereby, without the emergency procurement, the continued functioning of the Government or organisation would suffer irreparable loss, the preservation or protection of irreplaceable public property, or the health or safety of public will be threatened.

(3) The procuring entity shall apply the procedures stipulated in the regulations made under this Act for any procurement undertaken pursuant to the provisions of subsection (1).

(4) Where the procurement meets the requirements of subsection (1), the conditions relating to procurement limits, methods, tender processing periods and advertisement may be waived except that conditions relating to tender evaluation and obtaining approval of the tender board shall not be waived.

(5) The Authority shall, in collaboration with the Government Assets Management Department, the department responsible for technical audit in the Ministry responsible for finance or where necessary, with any other competent body, advises the Pay-Master General on the appropriate action to be taken pursuant to subsection (6).

(6) The Pay-Master General shall seek the advice of the Authority in respect of application for retrospective approval.

Procurement
directly from
manufacturer,
dealer or service
provider
Act No.
5 of 2016
s. 23

65A.-(1) A procuring entity or the Agency shall, for the purpose of obtaining value for money in terms of price, quality and delivery, procure goods or services directly from a manufacturer, dealer, wholesaler or service provider.

(2) The Minister may make regulations prescribing-

(a) goods and services to be procured in terms of

- subsection (1); and
- (b) the manner and procedures of procurement directly from manufacturer, dealer, wholesaler or service provider.

Approved
procurement
standards
Act No.
5 of 2016
s. 23

65B.-(1) Procurement of goods for Government use shall be done in conformity with established and approved standards.

(2) Approved standards referred under subsection (1) shall be-

- (a) issued by relevant Government organs specified in regulations made under this Act; and
- (b) in the manner and procedure prescribed in the regulations made under this Act.

(3) Notwithstanding subsection (1), the Minister may make regulations for procurement of certain goods for Government use without approved procurement standards.

Procurement of
used railway
machinery,
aircrafts and
ships

66.-(1) Where national interest demands that used railway machinery, ship or aircraft be procured, the procuring entity shall, upon satisfying the conditions stipulated in subsection (2), proceed with normal or emergency procurement.

(2) Where a procuring entity seeks to procure used railway machinery, ship or aircraft pursuant to subsection (1), it shall seek approval of the Minister.

(3) The Minister shall, for the purposes of subsection (2), form a Special Technical Advisory Committee to be composed of persons with various disciplines, knowledge and experience relevant to the subject matter of the procurement.

(4) The operation of this section shall not come into force until such time the regulations under section 105(1)(d) have been made and come into force.

(5) Where the procurement referred to under subsection (1) is to be done under emergency procurement, the procedure stipulated under section 65 shall, with necessary modifications, apply.

Competitive
tendering

67. A procuring entity wishing to commence competitive tendering shall provide all eligible prospective tenderers with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required goods, works services or non-consultancy services.

Life-saving
health
commodities
Act No.
5 of 2016
s. 24

67A.-(1) Life-saving health commodities, supplies and equipment shall be treated as items of public interest in their procurement.

(2) The procuring entity shall, in consideration of their importance and nature, by approval of the Minister, fast-track their procurement process or use emergency procurement.

(3) Where the procurement referred to under subsection (1) is to be done under emergency procurement, the procedure stipulated under section 65 shall, with necessary modifications, apply.

Invitation to
tender and
advertising

68.-(1) A procuring entity wishing to commence competitive tendering proceedings shall prepare a tender notice inviting tenderers to submit priced offers for the supply of goods, provision of non-consultancy services or for undertaking the works required and such tender notice shall be submitted within reasonable time before the planned issue of the tender to the tender board for approval.

(2) The approved tender notice shall be advertised by the procuring entity as set out in the regulations made under this Act and shall ensure widest reach of potential tenderers.

(3) Any tender notice shall be published in sufficient time, as prescribed in the regulations, to enable prospective tenderers to obtain tender documents and prepare and submit their responses before the deadline for receipt of tenders.

(4) The time specified for the opening of the

tenders submitted shall be the same as the deadline for receipt of tenders or immediately thereafter, and be repeated, together with the place for tender opening, in the invitation to tender.

(5) Subject to subsection (4), the procuring entity may prior to the deadline for submission of tenders, modify the tender documents and extend the deadline for submission of tenders if deemed necessary.

Issue of tender documents

69.-(1) The procuring entity shall provide tender documents immediately after first publication of the tender notice to all suppliers or contractors who respond to the tender notice and pay the requisite fee, where required, for which a receipt shall be given.

(2) All prospective tenderers shall be provided with the same information, and be assured of equal opportunities to obtain additional information.

(3) Tender documents shall not include requirements and terminologies which discriminate unfairly against participation by tenderers.

(4) Subsection (3) may be deviated where circumstances demand provided that, any deviation is made on basis of provisions of the regulations made under this Act.

(5) The scale of fees payable for tender documents shall be as set out in the regulations made under this Act.

Content of tender documents

70.-(1) The procuring entity shall use the appropriate standard model tender documents specified in the regulations for the procurement in question.

(2) The tender documents shall be worded so as to permit and encourage competition and such documents shall set forth clearly and precisely all the information necessary for a prospective tenderer to prepare tender for the goods, services and works to be provided.

Validity of

71. The procuring entity shall require tenderers to

tenders and
tender security

make their tenders and tender securities including tender securing declaration valid for periods specified in the tendering documents, sufficient to enable the procuring entity to complete the comparison and evaluation of the tenders and for the appropriate tender board to review the recommendations and approve the contract or contracts to be awarded whilst the tenders are still valid.

Evaluation
criteria

72.-(1) The basis for tender evaluation and selection of the successful tenderer shall be clearly specified in the tender document.

(2) The tender documents shall specify factors, in addition to price, which may be taken into account in evaluating a tender and how such factors may be quantified or otherwise evaluated.

(3) Notwithstanding the provisions of subsection (2), where tenders based on alternative materials, alternative completion schedules or alternative payment terms are permitted, conditions for their acceptability and the method of the evaluation shall be expressly stated in the tender documents.

Receipt of
tenders and
tender opening
Act No.
5 of 2016
s. 25

73.-(1) The Secretary of the tender board shall receive tenders using procedures set out in the regulations made under this Act.

(2) The secretary to the tender board shall give each tenderer a receipt showing the time and the date that the tenders were received, and any tender received after the deadline shall be returned unopened to the tenderer.

(3) All tenders submitted before the deadline time and date for submission shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender proceedings and the tender opening shall take place at, or immediately after the deadline time and date given in the tender documents for the receipt of the tenders and the names of all those present at the tender opening and the organisations they represent shall be recorded by the secretary of the respective tender board.

(4) The names and addresses of each tender the total amount of each tender or and of any alternative tenders, where they have been requested or permitted, shall be read and recorded during the tender opening.

(5) After the public opening of tenders, information relating to examination, clarification and evaluation of tenders and the recommendations concerning awards shall not be disclosed to tenderers or other persons not officially concerned with the process until the notice of intention to award a contract is notified to the tenderer who participated in the tender process.

(6) Information referred to in subsection (5) shall be made available to the Authority, the Appeals Authority, accounting officer and to the Minister when that information is so required.

Evaluation and
comparison of
tenders

74.-(1) The evaluation committee shall evaluate on a common basis tenders that have not been rejected in order to determine the cost to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs, but the lowest submitted price, may not necessarily be the basis for selection for award of a contract.

(2) Any relevant factor or factors in addition to price to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated tender shall be specified in the tender documents.

(3) Any procedure under which tenders above or below a predetermined assessment of tender value are automatically disqualified may not be accepted.

(4) The evaluation committee shall prepare for submission to the Procurement Management Unit a detailed report on the evaluation and comparison of tenders, setting out the specific reasons on which its recommendations for the award of each contract are based.

(5) The Procurement Management Unit shall

review the evaluation report submitted pursuant to subsection (4) and submit the report and their recommendations to the tender board.

Approval of
award of
contract

75. The tender board shall review the evaluation and recommendation made by the Procurement Management Unit and may either-

- (a) approve the recommendation and authorise acceptance of the tender and award a contract in the form specified in the tender documents; or
- (b) refuse to authorise recommendation for award of the tenders and refer the evaluation to the Procurement Management Unit with an instruction to re-evaluate the tenders or re-tendering or other action.

Negotiation and
award of
contracts
Act No.
5 of 2016
s. 26

76.-(1) Subject to the conditions stipulated in the regulations, a tenderer evaluated to have the capacity and capability to supply the goods, undertake the works, provide the services or purchase the assets shall be invited for negotiations by the procuring entity.

(2) Negotiations shall not be conducted-

- (a) to change the specifications or details of the requirement;
- (b) to materially alter the terms and conditions of contract stated in the tender document; or
- (c) to substantially alter anything which formed a crucial or deciding factor in the evaluation of tender.

(3) Where single source method was used or a competitive procurement method was used but only a single tender was received, negotiations may relate to other areas of the tender including the price tendered provided that the negotiation shall not increase price or affect the quality of the goods, works or services.

(4) Where the negotiation under subsection (2) fails to result in an acceptable contract, the procuring entity shall terminate the negotiations and after

consultation with the appropriate tender board, invite the next ranked firm for negotiations.

Alteration and
amendments
Act No.
5 of 2016
s. 27

77.-(1) A procurement contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendments is-

- (a) to the benefit of the Government or is not disadvantageous to the Government; and
- (b) approved by the accounting officer.

(2) The total price of the amended contract shall be within percentage of the total price of the original contract as prescribed in the regulations.

(3) Time extension order shall be issued only by the accounting officer in accordance with the procedures stipulated in the regulations.

(4) Liquidated damages shall be charged on the contractor, supplier or service provider for undelivered goods or delayed services or work in accordance with the procedures stipulated in the regulations.

Selection of
consultants

78.-(1) A procuring entity commencing selection proceedings for consultancy services shall apply the procedures and the selection methods prescribed in the regulations made under this Act.

(2) Circumstances to justify the Procuring Entity to depart from the use of selection methods shall be set out in the regulations and the alternative approaches to be used instead.

(3) The procuring entities shall use the appropriate standard request for proposals and standard forms of contract issued by the Authority with minimum changes as approved by the tender board, as necessary to address specific project issues, and any such changes shall be introduced only through contract data sheets, or through special conditions of contract and not by introducing changes in the wording of the general conditions of contract included in the standard form.

(4) Notwithstanding the provisions of subsection (3), where the standard request for proposal and standard

form of contract are not appropriate, procuring entities shall use other contract forms acceptable to the Authority.

PART VII PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIP

Scope,
applicability and
approval
Act No.
3 of 2014
s. 22
Cap. 103

79.-(1) The provisions under this Part shall apply in respect of procurement and disposal by tender activities under the solicited and unsolicited partnership arrangements between the public sector and private as provided for under the Public Private Partnership Act.

(2) The procuring entity shall not proceed with the procurement phase of solicited or unsolicited public private partnership prior to obtaining approval of the project concept by the relevant authorities under the Public Private Partnership Act.

Repealed

80. [Repealed by Act No. 3 of 2014 s. 23.]

Selection of
transaction
advisor or
manager
Act No.
3 of 2014
s. 24
Cap. 103

81. Where a transaction advisor or manager is to be appointed for the purposes of ensuring a public private partnership implementation process runs smoothly, the selection of such advisor or manager shall be in accordance with the procedures stipulated in the regulations made under the Public Private Partnership Act.

Repealed

82. [Repealed by Act No. 3 of 2014 s. 25.]

PART VIII PROHIBITIONS

Fraud and
corruption
Act No.
5 of 2016
s. 28

83.-(1) The procuring entities and tenderers under public financed contracts shall proceed in a transparent and accountable manner during the procurement and execution of such contracts.

(2) Where a procuring entity is satisfied, after due diligence, that any person or firm to which it is proposed

that a tender be awarded, has engaged in fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, the procuring entity shall-

(a) reject a proposal for award of such contract; and

(b) report any person or tenderer, including its directors to the Authority for debarment and blacklisting in accordance with section 62 of the Act.

(3) Where a procuring entity is satisfied after determination by a court or Appeals Authority, as the case may be, that corrupt, fraudulent, collusive, coercive or obstructive practices were engaged in by any person or tenderer in procurement, award of contract or the execution of that contract, the procuring entity shall-

(a) report any person or tenderer, including its directors, to the Authority for debarment and blacklisting in accordance with section 62 of the Act;

(b) require such person or tenderer to reimburse the portion of disbursed funds and cancel the portion of undisbursed funds to a contract for goods, works or services.

(4) Save as provided in this Act, the Authority shall debar and blacklist such person or tenderer determined in terms of subsection (3)(a) including its directors, for the period of not less than ten years.

(5) The determination by court under subsection (3) shall be sufficient proof for the Authority to debar and blacklist such a person or tenderer, including its directors.

(6) Any member of the procuring entity who engages in corrupt or fraudulent practices during the procurement proceedings or the execution of the public financed contract shall be dealt with in accordance with the provisions of this Act.

(7) The procuring entity shall, in any tender forms for public contracts, include an undertaking of the tenderer to observe the country's laws against fraud and corruption in competing for and executing a contract.

Conducts
influencing
public officers
Cap. 4
s. 8

84.-(1) A person shall not with intent to gaining an advantage or concession for himself or any other person-

- (a) offer any member or an associate of a member of a tender board or its committee or any employee or an associate of an employee of a tender board or its committee or any consultant or an associate of any consultant or a person or an associate of any person providing services, a gift of money or other valuable thing; or
- (b) approach any member or any associate of a member of a tender board or its committee or any of its officer or an associate of such officer with respect to any matter that is before that tender board or committee or that is expected to come before a tender board or a committee.

(2) A procuring entity, any public officer or other Government authority shall not accept a gratuity in any form, any offer of employment, service, any other thing of value, as an inducement with respect to an act or decision of or procedure followed by the procuring entity in connection with any procurement proceedings or tender and a procuring entity shall promptly reject a tender of any tenderer who gives, agrees to give or offers, directly or indirectly, any such inducement.

(3) A procuring entity shall not procure from a member of its staff or a person who has direct influence on the decision of a procuring entity acting in a private capacity, either alone or as a partner in a partnership or as an officer of a company.

(4) A procuring entity shall not include in a tender document any condition or specification which is likely to favour a tenderer.

(5) A member of staff of a procuring entity or a person with direct influence on the decisions of a procuring entity shall declare an interest that he may have in any tenderer and the tenderer against whom the

interest has been declared shall be barred from participating in such procurement.

(6) Any tender proved to have been awarded on the basis of inducement as provided in the preceding subsections shall be revoked forthwith and the same be reported to the Prevention and Combating of Corruption Bureau for appropriate action and to the relevant professional body for ethical proceedings.

(7) A tenderer whose tender or proposal has been rejected or revoked on the ground of inducement corrupt, fraudulent, collusive, coercive or obstructive shall not be able to qualify or pre-qualify in any procurement proceedings during the ten years following the date of the notice of such rejection or revocation.

(8) Any rejection or revocation on the grounds of inducement, corrupt, fraudulent, collusive, coercive or obstructive practices shall be notified to the Chief Executive Officer of the Authority who shall in turn review the grounds for rejection or revocation and notify all procuring entities and approving authorities on the purposes of effecting the provisions of subsection (7).

Disclosure of
payment made
by way of
commission, etc.

85.-(1) A tenderer in relation to the public contract shall, within thirty days after the execution of the contract, furnish a statement in writing to the Prevention and Combating of Corruption Bureau and the Tanzania Revenue Authority-

(a) stating particulars of any consideration given or to be given to any person or organisation for the purpose of or as a commission for obtaining the contract; and

(b) giving the names of the persons to whom and the organisation to which any such consideration was or is to be given.

(2) Where there is no consideration to be given to any person or organisation, a statement furnished pursuant to subsection (1) shall so state.

(3) Where in relation to a public contract, a body corporate is a contractor, then-

(a) where the consideration for the contract exceeds in value or total, two percent of the contract value, the statement furnished pursuant to subsection (1)-

(i) shall be signed by the Chief Executive of the body corporate; and

(ii) where the contractor is a subsidiary of another body corporate, shall be signed by the Chief Executive of the other body corporate; and

(b) in any case other than that which is referred to in paragraph (a), the statement so furnished shall be signed by an officer of the body corporate deputed by the body corporate to do so.

Cap. 212

(4) The provisions of the Companies Act in relation to the determination of whether a body corporate is the subsidiary of any other body corporate shall apply.

(5) Where there is a consideration given or offered to any public body, public officer or any other agent in relation to a public contract, such consideration shall be furnished to the Pay-Master General within thirty days from the date of receipt of the consideration.

(6) A tenderer or a public body or public officer who fails to comply with the provisions of this section commits an offence.

Conduct of
directors,
servants or
agents

86.-(1) Any conduct engaged in or on behalf of a body corporate-

(a) by a director, servant or agent of the body corporate within the scope of the actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement, whether express or implied, of a director, servant or agent of the body corporate, whether giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have

been engaged in by the body corporate.

(2) Any conduct engaged in or on behalf of a person other than a body corporate-

(a) by a servant or agent of the person within the scope of actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement, whether express or implied, of a servant or agent of the first mentioned person, when the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

Institution of
criminal
proceedings
Caps. 16 and
329

87. The measures provided by this Act shall not preclude the institution of criminal proceedings pursuant to the provisions of Penal Code, the Prevention and Combating of Corruption Act, or any other written law against any person discharging functions or exercising powers under this Act or regulations made under this Act.

PART IX DISPUTES SETTLEMENT

Establishment of
Appeals
Authority
Act No.
5 of 2016
s. 29

88.-(1) There is established an independent procurement appeals authority to be known as the Public Procurement Appeals Authority.

(2) The Appeals Authority shall consist of-

(a) a Chairman who shall be nominated by the President from amongst retired Judges;

(b) six other members to be nominated by the Minister as follows:

(i) a senior lawyer to be appointed by the Attorney General; and

(ii) five other members, at least two of them from the private sector with professional knowledge and experience in public

procurement, construction industry,
business administration, finance or law;
and

(c) the Executive Secretary who shall be the
Secretary of the Appeals Authority.

(3) The Third Schedule to this Act shall have
effect with regard to appointment and tenure of office of
members and of the Appeals Authority.

(4) The Appeals Authority shall have original
jurisdiction to hear and determine complaints against
procuring entities where a procurement or disposal of
contract is already in force and appeals arising from
administrative decisions made by the accounting officer.

(5) The Appeals Authority shall review the
Authority's decision arising from blacklisting of
tenderers.

(6) In resolving disputes or complaints, the
Appeals Authority shall conduct proceedings in
accordance with rules made under this Act.

Appointment of
Executive
Secretary
Act No.
5 of 2016
s. 30

89.-(1) There shall be an Executive Secretary of
the Appeals Authority who shall be appointed by the
President on such terms and conditions as the President
may determine.

(2) The Executive Secretary shall be appointed
from amongst the registered professionals save for
lawyers and business administrators who has at least ten
years of experience in either business, finance, law or
other relevant discipline and experience in procurement.

(3) The Executive Secretary shall be responsible
for-

(a) management of the operation of the Appeals
Authority;

(b) management of funds, property and business
of the Appeals Authority; and

(c) administration, organisation and management
of officers and staff of the Appeals Authority.

(4) The Executive Secretary shall be the Chief
Executive Officer and the accounting officer of the
Appeals Authority.

(5) The Executive Secretary shall hold office for a period of four years and may, subject to his satisfactory performance, be eligible for re-appointment for one more term of four years.

Employees of
Appeals
Authority

90. The Appeals Authority shall employ such number and categories of staff as it deemed necessary for the effective functioning of the Appeals Authority.

Funds of
Appeals
Authority
Act No.
5 of 2016
s. 31

91.-(1) The funds of Appeals Authority shall consist of-

- (a) monies appropriated by the Parliament;
- (b) loans and grants;
- (c) revenues collected from services rendered; and
- (d) any other monies received or made available to it for purposes of its functions.

(2) There shall be paid from the funds of the Appeals Authority-

- (a) the salaries and allowances of its staff;
- (b) such other allowances necessary to pay its members and staff or other persons engaged in business of the Appeals Authority as the Minister may determine; and
- (c) any other expenses incurred by it in the performance of its functions.

Audit of
accounts

92.-(1) The Appeals Authority shall maintain proper books of accounts and other records relating to its financial transactions and prepare annual statement of accounts including income and expenditure account, and balance sheet in accordance with the Public Finance Act.

(2) The books of accounts and other records shall be open for inspection by the Minister or any other person duly authorised by him.

(3) The accounts of the Appeals Authority shall be audited by the Controller and Auditor General.

Cap. 348

Annual
management

93.-(1) The Executive Secretary shall, not later than three months before the end of each financial year,

plan and budget
Act No.
5 of 2016
s. 32
Cap. 4
s. 8

prepare and submit to the Permanent Secretary of the Ministry responsible for finance an annual management plan which include a budget for its approval for the next financial year.

(2) The Executive Secretary may, at any time before the end of a financial year, prepare and submit to the Permanent Secretary of the Ministry responsible for finance for approval any estimates supplementary to the budget of the current financial year.

(3) An expenditure shall not be made out of the funds of the Appeals Authority unless it is part of the expenditure approved by the Permanent Secretary of the Ministry responsible for finance under the estimates for the fiscal year in which the expenditure shall be incurred, or in the supplementary budget for that year.

Annual
statement and
report

94.-(1) The Appeals Authority shall, within six months after the end of each financial year, cause to be prepared and submitted to the Minister a report on its activities and operations, and all complaints and appeals handled during that year.

(2) A copy of the report prepared under subsection (1) shall, when submitted to the Minister, be accompanied by-

- (a) a copy of the audited accounts of the Appeals Authority;
- (b) a copy of the auditor's report on the accounts; and
- (c) any other information as the Minister may direct.

(3) The Minister shall lay before the Parliament the reports mentioned under subsection (2) within three months from the date of receiving the report or at the next sitting of the Parliament.

Right to review
Act No.
5 of 2016
s. 33

95.-(1) Any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity by this Act may seek review in accordance with sections 96 and 97.

(2) The review referred to in subsection (1) shall not apply to-

- (a) the selection of a method of procurement or in the case of services the choice of a selecting procedure;
- (b) the limitation of procurement proceedings on the basis of nationality in accordance with section 53 of this Act or in accordance with the prescribed regulations; or
- (c) in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals proceedings.

Settlement of
complaints or
disputes by
accounting
officer
Act No.
5 of 2016
s. 34
Cap. 4
s. 8

96.-(1) Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

(2) On receiving a complaint under this section the accounting officer may, depending on the nature of the complaint, constitute an independent review panel from within or outside his organisation which shall review the complaint and advise him on the appropriate actions to be taken.

(3) Where after proper investigation, it is established that, the chairman of the tender board, any member of the tender board, the secretary of the tender board or any other public officer of the procuring entity has violated this Act or the regulations made under it, the accounting officer shall take appropriate actions against him.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is

earlier.

(5) The accounting officer shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

(6) The accounting officer shall, within seven working days after the submission of the complaint or dispute, deliver a written decision which shall-

- (a) state the reasons for the decision; or
- (b) where the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

(7) Where the accounting officer does not issue a decision within the time specified in subsection (6), the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 97 and upon institution of such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

(8) The decision of the accounting officer shall be final unless the tenderer applies for administrative review to the Appeals Authority.

Review by
Appeals
Authority
Act No.
5 of 2016
s. 35

97.-(1) A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to the Appeals Authority for review and administrative decision.

(2) Where-

- (a) the accounting officer does not make a decision within the period specified under this Act; or
- (b) the tenderer is not satisfied with the decision of the accounting officer,

the tenderer may make a complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision.

(3) A tenderer may submit a complaint or dispute directly to the Appeals Authority if the complaint or dispute cannot be entertained under section 96 because of entry into force of the procurement or disposal contract, and provided that the complaint or dispute is submitted within seven working days from the date when the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that tenderer should have become aware of those circumstances.

(4) The Appeals Authority shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the procuring entity in which case, the procuring entity shall be required to submit all the relevant documentations and information pertaining to the particular tender.

(5) The Appeals Authority may, unless it dismisses the complaint or dispute, issue one or more of the following remedies-

- (a) declare the legal rules or principles that govern the subject matter;
- (b) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procuring entity that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- (d) annul in whole or in part an unlawful act or decision of the procuring entity;
- (e) revise an unlawful decision by the procuring entity or substitute its own decision for such a decision;
- (f) require the payment of reasonable compensation to the tenderer submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the procuring entity;
- (g) order payment of compensation to the procuring entity for any reasonable cost

incurred by procuring entity in whose favour a decision has been made by the Appeals Authority;

- (h) set aside, vary or confirm the decisions made by the Authority to blacklist; or
- (i) any other order or relief as it may deem fit to grant.

(6) The Appeals Authority shall, within forty five days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.

(7) The decision of the Appeals Authority shall be final unless is subject for judicial review under section 95 of this Act.

(8) The decision of the Appeals Authority shall be binding on the parties to the complaint or appeal and shall be enforceable in the same manner as a decree or order of the court.

Extension of
time for
submission of
complaints or
appeals

98. The Appeals Authority may extend the time limit set under subsections (2) and (3) of section 97 where it is satisfied that, failure by a party to lodge an appeal or complaint was occasioned by being absent from the United Republic, sickness or other reasonable cause, subject to such terms and conditions as may be prescribed in the rules.

Certain rules
applicable to
review
proceedings
Act No.
5 of 2016
s. 36

99.-(1) The decision of the accounting officer, the Authority or the Appeals Authority made pursuant to sections 96 and 97 shall be furnished within seven working days after the delivery of the decision to the tenderer who submitted the complaint or dispute to the procuring entity and to any other tenderer or Government authority who participated in the review proceedings and after the decision has been delivered, shall be made available for inspection by the general public, provided no information shall be disclosed if its disclosure-

- (a) is contrary to law;
- (b) impedes law enforcement;
- (c) is not in the public interest;

(d) prejudices legitimate commercial interest of parties; or

(e) inhibits fair competition.

(2) The Authority may, upon receipt of reports of findings from the accounting officer or decision of the Appeals Authority, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of this Act.

Suspension of
procurement
proceedings

100.-(1) Upon receipt of a complaint or dispute, the accounting officer shall, subject to subsection (2), suspend the procurement process pending determination of a complaint or an appeal.

(2) The suspension referred to in subsection (1) shall not apply where the procuring entity certifies to the Authority that, urgent public interest considerations require the procurement to proceed and the certification shall state the grounds for the findings which shall be conclusive with respect to all levels of review other than judicial review.

(3) Any decision by the accounting officer under this section and the grounds and circumstances for it shall be made part of the record of the procurement proceedings.

(4) Upon receipt of a complaint or an appeal, the Appeals Authority may suspend the procurement process or where necessary, the performance of the concerned procurement contract pending determination of the complaint or an appeal.

Judicial review
Act No.
5 of 2016
s. 37

101.-(1) A tenderer or procuring entity aggrieved by the decision of the Appeals Authority may, within fourteen days of the date of delivery of such decision, apply to the High Court for judicial review.

(2) Where the application is before the High Court for juridical review-

(a) in case of an application by a tenderer

challenging the decision of the Appeals Authority, the Appeals Authority shall be represented in the High Court by the Attorney General; and

(b) in the case of an application by a procuring entity or a tenderer who is a public institution challenging the decision of the Appeals Authority, the procuring entity and tenderer shall state their positions to the Attorney General immediately after leave has been granted by the High Court.

(3) Where the procuring entity and the Appeals Authority have submitted their positions to the Attorney General in terms of subsection (2)(b), the Attorney General shall state case containing positions of both parties and file a case marked “Case Stated” in the High Court for its opinion.

(4) The judgment of the High Court issued in terms of subsection (3) shall be communicated to the parties by the Attorney General and shall be binding on both parties.

PART X GENERAL PROVISIONS

Codes of
Conduct

102.-(1) Public officers and experts engaged to deliver specific services under this Act shall subscribe to the Code of Ethical Conduct.

(2) All tenderers shall be required to sign a declaration of compliance with those Codes of Ethical Conduct determined by the Authority.

Protection from
personal liability
Cap. 4
s. 8

103. An act or thing done by any member or by any employee of the Authority or Appeals Authority shall not, if done or omitted *bona fide* in the execution or purported execution of his duties as a member or as an employee of the Authority or Appeals Authority, subject to him to any action, liability or demand of any kind.

Offences

104.-(1) A person who-

- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons issued under this Act;
- (b) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority, Appeals Authority or procuring entity or member of tender board in the performance of his functions or in the exercise of his power under this Act;
- (c) open any sealed tender, including such tenders as may be submitted through electronic system and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the tender documents;
- (d) connives or colludes to commit a fraudulent, corrupt, collusive, coercive or obstructive act as defined in section 3; or
- (e) causes loss of public properties or funds as a result of negligence in the implementation of this Act,

commits an offence and on conviction shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than seven years or to both, and in addition to the penalty imposed in this section, the court shall order that the amount of loss incurred by the complainant be compensated, failure of which, the court shall issue an order of confiscation of personal property of the person convicted in order to recover the loss.

(2) A person who-

- (a) without reasonable excuse fails or refuses to give information, produce any document, records or reports required under section 18 or under the notice issued in accordance with subsection (3) of section 92;
- (b) without reasonable excuse, fails or refuses to give information, produce any document,

- records or reports required under subsection (2) of section 18 or under the notice issued in accordance with subsection (4) of section 97;
- (c) delay without justifiable cause, the opening or evaluation of or the awarding of contract beyond the prescribed period; or
- (d) contravenes or fails to comply with provisions of this Act, or regulations made under this Act,

commits an offence and on conviction is liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both.

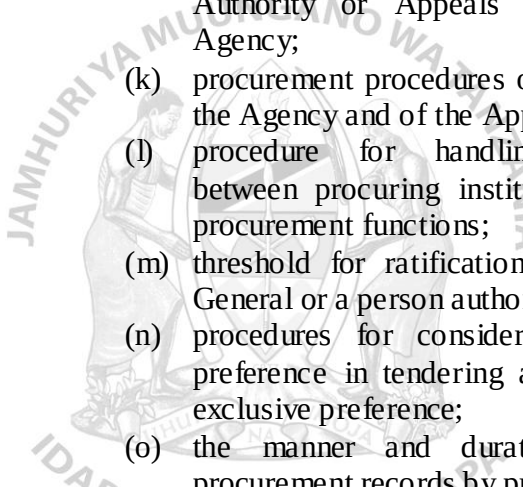
(3) Where a procuring entity consistently contravenes this Act, it shall, on the direction of the Authority, have its procurement function transferred to the Agency until the Authority is satisfied that the causes of the contravention have been rectified.

Regulations
Act No.
5 of 2016
s. 38

105.-(1) The Minister may make regulations and rules for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing-

- (a) procedures and processes for procurement of common use items under framework agreements;
- (b) procedure for procurement of goods and services by public bodies through third party or Agency;
- (c) terms and conditions for delegation of procurement functions of a procuring entity;
- (d) procurement procedures for used railway machinery, ships, aircrafts and life-saving health commodities;
- (e) procedures for tender submission, opening and evaluation awarding of tender and cancellation of procurement process;
- (f) procedure for investigation under this Act;
- (g) procedure for lodging procurement

- 
- complaints and appeals;
- (h) various methods of procurement and procurement of commodities of seasonal nature;
 - (i) qualification of tenderers circumstances and procedures for prequalification process;
 - (j) fees for various services rendered by the Authority or Appeals Authority or the Agency;
 - (k) procurement procedures of the Authority or the Agency and of the Appeals Authority;
 - (l) procedure for handling disagreements between procuring institutional bodies for procurement functions;
 - (m) threshold for ratification by the Attorney General or a person authorised by him;
 - (n) procedures for consideration of national preference in tendering and thresholds for exclusive preference;
 - (o) the manner and duration for keeping procurement records by procuring entity;
 - (p) procedure and period of debarment of a tenderer by the Authority or procuring entity;
 - (q) procedure for procurement under the public private partnerships agreements;
 - (r) procedure for advertisement and publication of tender notices by procuring entities;
 - (s) standards tender documents for application under this Act;
 - (t) percentage for contract variation or amendments;
 - (u) procedure for negotiation and award of contract;
 - (v) procedures for retrospective approval;
 - (w) procedure for conducting e-procurement;
 - (x) procurement procedures for commercial use by public bodies;
 - (y) procedure for emergency procurement; and
 - (z) anything or matter which requires to be

prescribed under this Act.

Guidelines
Cap. 4
s. 8

106. The Authority shall issue guidelines for the better carrying out of the objectives or any functions under this Act.

Repeal and
savings
Act No.
21 of 2004

107.-(1) Repeals the Public Procurement Act.
(2) Notwithstanding subsection (1), every order, direction or appointment which was issued, given, or made pursuant to the provisions of the Public Procurement Act and every office created in pursuance thereof shall remain valid until otherwise cancelled, revoked, varied or abolished under the provisions of this Act.

(3) Upon the coming into operation of this Act, save for section 31(3), all laws, regulations or rules relating to public procurement and disposal of public assets by tender shall cease to have any effect, power, function, authority or duty in relation to any matter connected with procurement of goods, service, works or disposal of public assets by tender.

Transitional
provisions

108.-(1) All properties, except that property as the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Authority or the Appeals Authority on the date of commencement of this Act shall immediately vest in the Authority or the Appeals Authority subject to all interests, liabilities, charges and trusts affecting that property.

(2) All legal obligations, proceedings and claims pending in respect of the Authority or the Appeals Authority shall be continued or enforced by or against the Authority or the Appeals Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.

SCHEDULES

FIRST SCHEDULE

(Made under section 21(4))

COMPOSITION, APPOINTMENT AND PROCEDURES OF THE AUTHORITY

Interpretation

1. In this Schedule “Appointing Authority” means:
- (a) in the case of the Chairman of the Authority, the President of the United Republic; and
 - (b) in the case of members of the Authority, the Minister responsible for finance;

Composition and appointment of Authority

- 2.-(1) The Board of Directors shall consist of the following members:
- (a) a non-executive Chairman who shall be appointed by the President; and
 - (b) six members at least three of whom are experts or specialists in procurement, law, management, engineering, commerce, or in any other relevant field, who shall be appointed by the Minister.
- (2) The Chief Executive Officer who shall be appointed by the President shall be the Secretary to the Board.

Tenure of office
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s. 8

- 3.-(1) The Chairman and members of the Board shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.
- (2) Under exceptional circumstances, the Appointing Authority may extend the tenure of the Board member or members for a period not exceeding six months from the date of expiry of the initial period of appointment.
- (3) The Appointing Authority may terminate the appointment of the Chairman, members and Chief Executive Officer of the Board at any time for-
- (a) abuse of office;
 - (b) corruption;
 - (c) incompetence;
 - (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
 - (e) failure to attend three consecutive meetings of the

	Board meetings without reasonable grounds; (f) conviction of an offence involving moral turpitude; or (g) being adjudged bankrupt by a court of law. (4) Any member of the Board may resign upon giving one month's notice in writing to the Appointing Authority. (5) Where any member is absent from three consecutive meetings of the Board without providing reasonable excuse, the Board shall advise the appointing authority to terminate the appointment of that member and appoint another member in his place.
Attendance by non-members	4. The Board may invite public officers of procuring entities whose procurement is under consideration or any other person with a legitimate interest in the procurement being reviewed to attend its meetings for the purpose of assisting the Board, but such persons shall have no vote.
Meetings	5.-(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Chief Executive Officer, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the Board shall meet at such times and such places being not less than once in a month as the Chairman may determine. (2) The Chairman, or in his absence or inability to act, the Chief Executive Officer, shall convene a special meeting of the Board upon receipt of a request in writing signed by not less than three members of the Board, save that such requests shall not be made without justifiable cause.
Quorum	6.-(1) Half of the members of the Board shall form a quorum for a meeting of the Board. (2) In the absence of the Chairman, the members present at a meeting of the Board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman. (3) At any meeting of the Board, a decision of the majority of the members present shall be recorded as a decision of the Board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting. (4) The validity of any act or decision of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

- Minutes 7. Minutes of each meeting of the Board shall be recorded by the Secretary in a proper form and shall be confirmed by the Board and signed by the Chairman and the Secretary at the next following ordinary meeting of the Board and filed at the offices of the Authority.
- Notification of decisions 8. Notification of decisions of the Board and all other communications made on its behalf shall be signed by the Chief Executive Officer, or by an officer of the secretariat of the Board who has been authorised in writing by the Chief Executive Officer to act on that behalf.
- Regulation of proceedings 9. The Board shall have power to regulate its own proceedings.
- Sub-committees 10. The Board may establish sub-committees and appoint members of such sub-committees, persons who are or are not, members of the Board for the purposes of advising the Board on any specific matter.
- Fees and allowances 11. The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the Authority.

 SECOND SCHEDULE

(Made under section 31(2))

COMPOSITION, APPOINTMENT AND PROCEDURES OF TENDER BOARDS

Interpretation

1.-(1) In this Schedule, “the board” means the tender board for the Ministry, Independent Department of Government, Region, Agency and Parastatal Organisation.

Composition and appointment

2.-(1) The board shall consist of-

- (a) a Chairman, who shall be one of the heads of department or a person of similar standing and who shall be appointed by the accounting officer; and
- (b) six members who are heads of department or persons of similar standing within the same procuring entity and who shall be appointed by the accounting officer.

(2) The Secretary of the board shall be the head of the Procurement Management Unit.

Tenure of
appointment
Cap. 4
s. 8

3.-(1) The Chairman and members of the board shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.

(2) Under exceptional circumstances, the accounting officer may extend the tenure of the board member or members for a period not exceeding three years from the date of expiry of the initial period of appointment.

(3) The accounting officer may terminate the appointment of the Chairman and members of the board at any time for-

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive meetings of the board without reasonable grounds;
- (f) conviction of an offence involving moral turpitude; or
- (g) being adjudged bankrupt by a court of law.

(4) Any member of the board may resign upon giving one month's notice in writing to the accounting officer.

	(5) Where any member is absent for three consecutive meetings of the board without providing reasonable excuse, the board shall advise the accounting officer to terminate the appointment of that member and appoint another member in his place.
Attendance by non-members	4. The board may invite public officers from within the procuring authority or other public authority to attend its meetings for the purpose of assisting the board, but such person shall have no vote.
Meetings Act No. 5 of 2016 s. 39	5. Meetings of the board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the board shall meet at such times and places, quarterly: Provided that, the board may convene an extra-ordinary meeting as the Chairman may determine.
Quorum	6.-(1) Half of the members of the board shall form a quorum for a meeting of the board. (2) In the absence of the Chairman, the members present at a meeting of the board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman. (3) At any meeting of the board, a decision of the majority of the members present and voting shall be recorded as a decision of the board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.
Minutes	7. Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and the Secretary at the next following meeting of the board.
Notification of decisions	8. Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the Permanent Secretary or Chief Executive as the case may be.
Regulation of proceedings	9. A tender board shall conduct its proceedings in accordance with the prescribed regulations.
Sub-committees	10. The tender board may establish sub-committees and

appoint members of such sub-committees, persons who are, or are not, members of the board for the purposes of advising the board on any specific matter.

Fees and
allowances

11. The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the board.

THIRD SCHEDULE

(Made under section 88(3))

COMPOSITION AND PROCEDURES OF THE APPEALS AUTHORITY

Act No.
5 of 2016
s. 40

Interpretation
Cap. 4
s. 8

Tenure of
office
Cap. 4
s. 8

1. In this Schedule “appointing authority” means-

- (a) in the case of Chairman, and Executive Secretary of the Public Procurement Appeals Authority, the President of the United Republic; and
- (b) in the case of members of the Appeals Authority, the Minister responsible for finance.

2.-(1) The Chairman and members of the Appeals Authority shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.

(2) Under exceptional circumstances, the appointing authority may extend the tenure of a member for a period not exceeding six months from the date of expiry of the initial period of appointment.

(3) The appointing authority may terminate the appointment of the Chairman, members and Executive Secretary at any time for-

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive meetings of the Appeals Authority meetings without reasonable grounds;
- (f) conviction of an offence involving moral turpitude; or
- (g) being adjudged bankrupt by a court of law.

(4) Any member of the Appeals Authority may resign upon giving one month's notice in writing to the appointing authority.

(5) Where a member is absent for three consecutive meetings without providing reasonable excuse, the Appeals Authority shall advise the appointing authority to terminate the appointment of that member and appoint another member in his place.

Notice of
hearing
Cap. 4
s. 8

3.-(1) The hearing of the Appeals Authority shall be convened by the Chairman or in his absence or inability to act, the Executive Secretary, by a notice specifying the date, time and place of such hearing which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such hearing.

(2) The Chairman or in his absence or inability to act, the Executive Secretary shall convene a special meeting upon receipt of a request in writing signed by not less than three members of the Appeals Authority save that such requests shall not be made without justifiable cause.

(3) The Appeals Authority may act notwithstanding any vacancy in its membership.

(4) An act or proceedings of the Appeals Authority shall not be invalid by reason of any defect or irregularity in the appointment of any member or by reason that any person who purposed *bona fide* to act as a member at the time of the act or proceedings was in fact disqualified or not entitled to act as a member.

Proceedings of
Appeals
Authority

4.-(1) In resolving disputes or complaints, the Appeals Authority shall conduct proceedings in accordance to the rules made under this Act.

(2) Where the rules are silent in relation to any particular practice or procedure the proceedings of the Appeals Authority shall be conducted in accordance with such rules of practice and procedure as the Appeals Authority may specify.

Quorum

5.-(1) In any meeting of the Appeals Authority, three members shall form a quorum for a hearing of review or an appeal.

(2) In the absence of the Chairman, the members present at a meeting of the Appeals Authority shall select one of their members to act as Chairman for that meeting and the member who is selected shall be responsible for reporting the findings of such meeting to the Chairman.

(3) At any hearing of the appeal or complaint, the decision of the majority of the members present shall be recorded as a decision of the Appeals Authority, save that a member who dissents from that decision shall be entitled to have his decision and the

reasons thereof be recorded in the minutes of that meeting.

Records of
Appeal

6.-(1) Proceedings at the hearing by the Appeals Authority shall be recorded in writing by the members or by any other authorised person.

(2) The records of every proceedings of the Appeals Authority shall be signed by the members present and the Chairman or a person presiding over.

Notification of
decision

7. Notification of decision made by the Appeals Authority and all other communications sent on its behalf shall be signed by the Executive Secretary or by an officer of the secretariat who has been authorised in writing to act on behalf of the Executive Secretary.

Fees and
allowances

8. The Minister may prescribe fees and allowances which may be payable to the Chairman and Members of the Appeals Authority.