THE PUBLIC PROCUREMENT (AMENDMENT) ACT, 2016

ARRANGEMENT OF SECTIONS

Section  Title

PART I
PRELIMINARY PROVISIONS

1. Construction

PART II
GENERAL AMENDMENTS

2. Amendment of section 3
3. Addition of section 4A
4. Amendment of section 6
5. Amendment of section 9
6. Amendment of section 10
7. Amendment of section 18
8. Amendment of section 20
9. Amendment of section 23
10. Amendment of section 25
11. Amendment of section 35
12. Amendment of section 36
13. Amendment of Part V
14. Repeal of section 47
15. Amendment of section 50
17. Amendment of section 59
18. Amendment of section 60
19. Addition of section 60A
20. Amendment of section 63
21. Amendment of section 64
22. Amendment of section 65
23. Addition of sections 65A and 65B
24. Addition of section 67A
25. Amendment of section 73
26. Amendment of section 76
27. Amendment of section 77
28. Amendment of section 83
29. Amendment of section 88
30. Amendment of section 89
31. Amendment of section 91
32. Amendment of section 93
33. Amendment of section 95
34. Amendment of section 96
35. Amendment of section 97
36. Amendment of section 99
37. Amendment of section 101
38. Amendment of section 105
39. Amendment of the Second Schedule
40. Amendment of the Third Schedule
An Act to amend the Public Procurement Act with a view to enabling efficiency in regulating procurement processes, to ensure value for money in public procurement and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Public Procurement (Amendment) Act, 2016 and shall be read as one with the Public Procurement Act, hereinafter referred to as the “principal Act”.
PART II
GENERAL AMENDMENTS

2. Section 3 of the principal Act is amended—
(a) by deleting the definition of the term “defence and national security organs” and substituting for it the following:
"defence and national security organs" has the meaning ascribed to it under the National Security Council Act;"
(b) in the definition of the word “procurement”, by deleting the words “preparation and award of contracts” and substituting for them the words “preparation, award and management of contracts”;
(c) by inserting in its appropriate alphabetical order, the following new definition:
“value for money” means the maximum benefit from goods, works or services procured with the resources available worth the cost incurred;"
(d) inserting immediately after paragraph (d) the following:
“local firm” means a firm whose majority share capital is owned by citizens of the United Republic"
(e) inserting immediately after the proposed new definition “local firm” the following definition:
“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 from time to time by the Minister in consultation with the Minister responsible for health by the order published in the Gazette”
3. The principal Act is amended by adding immediately after section 4, a new section 4A as follows:

"General principles and standards of procurement and disposal by tender

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."
4. The principal Act is amended in section 6(2) by inserting immediately after the word “procurement” appearing in paragraph (d) the word “policy”.

5. The principal Act is amended in section 9(1) by-
   (a) deleting paragraph (d) and substituting for it the following-
   “(d) in collaboration with the Attorney General’s Chambers and professional bodies, prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other documents to procuring entities;”
   (b) adding immediately after paragraph (m), the following new paragraphs-
   “(n) build capacity to stakeholders engaged in public procurement issues;
   (o) obtain price information for standardized common use items and services from relevant public bodies with a view to ensuring that the prices conform with the prevailing market prices.”
   (c) renaming paragraphs (n) and (o) as paragraphs (p) and (q) respectively.

6. The principal Act is amended in section 10 by adding immediately after subsection (2) the following new subsection-
   “(3) During the conduct of investigation, the Authority may order the suspension of proceedings or implementation of any matter under investigation”.
7. The principal Act is amended in section 18(1) by deleting the word "tenderers" appearing in paragraph (e).

8. The principal Act is amended in section 20(1) by deleting the words "entities, not of Government" appearing in the fourth line of paragraph (a) and substituting for them the words "non-Government entities".

9. The principal Act is amended in section 23 by deleting subsection (2) and substituting for it the following-

"(2) The Chief Executive Officer shall be appointed from amongst professionals with at least ten years 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."

10. The principal Act is amended in section 25 by deleting subsection (5).

11. The principal Act is amended in section 35 by-
(a) deleting subsections (3), (4) and (5); and
(b) renumbering subsection (6) as subsection (3).

12. The principal Act is amended in section 36(1) by-
(a) deleting paragraph (l) and substituting for it the following-
“(l) submitting to the Authority details of procurement contracts awarded and annual procurement plan for the next financial year.”

(b) adding immediately after paragraph (m), a new paragraph (n) as follows:

“(n) save for areas where there is no electronic infrastructure, ensure that all procurement information is promptly posted electronically; and”

(c) renaming paragraph (n) as paragraph (o).

13. The principal Act is amended by deleting the title to Part V and substitute for it the following:

“SPECIFIC PRINCIPLES OF PUBLIC PROCUREMENT”

14. The principal Act is amended by repealing section 47.

15. The principal Act is amended in section 50 by-

(a) deleting the words “closed or” appearing in subsection (1);

(b) deleting subsection (3) and substituting for it the following-

“(3) For the purpose of this section, “open framework agreement” means an agreement containing specified terms and conditions but does not contain agreed price.”
16. The principal Act is amended by adding immediately after section 55, the following new sections—

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.

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;

(b) the extent of use of materials locally manufactured, produced or mined.
55C. In contracts for goods and related services 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.

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.”

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

17. The principal Act is amended in section 59 by deleting subsection (6).
18. Section 60 of the principal Act is amended-
(a) in subsection (3), by deleting the word "fourteen" appearing in the fourth line and substituting for it the word "seven working";
(b) subsection (11), by deleting the words "when a written acceptance of a tender is communicated to the successful tenderer" and substituting for them the words "when the formal contract is signed by parties to the contract"

19. The principal Act is amended by adding immediately after section 60, a new section 60A as follows:

"Witnessing of contract signing

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.
(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."

20. The principal Act is amended by deleting section 63 and substituting for it the following:
“e-procurement 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.”

21. Section 64 of the principal Act is amended-
(a) in subsection (2), by-
(i) adding the words “including special groups” at the end of paragraph (c); and
(ii) deleting the closing phrase and substituting for it the following:
   “the procuring entity shall set aside a specific percentage of the procurement volume in accordance with the procedures set out in the Regulations”.
(b) in sub-section (3) by adding the following new paragraph-
   “(c) “special groups” includes women, youth, elderly and persons with disability”.
(c) by adding immediately after subsection (4) the following new subsections:
   (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;
       (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.

22. Section 65 of the principal Act is amended-
(a) in subsection (1), by deleting the word "urgent" and substituting for it the word "emergency";
(b) in subsection (2), by deleting the word "urgent" appearing in paragraph (a) and (b) and substituting for it the word "emergency"
(c) by deleting subsections (3) and (4);
(d) by renumbering subsections (5) to (8) as subsections (3) to (6) respectively; and
(e) in subsection (5) as renumbered by changing the reference to subsection (8) as reference to subsection (6).

23. The principal Act is amended by adding immediately after section 65 the following new sections-

"Procurement directly from manufacturer, dealers or service providers"

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

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.”
24. The principal Act is amended by adding immediately after section 67 the following new section:

"Lifesaving 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."

25. The principal Act is amended in section 73(5) by-
(a) deleting the words "Subject to the provisions of section 60(3), after" and substituting for them the word "After"; and
(b) deleting the word "e-examination" and substituting for it the word "examination".

26. The principal Act is amended in section 76(2) by-
(a) deleting paragraphs (c) and (d);
(b) renaming paragraph (c) as paragraph (c).

27. The principal Act is amended in section 77(1) by deleting the word "is" appearing in paragraph (b).
28. Section 83 of the principal Act is amended by-
(a) deleting subsections (2), (3) and (4) and substituting for them the following-

“(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.”

(b) renumbering subsections (5) and (6) as subsections (6) and (7) respectively.

29. The principal Act is amended in section 88 by-
   (a) deleting subsection (4); and
   (b) renumbering subsections (5), (6) and (7) as subsections (4), (5) and (6) respectively.

30. Section 89(3) of the principal Act is amended-
   (a) by deleting the opening phrase and substituting for it the following-
   “(3) The Executive Secretary shall be responsible for;”
   (b) by deleting the word “control” appearing in paragraph (c) and substituting for it the word “management.”

31. The principal Act is amended in section 91 by deleting subsection (3).

32. Section 93 of the principal Act is amended-
   (a) in subsection (1), by deleting the words “Members of the Appeals Board” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;
(b) in subsection (2), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;
(c) in subsection (3), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;

33. The principal Act is amended in section 95 by deleting subsection (3).

34. Section 96 of the principal Act is amended-
(a) in subsection (4) by deleting the words “twenty eighty days” and substituting for them the words “seven working days”
(b) in subsection (6) by deleting the word “fourteen” and substituting for it the word “seven working”

35. Section 97 of the principal Act is amended-
(a) in subsection (2), by deleting the closing phrase and substituting for it the following closing phrase-
“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.”
(b) in subsection (3), by deleting the word “fourteen” appearing in the fifth line and substituting for it the word “seven working”;
(c) in subsection (5), by adding immediately after paragraph (f) the following new paragraphs:
“(g) order payment of compensation to the procuring entity for any reasonable cost incurred by procuring entity in whose favor 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.”

(d) by deleting subsection (8) and substituting for it the following-

“(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”.

36. Section 99 of the principal Act is amended by-

(a) deleting subsections (1) and (2);

(b) renumbering subsections (3) and (4) as subsections (1) and (2) respectively;

(c) in subsection (1) as renumbered-

(a) by inserting the words “made pursuant to sections 96 and 97 after the words “Appeals Authority”;

(b) by deleting the word “seven days” appearing in the second line and substituting for them the words “seven working days”
37. Section 101 of the principal Act is amended-
(a) in subsection (2) by deleting paragraph (b) and substituting for it the following-
“(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.”
(b) in subsection (3) by deleting the words “in accordance with Order XXXIV of the Civil Procedure Code” appearing at the end of that subsection.

38. The principal Act is amended in section 105(2) by-
(a) inserting immediately after the word “aircrafts” appearing in paragraph(d) the following:
   “lifesaving health commodities”
(b) deleting the word “and” appearing in paragraph (w);
(c) adding immediately after paragraph (w) the following new paragraphs:
   “(x) procurement procedures for commercial use by public bodies; and
   (y) procedures for emergency procurement;”
(d) renaming paragraph (x) as paragraph (z).

39. The principal Act is amended in the Second Schedule by-
(a) deleting the words “not less than once in a month, as the Chairman may determine.” appearing at the end of paragraph 5 and substituting for them the word “quarterly:”; and
(b) adding immediately after paragraph 5 the following proviso-
“Provided that, the board may convene an extra-ordinary meeting as the Chairman may determine.”

40. The principal Act is amended in the Third Schedule by-
(a) deleting paragraphs 3 and 8; and
(b) renumbering paragraphs 9 and 10 as paragraphs 8 and 9 respectively.

Passed by the National Assembly on the 29th June, 2016.

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Clerk of the National Assembly