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THE UNITED REPUBLIC OF TANZANIA

ACT NO. 10 OF 2023

ENGLISH VERSION

THE PUBLIC PROCUREMENT ACT

[PRINCIPAL LEGISLATION]

This version of the Public Procurement Act, has been translated into English Language, and is published pursuant to section 84(4) of the Interpretation of Law Act, Chapter 1.

Dodoma,
17th September, 2024

HAMZA S. JOHARI
Attorney General

THE PUBLIC PROCUREMENT ACT, 2023

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THE UNITED REPUBLIC OF TANZANIA



NO. 10 OF 2023

I ASSENT,
SAMIA SULUHU HASSAN,
President
[29th September, 2023]

An Act to make provisions for better management of public procurement and supply, to repeal the Public Procurement Act of 2011, to re-enact the Public Procurement Act and to provide for related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the Public Procurement Act, 2023 and shall come into operation on such a date as the Minister shall, by notice in the *Gazette*, appoint.

Application

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

- (a) all procurement, supply management and disposal of assets by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- (b) non-Government entities, for procurement financed by public funds;
- (c) public private partnership projects, in their

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relevant stages; and

(d) defence and security organs subject to subsections (2) and (3).

(2) The defence and 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.

(3) In every financial year, the defence and security organs shall agree with the Authority on the category of items to be included in the restricted list to be procured or disposed in accordance with the procurement or disposal methods set out in this Act.

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

(5) Notwithstanding any other provision to the contrary, the provisions of this Act shall not prejudice implementation of an agreement for development of a strategic project which provides for special arrangement of procurement or disposal of assets which has been approved by the Cabinet and vetted by the Attorney General.

Interpretation

3. In this Act, unless the context otherwise requires-

Cap. 348

“accounting officer” means a Government officer appointed in accordance with the provisions of the Public Finance Act or a public officer appointed under any other written law to hold a vote or subvention and account for all monies expended from that vote or subvention;

“public 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 a public body; or
- (d) a person who has been a public officer;
- “price cap” means an established minimum and maximum price which shall be charged for particular goods, works or services;
- “health commodities” includes medicines and medical devices approved by the regulatory authority for approving health commodities;
- “goods” means raw materials, 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;
- “Board” means the Board of Directors of the Public Procurement Regulatory Authority established under section 22;
- “competent authority” means a person, body of persons, agency or organ competent to take actions as may be referred to or directed to it by the Authority under this Act;
- “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;
- “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;
- “consultancy services” means activities of an intellectual and advisory nature which do not lead to a measurable physical output and includes design, supervision, training, advisory, auditing, software development and similar services;
- “non-consultancy services” means any procurement other than procurement of goods, works and consultancy

services;

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

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

“department” in relation to a ministry, other public authority or public body, includes any department or unit by whatever name known of such ministry, authority or other body;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for public procurement;

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

“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;

“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;

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“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 non-competitive levels and to deprive the Government of the benefits of free and open competition;

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

“Procurement Management Unit” means a department or unit, depending on the size of the procuring entity, responsible for the execution of procurement and supply management functions;

“debarment” means the act of a tenderer being barred from participating in public procurement for a specified period of time;

“public asset” means any tangible and intangible property owned by a public body, and includes physical property, land, shares or proprietary rights;

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

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

“Appeals Authority” means the Public Procurement Appeals Authority established under section 112;

“approving authority” means an accounting officer or tender board of a procuring entity;

“Authority” means the Public Procurement Regulatory Authority established under section 8;

“solicited private partnership proposal” means a proposal for public private partnership projects which is initiated by public bodies and represent the Government’s priority programs;

“unsolicited private partnership proposal” means a

proposal initiated by a private sector party to a public institution for consideration as public private partnership project;

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

“disposal process” means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from tenderers, evaluation of such offers and award of contract;

“electronic public procurement system” means a system developed, hosted and operated by the Authority to enable a procuring entity carry out procurement and supply functions electronically;

“framework agreement” means a contractual arrangement which allows a procuring entity to procure goods, services or works which are needed continuously or repeatedly with or without an agreed price over an agreed period of time;

“guidelines” means guidelines issued by the Authority under this 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;

“procurement contract” means any licence, permit or other authority issued by a public body or concession 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;

“Paymaster General” has the meaning ascribed to it under

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the Public Finance Act;

“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;

“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;

“procurement professional” or “supply professional” means a person who has academic qualifications in procurement and supply from a recognised university and is registered by the relevant body responsible for procurement and supply profession;

“service provider” means a natural person, an incorporated body or a duly registered body licenced by a competent authority to provide the services and who is, according to the contract, a potential party or the party to a procurement contract with a procuring entity;

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

“supplier” means company, corporation, organisation, partnership or individual person supplying goods and related services and who is, according to the contract, a potential party or the party to a procurement contract with a procuring entity;

“tenderer” means any natural or legal person or group of such persons participating or intending to participate in procurement proceedings with a view to submitting a tender in order to conclude a contract and includes a supplier, contractor, service provider or asset buyer;

“foreign tenderer” means a firm whose majority share

capital is owned by a foreign citizen;

“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;

“price catalogue” means a list which defines the range of minimum and maximum prices of goods and services prepared and maintained by the Authority;

“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;

“Government” means the Government of the United Republic of Tanzania;

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

“public body” or “public authority” means-

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

(b) any body corporate or statutory body or authority established by the Government;

(c) any company registered under the Companies Act 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;

“commercially operating public bodies” means public bodies which are operating commercially as provided in the establishment legislation or identified by the Treasury Registrar as operating commercially;

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

“value for money” means the maximum benefits derived

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

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

“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;

“supply” means the procedure used by a procuring entity to facilitate acquisition, receipt, distribution, storage, maintenance, use of supplies, goods and services by the user department;

“e-supply” means supply functions conducted through an electronic system in accordance with this Act;

“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 or the highest evaluated tenderer in case of revenue collection has the experience, capability and resources to carry out the contract effectively;

“emergency procurement” means procurement of goods, works or services essentially to meet an emergency situation which cannot be done through normal procurement process;

“e-procurement” means public procurement functions conducted through an electronic system in accordance with this Act;

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“procurement” means buying, purchasing, renting, leasing, hire-purchase or otherwise acquiring any goods, works or services by a procuring entity and includes all functions which pertain to the obtaining of any goods, works or services, including identifying and consolidating requirements, selection and invitation of tenderers, preparation, award and management of contracts;

“disposal” means the divestiture of public assets including intellectual and proprietary rights and goodwill, and any other rights of a procuring entity or entity disposing assets by way of tender in accordance with this Act;

“supply chain management” includes all activities of implementation, monitoring and evaluation of supply chain activities including designing, identification of needs, planning, procurement, receiving, warehousing, storage, distribution, contract management, utilisation and disposal of assets with an objective of obtaining value for money intended by the procuring entity;

“supply management” means the effective and economical co-ordination and execution of-

- (a) warehouse organisation, storage, inventory control and preservation;
- (b) physical distribution including transportation, handling, clearing and forwarding, customs and port clearance;
- (c) stock verification and stock taking; and
- (d) disposal, recycling of materials, assets transfer and auctioneering and preservation;

“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;

“medical devices” has the meaning ascribed to it under the Medicines and Medical Devices Act;

“specification” means a description of any commodity, works or services by reference to its nature, quality, strength, purity, composition, quantity,

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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, works or services may be manufactured, produced, processed, treated, built or installed;

“collusive practices” means an arrangement between two or more parties with or without a knowledge of the other party or parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

Cap. 329

“corrupt practice” has the meaning ascribed to it under the Prevention and Combating of Corruption Act;

Cap. 61

“defence and national security organs” has the meaning ascribed to it under the National Security Council Act;

“Agency” means the Government Procurement Services Agency;

“Minister” means the Minister for responsible for public procurement;

“tender” means an offer, proposal or quotation made by a supplier, contractor or consultant in response to a request by a procuring entity;

“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 if the procurement method 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;

“competitive tendering” means the method of procurement whereby suppliers, contractors, service providers or consultants are invited by the

procuring entity to compete with each other in submitting priced tenders for goods, works or services;

“lowest evaluated tender” means the tender with 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; and

“highest evaluated tender” means the tender with the highest evaluated price offered by a tenderer for revenue collection services or for the asset to be disposed of, which is found to be highest after considering relevant factors specified in the tender documents.

International
obligation

4.-(1) Where this Act conflicts with an obligation of the United Republic 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, 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 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, service providers, 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 process of the beneficiary entity, in conjunction with firms in that country, and where applicable to offer such requirements from third sources.

(4) Where there is a need for derogation from the application of subsections (1) and (2), the competent agency responsible for the procurement or disposal in question may make an application to the Authority by submitting supporting documentation and justification.

General
principles and
standards of
procurement,
supply and
disposal

5.-(1) All public procurement, supply and disposal shall be conducted in accordance with the basic principles set out in this Act.

(2) Subject to this Act, all procurement, supply and disposal shall be conducted in a manner that-

- (a) achieves value for money; and
- (b) maximises integrity, competition, accountability, sustainability, economy, efficiency and transparency.

(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;
- (c) promotion of local industry, sustainable development and protection of the environment;
- (d) 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
COMMISSIONER FOR PUBLIC PROCUREMENT POLICY

Commissioner
for Public
Procurement
Policy

6.-(1) There shall be the Commissioner for Public Procurement Policy under the Ministry responsible for public procurement.

(2) The Commissioner for Public Procurement Policy shall be a senior procurement and supply professional who is registered by the procurement and supply professional body.

(3) In the discharge of his functions, the Commissioner for Public Procurement Policy shall be responsible to the Permanent Secretary.

Functions of
Commissioner
for Public
Procurement
Policy

7. The functions of the Commissioner for Public Procurement Policy shall be to-

- (a) develop a National Procurement and Supply Policy and Strategy;
- (b) review procurement and supply policies, regulations, circulars and other related directives with a view of updating the same;
- (c) monitor the implementation of the Public Procurement Policy;
- (d) advise the central Government, local governments and statutory bodies on policy issues and procurement and supply management;
- (e) develop and manage procurement and supply cadre;
- (f) monitor and evaluate procurement and supply management systems;
- (g) conduct research on procurement and supply policies, and advise accordingly;
- (h) advise on applications for retrospective approval;
- (i) monitor and evaluate performance of the Agency and public procurement oversight institutions;
- (j) advise on the structure, appointment of heads

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- of procurement management unit and recommend the transfer of procurement and supply staff; and
- (k) link the Government with professional institutions and stakeholders on all issues relating to public sector procurement and supply.

PART III

THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Public
Procurement
Regulatory
Authority

8.-(1) There shall continue to exist an Authority known as the Public Procurement Regulatory Authority

(2) The Public Procurement Regulatory 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 under this Act; and
- (d) do all other things which a body corporate may lawfully do, for the proper performance of its functions under this Act.

(3) The affixation of the common seal of the Authority on any document shall be authenticated by the signature of the Director General.

(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.

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Objectives
of
Authority

- 9.** The objectives of the Authority shall be to-
- (a) ensure value for money in procurement and supply;
 - (b) ensure observance of fairness, competition, transparency, sustainability, accountability, economy, efficiency, effectiveness and integrity in public procurement and supply;
 - (c) set standards for the public procurement and supply systems in the United Republic;
 - (d) ensure that procuring entities give preference to local tenderers in tenders for goods, works and services;
 - (e) monitor compliance of the law by procuring entities; and
 - (f) build, in collaboration with the Ministry responsible for procurement and supply and other relevant professional bodies, procurement and supply capacity in the United Republic.

Functions of
Authority

- 10.** The functions of the Authority shall be to-
- (a) advise Government, local government authorities and statutory bodies on procurement and supply principles and practices;
 - (b) monitor and report on the performance of the procurement and supply management systems in the United Republic and advise on desirable changes;
 - (c) regulate procurement of consultancies, transaction advisors and private parties 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 Unit;
 - (d) in collaboration with the Office of the

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- Attorney General and professional bodies, prepare, update and issue authorised versions of the standardised tendering documents, procedural forms and any other authorised documents to procuring entities;
- (e) approve the use of tendering documents, procedural forms and any other attendant documents other than standardised documents issued by 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 procuring entities to ensure full and correct application of this Act;
 - (i) monitor the award, implementation of public contracts and supplies management 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 contract;
 - (iii) supplies audits during and after contract implementation; and

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- (iv) 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 electronic system in procurement and supply management;
- (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 procurement and supply issues;
- (o) obtain price information for standardised goods, works and services from relevant public bodies with a view to ensuring that the prices conform with the prevailing market prices;
- (p) in so far as may be deemed appropriate, prepare and maintain a record of price capping for standardised goods, works and services in public procurement with a view to ensure value for money and its conformity with the prevailing market prices;
- (q) undertake research and surveys nationally and internationally on procurement and supply matters; and
- (r) undertake any activity that may be necessary for the execution of its functions.

Scope of
investigations
by Authority

11.-(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:

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- (a) the registration of contractors, suppliers or consultants in relation to the specific procurement;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) award of any public contract;
- (d) implementation of the terms of any public contract;
- (e) circumstances of the grant, issue, use, suspension or revocation of any prescribed license;
- (f) practice and procedures relating to the grant, issue, suspension or revocation of any prescribed license;
- (g) applications for retrospective approvals; and
- (h) any other matter which shall be submitted to the Authority or which the Authority may consider necessary.

(2) The Authority shall, with 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 organs;
- (b) the grant or issue of any prescribed licence for the purposes of defence or for the supply of equipment to the security organs and any report or comment thereon shall be made to the Paymaster General or the Minister or to both.

(3) Where the budget approving authority or accounting officer is not satisfied with the implementation of the procurement or disposal, the authority or accounting officer may, after paying the costs determined by the Authority, submit to the Authority a request to conduct an investigation or special audit regarding any issue in such procurement or disposal.

(4) During the conduct of investigation, the Authority may order the suspension of proceedings or

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implementation of any matter under investigation.

Initiation of investigation

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

Evidence

13.-(1) Subject to the provisions of subsection (3) and section 11(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 presentation to it; or
- (b) any officer, servant 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 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 on disclosure of certain matters

14.-(1) Where the Paymaster General, 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;

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- (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 employee 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 employee 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), any regulations which authorise or require 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 not apply in respect of any investigation by or proceedings before the Authority or its staff.

Procedure in
respect of
investigation

15. In conducting an investigation, the Authority may use any procedures it deems appropriate depending on the circumstances of the relevant issue and in accordance with the provisions of this Act.

Procedure after
investigation

16.-(1) The Authority shall, after conducting investigation under this Act and in writing, inform the Paymaster 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.

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(2) The Director General 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

17.-(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

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

Powers of
Authority

19.-(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 and supply process where a breach, wrongdoing, 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, supply, contract and performance audits;
- (d) cause to be inspected any procurement transaction to ensure compliance with contract award by a procuring entity;
- (e) enter into any premises or location-
 - (i) where work on a public contract has been or is being or is to be carried out;

- (ii) where it has reason to believe that any book, records, document or any other property referred to in paragraph (a), may be found;
- (iii) 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;
- (f) retain any such document, record or other property involved in any matter being investigated by the Authority;
- (g) obtain information of the award and the variation of any public contract by the procuring entity responsible for such contract;
- (h) direct the procuring entity to take such actions as necessary to rectify the contravention of this Act, regulations or guidelines;
- (i) act upon complaints by procuring entities or any other entity or person;
- (j) commission any studies relevant to the determination of award of contracts; and
- (k) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere.

(2) Where-

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

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.

(3) 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

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desirable.

Cancellation of
procurement
proceedings

20.-(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, terminate the procurement proceedings.

(2) For the purposes of subsection (1), where several lots or health products in one tender are not in compliance with this Act, the Authority shall cancel the procurement proceedings in respect to such lots or products.

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

(4) The Authority shall not incur any 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

21.-(1) The Authority shall, where there is persistent breach of this Act, 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, chairman or member of the tender board, as may be considered appropriate;
- (c) the disciplining of the accounting officer, the head of Procurement Management Unit, a member of the tender board, 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 or Agency.

(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 audit findings and complaints investigated;
(b) its recommended corrective measures in each case;

(c) the response and actions taken by-

(i) the respective competent authority; and
(ii) relevant law enforcement and oversight agencies;

(d) any remedial measures taken.

Board of
Directors

22.-(1) There shall be a Board to be known as the Board of Directors of the Public Procurement Regulatory Authority which shall consist of the following members:

(a) non-executive Chairman, who shall be appointed by the President;

(b) six members, two of whom shall be procurement and supply professionals and four from the fields of law, finance, management, engineering, commerce, or in any other relevant field, who shall be appointed by the Minister.

(2) The Director General of the Authority shall be the secretary to the Board.

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

(4) The Chairman and members of the Board shall be appointed from amongst persons of good standing with high levels of professionalism, competence and integrity.

(5) Matters regarding the procedures of the Board

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shall be as prescribed in the First Schedule.

Committees of
Board of
Directors

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

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

Appointment of
Director General

24.-(1) There shall be a Director General 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 one further term.

(2) The Director General shall be appointed from among professionals with at least ten years' experience in either engineering, architecture, law, finance, procurement and supply management, quantity surveying, business administration, economic development planning or in any other related field and shall have proven record of procurement experience.

(3) Subject to the general supervision and direction of the Board, the Director General shall be responsible for the-

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) management 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 the terms and conditions of their employment.

(4) The Director General shall be the accounting officer of the Authority and in discharging the duty imposed under this section, he shall, be guided by the laws governing employment in the public service.

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Directors,
consultants and
other staff of
Authority

25.-(1) The Authority shall employ Directors who shall be principal assistants to the Director General, 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 in various disciplines on such terms and conditions as the Authority may determine.

(3) The Authority shall establish and comply with a competitive selection procedure for the appointment of consultants and experts.

(4) A person who was the chairman or a member of the Board, the Director General 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 which was subject of a contract with the Authority at the time when such person was the member, Chairman, Director General or employee of the Authority;

(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 organisation or person who was subject of a contract with the Authority at the time when such person was the member, Chairman, Director General or employee of the Authority.

Funds of
Authority

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

(a) money appropriated by Parliament;

(b) loans or grants;

(c) revenues collected from goods or services rendered by the Authority; and

(d) any other money received or made available

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to the Authority for the purposes of discharging its functions.

(2) The Authority may collect fees and charges on services rendered.

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

(a) the salaries and allowances of the staff of the Authority;

(b) reasonable travelling, transport and subsistence allowance for members of the Board or members of any committee of the Authority when engaged on the business of the Authority, at such rates as the relevant authority may determine; and

(c) any other expenses incurred by the Authority in the performance of its functions.

(4) The Authority may, with prior approval of the Paymaster General, 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

27.-(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 accounts 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

28.-(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 shall, for the performance of his

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duties under subsection (1), have access to all books of accounts, records, revenue and expenditure, reports and other documents relating to the Authority's accounts at all reasonable times.

(4) The auditor shall, in respect of each financial year, certify whether-

(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 according to the explanations and other information received, and the books of account, records, revenue and expenditure, 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 National Assembly within three months of receiving the report or at the next sitting of the National Assembly, whichever event comes first.

Annual
management
plan and
budget

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

(2) The Director General 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) Expenditure shall not be made out of the

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funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the financial year in which the expenditure is to be incurred, or in the supplementary budget for that year.

(4) The Board shall, upon approval of an annual budget or any supplementary budget, submit such budget to the Minister for approval.

Annual Public
Procurement
Performance
Evaluation and
Value for Money
Report

30. On or before 30th March of each year, or on such other date as the President may direct, the Authority shall submit to the President an annual report on the performance evaluation of public procurement, supply and disposal of assets and value for money, which shall include-

- (a) an evaluation of operations of procuring entities in respect to compliance;
- (b) audit findings, complaints investigated and corrective actions taken; and
- (c) any other information as the President may direct.

Annual report

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

- (a) the Minister, an annual report of the Authority's operations in respect of that year and the annual management plan;
- (b) the Controller and Auditor-General, the accounts of the Authority in respect of that financial year.

(2) The Minister shall lay before the National Assembly the annual report within three months from the date of his receiving the report or at the next sitting of the National Assembly, whichever event comes first.

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

PART IV
INSTITUTIONAL ARRANGEMENT IN PROCUREMENT AND
SUPPLY

Tender boards

32.-(1) Except where it is provided otherwise in this Act, each procuring entity shall establish a tender board for approval of procurement of goods, services, works and disposal of assets other than procurement approved by an accounting officer under this Act.

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

(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 the regulations.

(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) For the purpose of subsection (1), tender board approval shall be required for all procurement of goods, services, works and disposal of public assets subject to the threshold of approval.

(6) Procurement of goods, services, works and disposal of public assets other than procurement which requires tender board approval shall be approved by the accounting officer.

(7) Procedures for the procurement of goods, services, works and disposal of assets which are subject to the tender board approval and which are subject to the accounting officer's approval shall be as prescribed in the regulations.

(8) Notwithstanding the threshold of approval, the accounting officer may seek approval of the tender board in respect of the procurement which is not subject to

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tender board approval.

(9) The procuring entity shall not split a tender for the purpose of avoiding tender board approval.

Notification to
Authority of
composition of
tender board

33.-(1) The accounting officer shall inform the Authority of the composition of the tender board and the qualifications of its members within fourteen days from the date of its appointment.

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

Functions of
tender
boards

34. Subject to the provisions of section 32, 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 tender documents;
- (d) approve procurement, supply and disposal of assets subject to the prescribed threshold; and
- (e) ensure that best practices in relation to procurement and disposal are strictly adhered by procuring entity.

Budget
approving
authority

35.-(1) 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 entity complies with the provisions of the Act and regulations;
- (d) ensuring that the Authority's recommendations with respect to established wrongdoings in

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- procurement activities are implemented; and
- (e) taking disciplinary actions against the staff implicated on wrongdoings under paragraph (d).

(2) The budget approving authority may request the Authority to carry out procurement audit or investigation where it is not satisfied with the implementation of any procurement in the procuring entity.

Powers of
tender
boards

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

- (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.

Award of
contract

37.-(1) Notwithstanding any other enactment, a procuring entity shall not-

- (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 procuring entity unless the award has been approved by the approving authority.

(3) The acceptance of a tender shall be communicated in writing through the electronic public procurement system to a successful tenderer by the accounting officer.

Functions and
powers of
accounting
officer

38.-(1) The accounting officer shall have the overall responsibility for the execution of the procurement and supply processes in the procuring

entity, and in particular, shall be responsible for-

- (a) establishing a tender board and appointing its members in accordance with this Act;
- (b) approving all procurement, supply and disposal of assets opportunities;
- (c) appointing the evaluation committee, negotiation team and inspection and acceptance committee;
- (d) certifying the availability of funds to support procurement and supply activities;
- (e) approving award recommendations subject to the threshold to be prescribed in the regulations;
- (f) communicating the award decision to successful tenderer;
- (g) approving all applications for variations, addenda or amendments to ongoing contracts subject to the threshold to be prescribed in the regulations;
- (h) approving tendering and contract documents subject to the threshold to be prescribed in the regulations;
- (i) approving procurement and disposal by tender procedures subject to the threshold to be prescribed in the regulations;
- (j) ensuring that best practices in relation to procurement and disposal are strictly adhered to;
- (k) approving negotiation plan and report subject to the threshold to be prescribed in the regulations;
- (l) publishing the annual procurement plan upon the approval of the plan by the budget approving authority;
- (m) signing procurement contracts on behalf of the procuring entity;
- (n) handling complaints by tenderers and submitting a copy of complaints and reports of the findings to the Authority;

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- (o) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award contract;
 - (p) implementing decisions made by the Authority and Appeals Authority after investigation or adjudication of a complaint;
 - (q) providing feedback on the implementation of the decision of the Authority or Appeals Authority within fourteen days of receipt of the decision;
 - (r) ensure that any deviation from the use of the standardised tendering documents, procedural forms and any other documents is effected only after prior written approval of the Authority;
 - (s) cause to be investigated any discrepancies in assets, inventory and stores and report to the Authority of its findings;
 - (t) take actions on any misuse of assets and stores as reported by the head of Procurement Management Unit.
- (2) The accounting officer may, upon consultation with the tender board, request for any professional or technical advice from any appropriate body or person in the United Republic or elsewhere if 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 committee 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

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(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 and supply decisions made by his procuring entity.

Establishment
and composition
of Procurement
Management
Unit

39.-(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 supply professionals and administrative staff.

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

(4) The Head of 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 funds in the budget to carry out its responsibilities under this Act.

Functions of
Procurement
Management
Unit

40. The Procurement Management Unit shall-

(a) manage all procurement and disposal activities of the procuring entity as follows:

- (i) implement the decisions and directives of the accounting officer and tender board;
- (ii) plan the procurement and disposal activities;
- (iii) recommend procurement and disposal procedures;
- (iv) review requirements from user department to ensure conformity with public procurement principles and

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- standards;
- (v) prepare tendering documents;
- (vi) prepare advertisements of tender opportunities;
- (vii) liaise with the user department when recommending on the evaluation and negotiation committees;
- (viii) review evaluation and negotiation reports and recommend award of contracts to the accounting officer or tender board;
- (ix) prepare contract documents;
- (x) issue approved contract documents;
- (xi) liaise with user department to review all applications for variations, addenda or amendments to ongoing contracts and advise the accounting officer;
- (xii) manage and ensure quality sourcing of goods, services and works;
- (xiii) advise the accounting officer on all issues relating to procurement and disposal;
- (xiv) maintain and archive records of the procurement and disposal of assets;
- (xv) maintain a list or register of all contracts awarded;
- (xvi) prepare monthly reports of the tender board;
- (xvii) prepare and submit to the management meeting quarterly reports on the implementation of the annual procurement plan;
- (xviii) co-ordinate procurement and disposal of assets activities of the procuring entity; and
- (xix) prepare other reports as may be required;
- (b) manage all supply activities of the procuring entity as follows:

- (i) advise the accounting officer on all issues relating to supply management;
- (ii) manage storage, maintenance and distribution of inventories, stores and assets;
- (iii) ensure and plan for inventories, stores and assets requirement;
- (iv) ensure timely replenishment of inventories, stores and assets;
- (v) receive, record and issue of procured inventories, stores and assets;
- (vi) report to the accounting officer on any change in the status of the inventories, stores and assets;
- (vii) maintain and update records of inventories, stores and assets of the procuring entity;
- (viii) coordinate activities relating to management of inventories, stores and assets;
- (ix) manage a procuring entity's purchase orders and quality and quantity of inventories, stores and assets;
- (x) conduct periodic verification and annual stocktaking and report on any discrepancies observed during stocktaking and stock checking;
- (xi) prepare periodic reports on dormant, obsolete, expired and damaged inventories, stores and assets;
- (xii) propose to the accounting officer appropriate inventories, stores and assets storage and management system; and
- (xiii) conduct regular checks of inventories, stores and assets of a procuring entity with the view of identifying any improper usage and propose to the accounting officer appropriate actions

to be taken.

User department

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

- (a) liaise with Procurement Management Unit throughout the procurement or disposal by tender process to the point of contract signing;
- (b) initiate procurement and disposal requirements and forward them to the Procurement Management Unit;
- (c) propose and prepare statements of requirements, technical specifications or terms of reference and submit to the Procurement Management Unit;
- (d) participate in tender evaluation;
- (e) verify claims for payments to suppliers, contractors or service providers;
- (f) report any departure from the terms and conditions of an awarded contract to the Procurement Management Unit;
- (g) forward details of any required contract amendments to the Procurement Management Unit for necessary actions;
- (h) maintain and archive records of contracts management and submit to Procurement Management Unit after the contract closure;
- (i) prepare any reports required for submission to the Procurement Management Unit, tender board or the accounting officer;
- (j) oversee contract implementation including reviewing and approving technical reports, design or any outputs as per contract; and
- (k) liaise with the Procurement Management Unit during budget preparation.

(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

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plan.

Evaluation
Committee

42.-(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 members of the evaluation committee shall be recommended by the Procurement Management Unit in accordance with regulations 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.

(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 external to the procuring entity, where the required skills or experience is 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 subscribe to the Code of Ethics prescribed in the regulations, 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.

Independence of
functions and
powers

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

Delegation of
powers by
accounting
officer

44.-(1) An accounting officer may, in accordance with the terms and conditions specified in the regulations, delegate the procurement functions of the procuring entity to-

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- (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

45.-(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 the Agency or third-party procurement services-

- (a) ensure that funds are available to pay in full and on time for such services;
- (b) follow the procedures laid down in the regulations.

Procurement
procedures for
Authority and
Appeals
Authority

46.-(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.

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

Disagreements
in decisions

47.-(1) 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 38(4), shall be resolved in accordance with the procedures set out in the regulations.

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(2) In case the accounting officer is not satisfied with the recommendations from Procurement Management Unit regarding application or interpretation of any procurement methods, practice, award of the contract and supply management, the matter shall be resolved in accordance with the procedures set out in the regulations.

Confidentiality
of documents

48.-(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 11, a person in possession of or control over any document or information relating to any business or transaction of the procuring entity shall not 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

PUBLIC PROCUREMENT PROCEDURES

Procurement in
commercially
operating public
bodies

49. Commercially operating public corporations and public bodies shall conduct procurement, supply and disposal of assets in the manner prescribed in the regulations.

Duties of
procuring entity

50.-(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 the accounting officer to ensure that 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

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whether this Act and regulations have been complied with and the accounting officer shall, upon receiving such report, submit a copy thereof to the Authority.

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

(4) Where an accounting officer satisfies the Authority that he had, in accordance with the provisions of any rules or regulations 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).

(5) The Authority shall, in the case of any failure to comply with the provisions of subsection (1), take appropriate corrective or punitive measures.

Approval of
annual
procurement plan

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

- (a) avoid emergency procurement wherever practicable;
- (b) aggregate its requirements wherever practicable, 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 prior approval of the Authority shall be obtained; and
- (d) integrate its procurement budget with its expenditure programme.

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

(3) The procuring entity shall observe the approved annual procurement plan and any unplanned procurement shall obtain prior written approval of the

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accounting officer.

Procurement
through framework
agreements

52.-(1) The procuring entity shall, for the purpose of ensuring efficiency of procurement process and reduction of procurement transaction costs within and across public bodies, engage in 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 exist 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.

Qualifications of
tenderers

53.-(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.

(2) Local tenderers intending to participate in any procurement proceeding shall satisfy all relevant requirements for registration with appropriate statutory bodies in the United Republic.

(3) Foreign tenderers intending to participate in the proceedings are exempted from the requirement of subsection (2), except that, 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 tenderer shall register with the appropriate professional statutory body and shall be required to submit evidence of registration as

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an approved supplier, contractor or consultant in United Republic.

(4) Subject to sections 55 and 56 of this Act, any criteria for qualification shall be made known to, and apply equally to all tenderers and a procuring entity shall not impose any discriminatory criteria, requirement or procedure with respect to the qualifications of any tenderer.

Pre-qualification
proceedings

54.-(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.

Post-qualification

55.-(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 price, in the case of procurement or the highest evaluated price in the case of disposal, has the legal capacity, capability and resources to carry out effectively the contract as offered in the tender or proposal 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 the 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) The procuring entity shall, in case of a foreign company, seek from a reliable institution in the respective country reference of legal existence of the tenderer, capability, resources to discharge the tender and any other information considered relevant in the determination of the tenderer's qualifications.

(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 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 54 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 shall have the right to reject all remaining tenders in accordance with section 68.

National
preference

56.-(1) Tenderers shall be allowed to participate in procurement proceedings without regard to their nationality, except where a procuring entity has limited participation in procurement proceedings on the basis of nationality in accordance with this Act, regulations or 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 tenders for certain goods manufactured, mined, extracted or produced in the United Republic, for works by Tanzanian contractors or services provided by Tanzanian consultants.

(3) For purposes of implementation of the provisions of this section, the Authority shall clearly state the criterion for the preference in the tender documents.

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

(a) for individual companies-

(i) they are incorporated or registered in

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- 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; and
 - (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; and
 - (iv) such companies do not have an 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;
- (c) for partners or individual persons trading as contractors or consultants, the majority of the shares are held by citizens of Tanzania.

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

Exclusive
preference to local
persons or firms

57.-(1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement

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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 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.

(3) 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 re-solicited on unrestricted basis.

Inclusion of local firms and experts in consultancy contract

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

(2) In the evaluation of foreign firms, a procuring entity shall ensure that the principle of mandatory inclusion of local experts and local firms in non-emergence assignments has been observed and shall apportion weight in accordance with this section.

(3) A procuring entity shall, for the purpose of subsection (2) 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 are Tanzanians are granted a full score.

Use of local experts in works and non-

59. When applying the margin of preference in respect of works or non-consultancy services, a procuring

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consultancy
services contract

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 local
goods

60.-(1) In contracts for goods and related services to be awarded on the basis of international or national competitive tendering, procuring entity 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.

(2) In procurement of goods, the procuring entity shall, prior to procuring from abroad, give preference to goods manufactured, produced or mined within the United Republic.

(3) Subject to subsection (2), the procuring entity shall state in the tender documents the need for the supplier or the contractor to give preference to the goods manufactured, produced or mined in United Republic.

(4) Where a procuring entity procures goods which are not manufactured, produced or mined in United Republic, it shall, within five working days after the award of contract, submit to the Authority a report detailing the reasons for not procuring goods manufactured, produced or mined in the United Republic.

Capacity building
for local
individuals or
firms

61.-(1) A procuring entity shall set aside an amount of the annual procurement volume for tenders to local individuals or firms in accordance with procedures prescribed in the regulations.

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

(3) Where a joint venture established in accordance with this section involves a foreign firm, the

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local firm shall be the leading firm and the joint venture shall be given preference in accordance with the provisions of this Act.

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

Joint venture or subcontracting of local firms

62-(1) For procurement of works and non-consultancy services above the limit prescribed in the regulations, a procuring entity shall require foreign tenderers to enter into joint venture agreements or to subcontract local firms.

(2) Subject to subsection (1), a foreign tenderer who is awarded a procurement contract shall enter into a joint venture or subcontract at a percentage of the total value of the contract as may be prescribed in the regulations.

(3) Subject to subsection (1), the method which shall be used to enter into a joint venture or subcontract shall be as prescribed in the regulations.

(4) A foreign tenderer shall attach to his tender a joint venture agreement or subcontract specifying the key operating procedures which shall govern such joint venture or subcontract.

Ownership of share capital

63. Notwithstanding any other provision to the contrary, local firms referred to in sections 58 and 61 shall have a share capital which is wholly owned by citizens of the United Republic.

Preference to special groups

64.-(1) A procuring entity shall set aside a percentage of the annual procurement volume for special groups in accordance with procedures set out in the regulations.

(2) In making the regulations referred to under subsection (1), the Minister shall consult with the ministries responsible for special groups.

(3) For the purpose of this section “special

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groups” includes women, youth, elderly and persons with special needs.

Procurement from
Agency

65. A procuring entity shall procure from the Agency in accordance with the procedures prescribed in the regulations.

Language

66. Pre-qualification documents and tender documents shall be written in Kiswahili or English language and tenders shall be invited in either of those languages.

Tender securities

67.-(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 prescribed 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 tender
or proposal

68.-(1) Tender documents and request for proposals shall provide that a procuring entity may 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) all 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;

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- (d) tenders or proposals involve costs substantially higher than the market price, 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 or those who submitted tenders or proposals in the first instance may be invited with prior approval from the accounting officer or tender board depending on the nature of procurement.

(5) The appropriate tender board or accounting officer'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

69.-(1) Subject to the provisions of section 68, the tender or proposal that has been ascertained to be the successful tender or proposal pursuant to the provision of

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contract

this Act shall be accepted.

(2) For procurement which requires approval of tender board, the accounting officer shall be notified by the tender board of its award decision within three working days of making the decision.

(3) For procurement which does not require approval of the tender board, the Procurement Management Unit shall submit to the accounting officer recommendations for award of contract as prescribed in the regulations.

(4) Upon receipt of notifications or recommendations for approval of award, 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 five working days within which to submit complaints thereof, if any.

(5) Notwithstanding the provisions of section 75, the requirement to issue a notice of intention to award the contract under subsection (4) shall not apply to national shopping procurement method, procurement of common use items and services, single source method and minor value procurement.

(6) Where no complaints have been lodged pursuant to subsection (4), the accounting officer shall issue a notice of acceptance to the successful tenderer.

(7) The notifications referred to in subsections (4) and (6) shall be communicated in an electronic form as prescribed in the tender document and be signed by accounting officer.

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

(9) A contract shall contain such terms, conditions and provisions as contained in the tender document.

(10) Any contract above the thresholds specified in the regulations arising out of the acceptance of a

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tender, offer or proposal under this Act shall be vetted by the Attorney General before being signed by the parties.

(11) Contracts below specified thresholds in the regulations shall be vetted by legal officers of the respective procuring entity.

(12) A procurement contract shall enter into force upon being signed by parties to the contract.

(13) The accounting officer shall, within seven days from the date of award notify the Authority, the name of the person or entity to whom the contract is awarded, the value of award and the date on which the award was made.

(14) The parties may use hand written or digital signatures in signing contracts specified under subsection (12).

(15) The accounting officer shall, within seven days after the communication of award, notify unsuccessful tenderers the name of the person to whom the contract is awarded and the respective contract value.

Witnessing of
contract signing

70.-(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.

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

Records and
information

71.-(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 records 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.

Debarment

72.-(1) The Authority may debar a tenderer for a specified time from participating in public procurement proceedings and notify all procuring entities on such action.

(2) A tenderer who has been barred from taking part in public procurement by a foreign country or international organisation shall automatically be debarred from participating in public procurement in the United Republic for such period as is debarred by that foreign country or international organisation.

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

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

(4) The Authority may debar 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 prescribed in the regulations.

(6) A tenderer debarred pursuant to this section may appeal against the decision to the Appeals Authority within twenty one days from the date the decision came to his knowledge.

(7) The Authority shall keep and maintain a

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register of all debarred tenderers in accordance with this Act.

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

(9) Procuring entities shall not contract with, engage or procure from a tenderer who has been debarred from participating in public procurement proceedings pursuant to this Act.

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

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

PART VI

PROCUREMENT METHODS AND PROCESSES

e-Procurement

73.(1) Procuring entities shall ensure that procurement, supply and disposal of assets functions are implemented and reported through the electronic public procurement system.

(2) Where there is a malfunction of the system, the Authority shall issue a notice of guidance to the electronic public procurement system users and the public.

Price cap

74.-(1) Procuring entities shall procure goods, services and works based on price cap as they may be prepared.

(2) A public officer involved in transactions in which goods, services and works are procured at unreasonably inflated prices shall be liable to disciplinary action and in addition be ordered to pay the difference between the actual cost of the procurement and what the costs would have been through the price cap.

(3) Procedures for the implementation of the provisions of this section shall be prescribed in the regulations.

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Selection of
methods of
procurement

75.-(1) A procuring entity engaging in the procurement of goods, works, services, non-consultancy services or disposal of assets 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 54;

(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 competitive tendering or competitive selection; or

(c) there is need to achieve certain social objectives by calling for the participation of local communities,

the procuring entity may restrict the issue of tenders in accordance with the procedures set out in the regulations.

(3) For the purposes of subsection (2)-

(a) circumstances giving rise to the urgency are those which were neither foreseeable by the procuring entity nor caused by dilatory conduct on its part; and

(b) the procuring entity shall include in the records required under section 71 a statement of the grounds for its decision and the circumstances leading to, or justifying the restriction.

(4) The procurement of commodities such as grain and other food stuff, animal feeds, fuel or fertiliser, 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.

Force account

76.-(1) For the purpose of this Act, “force account” means a process where works are carried out by a public or semi-public entities by making recourse to its officers and equipment or in collaborating with a local technician or another public body.

(2) 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 price;
- (b) works are required to be carried out without disrupting ongoing operations;
- (c) there may be unavoidable interruption of the entity’s operations and for avoidance of risks, the works are better undertaken by a procuring entity or public authority than by a contractor;
- (d) there is an emergency that needs immediate attention;
- (e) the procuring entity has qualified personnel or equipment to supervise and carry out the required works;
- (f) the maintenance or construction is part of the routine activity of the procuring entity undertaking the works.

(3) Notwithstanding subsection (2), a procuring entity shall not carry out works through force account where-

- (a) there is no qualified public personnel to supervise the works in the area where procuring entity is located; and
- (b) the estimated value of works is above the threshold for works prescribed in the regulations.

(4) For purposes of subsection (1), “local technician” means a technician who possesses professional knowledge in the field of construction but

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has not been registered by the relevant body responsible for registration of construction professionals or who does not have professional knowledge in the field of construction but has the requisite experience in construction works.

(5) During implementation of the projects through force account, the procuring entity shall ensure that basic principles and standards of public procurement and construction are adhered to.

(6) The manner in which force account shall be carried out, qualifications of personnel to supervise the works and the thresholds for force account shall be stipulated in the regulations.

Emergency
procurement

77.-(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) there is 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;

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

(c) subject to section 82, there is an urgent need of health commodities in health care centres.

(3) The procuring entity shall apply the procedures stipulated in the regulations 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

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procurement limits, methods, tender processing periods and advertisement may be waived except that conditions relating to tender evaluation and obtaining approval of the accounting officer shall not be waived.

(5) The Authority shall, in collaboration with the department responsible for management of Government assets, the department responsible for technical audit in the Ministry responsible for procurement or where necessary, with any other competent body, advise the Paymaster General on the appropriate action to be taken pursuant to subsection (6).

(6) The Paymaster General shall be advised by the Authority in respect of application for retrospective approval.

Procurement
directly from
manufacturer,
dealer or service
provider

78.-(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 procuring directly from a manufacturer, dealer, wholesaler or service provider.

Approved
procurement
standards

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

(2) Approved standards referred to under subsection (1) shall be issued by relevant Government organs and in the manner and procedure prescribed in the regulations.

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

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standards.

Procurement of
used locomotives
and coaches,
aircrafts and ships

80.-(1) Where national interest demands, a procuring entity may, subject to the provisions of subsection (2), procure used locomotives and coaches, ship or aircraft.

(2) A procuring entity intending to procure used locomotives and coaches, ship or aircraft shall-

(a) use normal or emergency procurement; and

(b) seek approval from the Minister.

(3) After receiving a request for approval in accordance with subsection (2), the Minister shall 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) Procurement of used locomotives and coaches, ship or aircraft shall comply with the procedures prescribed in the regulations.

(5) Where the procurement referred to under subsection (1) is to be done under emergency procurement, the procedure stipulated under section 77 shall apply subject to necessary modifications stipulated in the regulations.

(6) The regulations made for purposes of implementation of this section shall, among other things, prescribe characteristics and criteria to be considered by a procuring entity during procurement of used locomotives and coaches, ship or aircraft.

Competitive
tendering

81. 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.

Health
commodities

82.-(1) The Ministry responsible for health shall prepare and approve standards of health commodities

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depending on the status of health care centres and issue specifications to be considered by the Medical Stores Department during procurement of health commodities.

(2) The Medical Stores Department shall prepare a schedule of requirements and specifications in accordance with the standards of health commodities issued and approved for use in the procurement process.

(3) In procurement of health commodities for health care centres, the Medical Stores Department shall comply with the standards issued by the Ministry under subsection (1).

(4) The Medical Stores Department shall, in consideration of the importance and nature of health commodities, fast-track their procurement process or use emergency procurement.

(5) Where the procurement of health commodities is to be done under emergency procurement, the procedure stipulated under section 77 shall apply subject to necessary modifications stipulated in the regulations.

(6) The procurement of health commodities shall be conducted in accordance with procedures prescribed in the regulations.

Invitation to tender
and advertising

83.-(1) A procuring entity intending to commence competitive tendering proceedings shall prepare a tender notice inviting tenderers to submit priced offers for the supply of goods, provision of services or for undertaking the works required and such tender notice shall be submitted to the tender board or accounting officer for approval within reasonable time before issuance of bid documents to tenderers.

(2) The approved tender notice shall be advertised by the procuring entity as set out in the regulations and such entity 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

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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 indicated 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

84.-(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, if 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 or 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.

Content of tender documents

85.-(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 tenders and tender security

86. The procuring entity shall require tenderers to make their tenders and tender securities valid for periods specified in the tendering documents, sufficient to enable the procuring entity to complete the comparison and

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evaluation of tenders, approval of the recommendations, issuance of notification of award and signing of contract whilst the tenders and tender securities are still valid.

Evaluation criteria

87.-(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

88.-(1) Tenders shall be received and opened using procedures set out in the regulations.

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

(3) 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 tenderers who participated in the tender process.

(4) Information referred to in subsection (3) shall be made available to the Authority, the Appeals Authority, accounting officer and to the Minister when such information is so required.

Evaluation and comparison of tender

89.-(1) The evaluation committee shall evaluate, on a common basis, tenders that have not been rejected in

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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 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) 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.

(4) The Procurement Management Unit shall review the evaluation report submitted pursuant to subsection (3) and submit the report together with its recommendations to the tender board or accounting officer.

Approval of
contract award

90. The tender board or accounting officer shall review the evaluation report and recommendation made by the Procurement Management Unit and may-

- (a) for tenders which require the tender board approval-
 - (i) approve the recommendations and authorise acceptance of the tender and award a contract in the form specified in the tender documents; or
 - (ii) refuse to authorise recommendations for award of the tenders and refer the evaluation to the Procurement Management Unit with instructions for re-evaluation of the tenders, re-tendering or other action;
- (b) for tenders which require the accounting officer approval-

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- (i) approve the recommendations and award a contract in the form specified in the tender documents; or
- (ii) refuse to authorise recommendations for award of the tenders and refer the evaluation to the Procurement Management Unit with instructions for re-evaluation of the tenders, re-tendering or other action.

Negotiation and
award of contract

91.-(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 the negotiations under subsection (2) fail to result in an acceptable contract, the accounting officer shall-

- (a) for tenders requiring approval by the accounting officer, terminate the negotiations invite the next ranked firm for negotiations; or
- (b) for tenders requiring approval by the tender board, terminate the negotiations after the consultation with the tender board and invite the next ranked firm for negotiations.

Selection of
consultants

92.-(1) A procuring entity commencing selection proceedings for consultancy services shall apply the procedures and selection methods prescribed in the regulations.

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

(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 or accounting officer as necessary to address specific contract issues, and any such changes shall be introduced only through tender data sheet, 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 CONTRACT MANAGEMENT

Responsibility to
monitor
execution of
contract

93.-(1) Upon entry into force of the procurement contract by virtue of this Act, the accounting officer shall have the overall responsibility for the execution of the contract in a manner prescribed in the regulations.

(2) The user department shall be responsible to oversee contract implementation in a manner prescribed in the regulations.

(3) The user department shall recommend to the accounting officer to appoint in respect of each contract a team, supervisor, project manager or consultant who shall be responsible for ensuring proper implementation of the signed contract.

(4) Subject to subsection (3), the procedure of appointment of the team, supervisor, project manager or consultant shall be prescribed in the regulations.

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Management of
cost, quality and
time in
procurement
contracts

94.-(1) The user department shall be responsible to ensure that goods delivered, works executed or services rendered are in conformity with the terms and conditions of the contract and all aspects including quantity, quality, cost and time are properly managed to ensure achievement of value for money.

(2) In the course of contract implementation, the appointed team, supervisor, project manager or consultant shall prepare implementation plans and reports and submit them to the user department for appropriate action and submission to the accounting officer.

Alteration or
amendment

95.-(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 amendment-

- (a) is not disadvantageous to the Government; and
- (b) does not exceed fifteen percent of the total price of the original contract sum without the approval of the budget approving authority.

(2) A procuring entity shall, prior to altering or amending a procurement contract, submit to the Attorney General the proposed alteration or amendment for vetting.

(3) The manner and procedure of alteration or amendment of contract shall be prescribed 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.

Advance payment

96.-(1) Works, goods or services shall not be paid for before they are executed, delivered or rendered and accepted by the accounting officer or an officer authorised by him in writing unless specified in the tender document and contract.

(2) Advance payment shall not be paid before the contract is signed and shall be in such amount as specified

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in the regulations or guidelines.

Termination of contract

97.-(1) A procurement contract may be terminated on grounds and procedures stipulated in the contract.

(2) Without prejudice to subsection (1), a procuring entity shall not terminate any procurement contract prior to obtaining the opinion of the Attorney General.

(3) The manner and procedure of termination of contract and obtaining the opinion of the Attorney General pursuant to subsection (2) shall be prescribed in the regulations.

Contract closure

98.-(1) An accounting officer shall close out a contract after completion of implementation of the contract.

(2) The manner and procedures for contract closure shall be prescribed in the regulations.

PART VIII SUPPLY MANAGEMENT

Receipt and recording of goods, supplies or assets

99.-(1) A procuring entity shall receive goods, supplies or assets which have been certified in accordance with terms and conditions of the contract.

(2) A procuring entity shall record goods, supplies or assets received under subsection (1) in an inventory of the procuring entity as prescribed in the regulations.

Responsibility of procuring entity in managing goods, supplies or assets

100.-(1) A procuring entity shall manage the received goods, supplies and assets for the purpose of preventing wastage and loss, and continuing utilisation in accordance with the regulations.

(2) For the purpose of avoiding unprofitable lock-up of funds, the procuring entity shall ensure that stocks of goods and assets are kept to the minimum necessary for the efficient conduct of the procuring entity.

(3) A procuring entity shall establish electronic

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systems for management and control of goods, supplies and assets to meet the objectives of sound supply chain management.

Management of
goods, supplies or
assets

101.-(1) A procuring entity shall manage goods received, works executed and services rendered for the purpose of preventing wastage and loss and ensuring sustainable utilisation.

(2) A procuring entity shall ensure availability of adequate and secure environment for storage of goods received.

(3) A procuring entity shall ensure that goods received do not suffer deterioration from any preventable cause or overstocking.

Distribution of
goods and
supplies

102.-(1) A procuring entity shall ensure that it keeps proper record of all goods and supplies received prior to distribution, utilisation or storage.

(2) Goods and supplies set aside for utilisation or distribution shall be requisitioned and distributed in the manner prescribed in the regulations.

(3) A procuring entity shall ensure that distribution of goods and supplies adheres to efficiency, economy and timely availability of goods and supplies at appropriate places.

Control of losses
and fraud in goods,
supplies and assets

103. A procuring entity shall establish and ensure compliance with procedures for regulating, detecting and accounting for losses and fraudulent practices in goods, supplies and assets as provided for in the Public Finance Act.

Cap. 348

Guidelines for
management of
goods, supplies or
assets
Cap. 348

104. A procuring entity shall comply with guidelines issued by the Paymaster General regarding goods, supplies and assets management under the Public Finance Act.

**PART IX
PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIP**

Scope,
applicability and
approval

Cap. 103

105.-(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 sector 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.

Selection of
transaction
advisor or
manager

Cap. 103

106. 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.

**PART X
PROHIBITIONS**

Fraud and
corruption

107.-(1) The procuring entity 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 thorough investigation, 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 in accordance with section 72 of the Act.

(3) Where a procuring entity is satisfied after determination by a court or Appels 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 in accordance with section 72 of the Act;

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

(4) Save as provided in this Act, the Authority shall debar 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 such a person or tenderer, including its directors.

(6) Any public officer 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 ensure that each tender form for public contracts include formal declaration by the tenderer to observe the country's laws against fraud and corruption in competing for and executing a contract.

Conducts
influencing public
officer

108.-(1) Any 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 such 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 or 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 public officer 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 by the procuring entity within a period which does not exceed fourteen days and the same be reported to the Prevention and Combating of Corruption Bureau for appropriate action

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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 practices shall not be able to qualify or pre-qualify in any procurement proceedings during a period of ten years from the date of debarment from participating in public procurement.

(8) Any rejection or revocation of a tender on the grounds of inducement, corrupt, fraudulent, collusive, coercive or obstructive practices shall be notified to the Authority which 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

109.-(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) if 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

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of the body corporate; and

(ii) if 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 procurement contract, such consideration shall be furnished to the Paymaster General within thirty days from the date of receipt of the consideration.

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

Conduct of
directors, servants
or agents

110.-(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

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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 aforementioned 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 aforementioned person.

Institution of
criminal
proceedings
Caps. 16 and 329

111. 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 XI DISPUTE SETTLEMENT

Appeals Authority

112.-(1) There shall continue to exist an independent procurement appeals authority to be known as the Public Procurement Appeals Authority.

(2) The Appeals Authority shall consist of-

- (a) Chairman who shall be appointed by the President from amongst retired Judges; and
- (b) six other members to be appointed by the Minister as follows:
- (i) a senior lawyer to be nominated 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 and supply, construction industry, business administration, finance or law.

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(3) The Executive Secretary shall be the Secretary of the Appeals Authority.

(4) Other matters regarding the proceedings of the members of the Appeals Authority shall be as prescribed in the Third Schedule.

(5) The Permanent Secretary shall oversee the performance of the Appeals Authority

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

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

(8) In resolving disputes, complaints or appeals, the Appeals Authority shall conduct proceedings in accordance with the procedures prescribed in the regulations.

Appointment of
Executive
Secretary

113.-(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 professionals who have at least ten years of experience in either procurement and supply management, law, accounts, finance, business or in any other related field and shall have academic qualifications and experience in such fields including proven record of procurement experience.

(3) The Executive Secretary shall be responsible for-

- (a) management of the operations of the Appeals Authority;
- (b) management of funds, property and business of the Appeals Authority;
- (c) administration, organisation and management of officers and staff of the Appeals Authority.

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(4) The Executive Secretary shall be the Director General 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 reappointment for one further term.

Employees of
Appeals Authority

114. The Appeals Authority shall, subject to the approved organisation structure and scheme of service, employ such number and categories of staff.

Funds of Appeals
Authority

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

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

Cap. 348

(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 appropriate authority may determine; and
- (c) any other expenses incurred by it in the performance of its functions.

Audit of accounts

116.-(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 revenue and expenditure account, and balance sheet in accordance with Public Finance Act.

Cap. 348

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

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duly authorised by him.

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

Annual
management work
plan and budget

117.-(1) The Executive Secretary shall, not later than three months before the end of each financial year, prepare and submit to the Permanent Secretary an annual management work 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 for approval any estimates supplementary to the budget of the current financial year.

(3) 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 under the estimates for the financial year in which the expenditure shall be incurred or in the supplementary budget for that year.

Annual report

118.-(1) The Appeals Authority shall, within three 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, disputes and appeals handled during that year.

(2) A copy of the report prepared under subsection (1) shall, during submission 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 National Assembly the reports referred to under subsection (2) within three months from the date of receiving the report

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or at the next sitting of the National Assembly, whichever event comes first.

Right to review

119.-(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 a review.

(2) The right to 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 56 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 to participating in request for proposals proceedings.

(3) The provisions of section 120 shall, *mutatis mutandis*, apply to review sought under subsection (1).

Settlement of complaints or disputes by accounting officer

120.-(1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets and award 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 entity 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, any member or secretary of the tender board or any other public officer of the

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procuring entity has violated this Act or the regulations 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 five 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 after the procurement contract has entered into force.

(6) Within five working days after the submission of the complaint or dispute, or within seven days in case an independent review panel is constituted, the accounting officer shall deliver a written decision which shall-

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

(7) Where the accounting officer constitutes an independent review panel, he shall be required to notify all tenderers within one day after receipt of a complaint or dispute.

(8) Where the accounting officer does not issue a decision within the time specified in subsection (7), the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 121 and upon institution of such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

(9) The decision of the accounting officer shall be final unless the tenderer applies for appeal to the Appeals Authority.

Appeals or
complaints to
Appeals Authority

121.-(1) A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to

the Appeals Authority for appeal within five working days from the date of receipt of the accounting officer's decision.

(2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if-

(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision;

(b) the complaint or dispute cannot be entertained under section 120 because of entry into force of the procurement or disposal contract, and provided that the complaint or dispute is submitted within five 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.

(3) The Appeals Authority shall, upon receipt of a complaint, dispute or appeal give notice of the complaint, dispute or appeal 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.

(4) The Appeals Authority may, unless it dismisses the complaint, dispute or appeal, issue a decision as follows:

(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, dispute or appeal as a result of an unlawful act, decision or procedure followed by the procuring entity;
 - (g) order payment 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 decision made by the Authority to debar; or
 - (i) give such other order or reliefs as may be deemed fit.
- (5) The Appeals Authority shall, within forty days, issue a written decision concerning the complaint, dispute or appeal stating the reasons for the decision and the reliefs granted, if any.
- (6) The decision of the Appeals Authority shall be final unless it is subject for judicial review under section 125 of this Act.
- (7) The decision of the Appeals Authority shall be binding on the parties to the complaint, dispute or appeal and shall be enforceable in the same manner as a decree or order of the court.

Extension of time
for submission of
complaint, dispute
or appeal

122. The Appeals Authority may extend the time limit set under section 121(1) and (2) where it is satisfied that failure by a party to lodge a complaint, dispute or appeal 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 regulations.

Rules applicable to
review
proceedings

123.-(1) The decision of the accounting officer or the Appeals Authority made pursuant to sections 119 and 120 shall be furnished within five working days after the delivery of the decision to the tenderer who submitted the complaint, dispute or appeal to the procuring entity and to any other tenderer or Government authority which 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

124.-(1) Upon receipt of a complaint or dispute, the accounting officer shall suspend the procurement proceedings pending determination of a complaint or dispute.

(2) In the case of health commodities, where the complaint or dispute lodged is in respect of particular lots or particular health commodities in the same tender, the accounting officer shall suspend the procurement proceedings in respect of such lots or commodities.

(3) Procurement proceedings shall not be suspended pursuant to subsection (1) where the procuring entity certifies to the Authority that urgent public interest considerations require the procurement to proceed and the

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certification shall state the grounds for the findings which shall be conclusive with respect to all levels of review other than judicial review.

(4) Subject to subsection (2), request for non-suspension of the procurement proceedings shall be submitted to the Authority when the complaint or dispute is under the mandate of the accounting officer.

(5) 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.

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

Judicial review

125.-(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 judicial review-

(a) in case of an application by a tenderer challenging the decision of the Appeals Authority, the Appeals Authority shall be represented 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 or tenderer and Appeals Authority shall state their positions to the Attorney General immediately after leave has been granted by the High Court.

(3) Where the procuring entity or tenderer 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

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High Court for its opinion.

(4) The judgement 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 XII GENERAL PROVISIONS

Codes of Conduct

126.-(1) Public officers, experts and tenderers engaged in public procurement and supply shall subscribe to the Codes of Ethical Conduct as prescribed in the regulations.

(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

127. Any member or employee of the Authority or Appeals Authority shall not be subject to any action, liability or demand for an act or thing if such act or thing was done or omitted *bona fide* in the execution of his duties as a member or employee of the Authority or Appeals Authority.

Offences

128. 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, procuring entity or a member of the tender board in the performance of his functions or in the exercise of his power under this Act;
- (c) opens any sealed tender, including such tenders as may be submitted through electronic system and any document required to be

sealed, or divulges 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 this Act;
- (e) causes loss of public property 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 19;
- (b) without reasonable excuse, fails or refuses to give information, produce any document, records or reports required under section 19(3) or under a notice issued in accordance with section 121(3);
- (c) fails to conduct procurement, supply or disposal through the public procurement electronic system;
- (d) contravenes provisions relating to preference;
- (e) delays without justifiable cause, the opening, evaluation or the award of contract beyond the prescribed period; or
- (f) contravenes or fails to comply with provisions of this Act or regulations,

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.

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

Regulations

129.-(1) The Minister may make regulations 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) procedures for procurement of goods and services by public bodies through third party or Agency;
- (c) threshold of the tender board or accounting officer to approve procurement or disposal of public assets;
- (d) terms and conditions for delegation of procurement functions of a procuring entity;
- (e) procurement procedures for used locomotives and coaches, ships and aircrafts;
- (f) procurement procedures for health commodities including life-saving health commodities;
- (g) procedures for tender submission, opening, evaluation and awarding of tender and cancellation of procurement process;
- (h) procedures for investigation under this Act;
- (i) procedures for lodging procurement complaints, disputes and appeals;
- (j) various methods of procurement and procurement of commodities of seasonal nature;
- (k) qualification of tenderers, circumstances and procedures for pre-qualification process;

- (l) fees and charges for various services rendered by the Authority, Appeals Authority or the Agency;
- (m) procurement procedures for the Authority, Agency or Appeals Authority;
- (n) procedures for handling disagreements between procuring institutional bodies for procurement functions;
- (o) threshold for vetting of procurement contracts by the Attorney General or a legal officer of the procuring entity;
- (p) procedures for consideration of national preference in tendering and thresholds for exclusive preference;
- (q) the manner and duration for keeping procurement and supply records by procuring entity;
- (r) procedures for debarment of a tenderer by the Authority;
- (s) procedures for advertisement and publication of tender notices by procuring entity;
- (t) standard tender documents for application under this Act;
- (u) procedures for negotiation and award of contract;
- (v) procedures for contracts management;
- (w) procedures for retrospective approval;
- (x) procurement procedures for public bodies operating commercially;
- (y) procedures for emergency procurement;
- (z) procedures for conducting e-procurement;
- (aa) procedures for inventories and assets management;
- (bb) composition, manner of appointment of members and proceedings of tender boards in local government authorities; and
- (cc) anything or matter which is required for effective implementation of the provisions of this Act.

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(3) The Minister shall, in making regulations for tender boards in local government authorities, consult the Minister responsible for local government.

Guidelines

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

Repeal and savings
Act No.
7 of 2011

131.-(1) The Public Procurement Act of 2011 is hereby repealed.

(2) Notwithstanding subsection (1), anything done pursuant to the provisions of the Public Procurement Act of 2011 shall remain valid until otherwise revoked or varied under the provisions of this Act.

(3) Upon the coming into operation of this Act, all laws, regulations, rules, guidelines or any other subsidiary legislation relating to public procurement, supply and disposal of public assets by tender which were in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, remain in force as if they were made under this Act until replaced or revoked.

FIRST SCHEDULE

(Made under section 22(5))

PROCEDURES OF THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Interpretation	1. In this Schedule, “appointing authority” means- (a) in the case of the Chairman of the Board, the President of the United Republic of Tanzania; and (b) in the case of members of the Board, the Minister for the time being responsible for procurement.
Tenure of office	2.-(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 one further term. (2) The appointing authority may terminate the appointment of a member 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; and (g) being adjudged bankrupt by a court of law. (3) Any member of the Board may resign upon giving one month’s notice in writing to the appointing authority. (4) 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	3. 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 person shall have no right to vote.
Meetings	4.-(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Director General, 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 working days before the date of such meeting and the

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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 Secretary to the Board, 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 request shall not be made without justifiable cause.

(3) A meeting of the Board shall be chaired by the Chairman and, in the case of his absence, the members present shall select one member among them to act as Chairman in respect of such meeting, and the member so selected shall be responsible for reporting the findings of such meeting to the Chairman.

(4) 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 such decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting.

(5) 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.

Quorum	5. Half of the members of the Board shall form a quorum for a meeting of the Board.
Minutes	6. 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	7. Notification of decisions of the Board and all other communications made on its behalf shall be signed by the Secretary or by an who has been authorised in writing.
Fees and allowances	8. Fees and allowances payable to the Chairman and members of the Board shall be prescribed by the relevant authority.
Regulation of proceedings	9. The Board shall have power to regulate its own proceedings.

SECOND SCHEDULE

(Made under section 32(2))

COMPOSITION, APPOINTMENT AND PROCEDURES OF TENDER BOARDS

Interpretation	1. In this Schedule, “board” means the tender board for a ministry or public institution.
Composition and appointment	2.-(1) The board shall consist of- (a) Chairman, who shall be one of the heads of departments 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 head of the Procurement Management Unit shall be the Secretary to the board.
Tenure of appointment	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 shall extend the tenure of a board member for a period not exceeding six months 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 meetings without reasonable grounds; (f) conviction of an offence involving moral turpitude; and (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 from 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.

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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 not vote.
Meetings	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 among them 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, Permanent Secretary or Chief Executive, as the case may be.
Sub-committee	9. The tender board may establish sub-committees and appoint as members, of such sub-committees, persons who are, or are not, members of the tender board for the purposes of advising the board on any specific matter.
Fees and allowances	10. The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the board.
Regulation of proceedings	11. The board shall have power to regulate its own proceedings.

THIRD SCHEDULE

(Made under section 112(4))

PROCEDURES OF THE APPEALS AUTHORITY

Interpretation	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 of Tanzania; and (b) in the case of members of the Appeals Authority, the Minister for the time being responsible for procurement.
Tenure of office	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 one further term. (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 without reasonable ground; (f) conviction of an offence involving moral turpitude; and (g) being adjudged bankrupt by a court of law. (3) Any member of the Appeals Authority may resign upon giving one month’s notice in writing to the appointing authority. (4) Where a member is absent from three consecutive meetings, 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	3.-(1) A meeting of the Appeals Authority for hearing complaint, dispute or appeal 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 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

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request in writing signed by not less than three members of the Appeals Authority save that such request shall not be made without justifiable cause.

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

(4) An act or proceeding 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 claimed *bona fide* to act as a member at the time of the act or proceeding was in fact disqualified or not entitled to act as a member.

Proceedings
of Appeals
Authority

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

(2) Where the regulations 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 complaints, disputes or appeals.

(2) In the absence of the Chairman, the members present at a meeting of the Appeals Authority shall select one among them 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, dispute 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 the decision reached shall be entitled to have his decision and the reasons thereof be recorded in the decision of the appeal, dispute or complaint of that meeting.

Record of
decision

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 proceeding 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.

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Fees and
allowances

8. Fees and allowances payable to the Chairman and members of the Appeals Authority shall be prescribed by the relevant authority.

Passed by the National Assembly on the 8th September, 2023.

NENELWA JOYCE MWIHAMBI
Clerk of the National Assembly

