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THE PUBLIC PROCUREMENT ACT, 2004

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THE UNITED REPUBLIC OF TANZANIA



NO. 21 OF 2004

I ASSENT

BENJAMIN W. MKAPA

*President*8th February, 2005

An Act to repeal the Public Procurement Act, 2001 with a view to make better provisions for the regulation of Public Procurement in the Government of the United Republic and to provide for other related matters

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

Short title
and
commence-
ment
Application

1. This Act may be cited as the Public Procurement Act, 2004 and shall come into operation on the date of publication in the *Gazette*.

2.-(1) This Act shall apply:

- (a) to all procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- (b) to entities, not of Government, for procurement financed from specific public finances.

(2) The Defence and National Security Organs shall comply with this Act subject to paragraphs (a) and (b) of this subsection:

- (a) the Defence and National Security Organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively; and

- (b) the Defence and National Security Organs shall agree annually with the Public Procurement Regulatory Authority on the category of items to be included in the restricted list and on which restricted procurement methods set out in this Act or regulations made under this Act shall apply to each category of item on the restricted list.

Inter-
pretation

3.-(1) In this Act unless the context requires otherwise -

“Accounting Officer” means a Government officer appointed in accordance with the provisions of Public Finance Act, 2004 to hold a vote and account for all monies expended from that vote;

“Approving Authority” means an Accounting Officer or Chief Executive, a Ministry tender board, a regional tender board, a district tender Board, a local Government tender board, or a parastatal tender board;

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

“competitive selection” means the method of procurement whereby limited number of 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 alone or on the basis of a combination of quality and cost;

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

“consultant” means a firm, company, corporation, organisation, partnership or 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;

- “contractor” means a firm, company, corporation, organisation, partnership or individual person engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovation, and who is, according to the context, a potential party or the part to a procurement contract with the procuring entity;
- “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of public officer in the procurement process or contract execution;
- “Defence and National Security Organs” means the Tanzania Peoples Defence Forces, the Tanzania National Service, Tanzania Police Force, Tanzania Prisons Service, Tanzania Intelligence Security Services, the National Security Council and the Prevention of Corruption Bureau;
- “Department” in relation to a Ministry of Government or other public authority or public body, includes any division or unit by whatever name known of that ministry, authority or other body;
- "disposal" means the divestiture of public assets including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means, including sale, hire - purchase, licences, tenancies, rental, lease, franchise, auction or any combination however classified other than those regulated by the Public Corporation Act 1992;
- "disposal process" means the successive stages in the disposal cycle, including planning choice of procedure, measures to solicit offers from tenderers, examination and evaluation of those offers and award of contract;
- “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 and includes collusive practices among tenderers (prior to or after submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;
- “goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;

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

"guidelines" means directives issued by the Public Procurement Regulatory Authority under Section 87 of this Act;

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

"Local government" means local government authority established under the Local Government Authority Act No. 7 of 1982 or Local Government Authority established under the Local Government Authority Act No. 8 of 1982;

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

“Minister” means the Minister for the time being responsible for matters relating to finance;

“minor value” means an amount of money up to a maximum limit for the procurement of goods, works and services of a minor nature, to be determined each year by the Minister;

“parastatal organisation” means -

Cap.212

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

(ii) any corporation registered under the Companies Ordinance, in which not less than fifty percent of the share capital is owned by the Government or by another parastatal organisation, or in the case of a company which is limited by guarantee, where the government has undertaken to meet fifty percent or more of the liabilities of that company; or

Act No.30
of 1997

- (iii) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act, 1997;

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

“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;

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

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

“procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity spending public funds on behalf of a ministry, department or regional administration of the Government or public body and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation and award of contracts;

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

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

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

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

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

"Procurement Professional Body" means a body established to oversee procurement professional development in the United Republic of Tanzania including training standards, professional certification or registration and professional practices and code of conduct.

"public body or public authority" means -

Cap 212,

- (i) any ministry, department or agency of government;
- (ii) any body corporate or statutory body or authority established for the purposes of the Government;
- (iii) any company registered under the Companies Ordinance being a company in which the Government or an agency of Government, is in the position to influence the policy of the company;
- (iv) any local government authority;
- (v) any parastatal organization.

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

"public officer or officer" means:-

- (i) any person holding or acting in an office of emolument in the services of the Government;
- (ii) a person holding or acting in the office of Minister in the Government;
- (iii) an employee of any body corporate such as is referred to in the definition of public body or public authority;

- (iv) any person conducting negotiations, for or in relation to a public contract, or a prospective public contract on behalf of a public body or public authority; or
- (v) a person who is a consultant to a public body or public authority.

“services” means any object of procurement other than goods or works, which involve the furnishing of labour, time or effort including the delivery of reports, drawings or designs, or the hire or use of vehicles, machinery or equipment for the purposes of providing transport, or for carrying out work of any kind, with or without the provision of drivers, operators or technicians;

"solicitation documents" means tendering documents or any other documents inviting tenderers to participate in procuring or disposal by tender proceedings and includes documents inviting potential tenderers to pre-qualify, and standard tendering documents.

“successful tender” means the tender selected by the procuring entity as;

- (i) offering the lowest evaluated cost, in case the method of procurement used was competitive tendering; or
- (ii) being the most responsive to the needs of the procuring entity if procurement used was competitive quotations, single source procurement, competitive selection or where goods or services of minor value were procured;

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

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

“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;

“works” means -

- (i) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;
- (ii) any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing;
- (iii) services which are 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;

(2) For purposes of this Act, a person is presumed to be an associate if :

- (a) in the case of a public officer, that person is the public officer’s husband, wife or relative, or a husband or wife of the relative of the public officer;
- (b) that person is in partnership with the public officer; or
- (c) in the case of a body corporate, the public officer is a controller of the body corporate or the public officer and the persons who are his associates together are controllers of it.

(3) In this section, “relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent and references to a husband or wife, and for the purposes of this subsection, a relationship shall be established as if any illegitimate child, step child or adopted child of a person had been a child born to the person in wedlock.

International
obligation

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

- (a) any treaty or other form of agreement to which the United Republic 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 United Republic with an inter-governmental or international financing institution in which the United Republic is the beneficiary,

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

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

- (a) procurement made through contributions made by the United Republic shall be undertaken in the United Republic through national suppliers, contractors or consultants,
- (b) all relevant insurances shall be placed with companies registered in the United Republic,
- (c) supplies shall be transported in carriers registered in the United Republic.

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

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

PART II
THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Establish-
ment
of the
Authority

5.-(1) There is hereby established within the Ministry of Finance an authority to be known as the Public Procurement Regulatory Authority" in this Act referred to as the "Authority"

(2) The Authority shall:

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

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

(4) Every 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 in evidence without further proof.

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

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

Act No.16
of 1967

Objectives
of the
Authority

- 6.-(1) The objectives of the Authority shall be to:
- (a) ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices;
 - (b) harmonize the procurement policies, systems and practices of the Central Government, local governments and statutory bodies;
 - (c) set standards for the public procurement systems in the United Republic of Tanzania,
 - (d) monitor compliance of procuring entities; and
 - (e) in collaboration with relevant professional bodies build procurement capacity in the United Republic of Tanzania.

Functions
of the
Authority

- 7.-(1) The functions of the Authority shall be to:-
- (a) advise central Government, local governments and statutory bodies on all procurement policies, principles and practices;
 - (b) monitor and report on the performance of the public procurement systems in the United Republic of Tanzania and advise on desirable changes;
 - (c) set training standards, competence levels, certification requirements and professional development paths for procurement experts in consultation with relevant professional bodies and any other competent authorities;
 - (d) prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other attendant documents to procuring entities;
 - (e) in collaboration with relevant professional bodies, ensure that any deviation from the use of the standardized tendering documents, procedural forms and any other attendant documents is effected only after prior written approval of the Authority;

- (f) issue guidelines under Section 89 of this Act;
- (g) organize and maintain a system for the publication of data on public procurement opportunities, awards and any other information of public interest as may be determined by the Authority;
- (h) conduct periodic inspections of the records and proceedings of the procuring entities to ensure full and correct application of this Act;
- (i) monitor the award and implementation of public contracts with a view to ensuring that:
 - (i) such contracts are awarded impartially and on merit;
 - (ii) the circumstances in which each contract is awarded or as the case may be, 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 such contract conforms to the terms thereof;
- (j) institute:
 - (i) procurement audits during the tender preparatory process;
 - (ii) contract audits in the course of the execution of an awarded tender; and
 - (iii) performance audit after the completion of the contract in respect of any procurement as may be required;
- (k) determine, develop, introduce, maintain and update related system - wide data -bases and technology;
- (l) develop policies and maintain an operational plan on capacity building, both for institutional and human resource development;
- (m) agree on a list, which shall be reviewed annually of works, services and supplies in common use by more than one procuring entity which may be subject to common procurement;
- (n) establish and maintain institutional linkages with entities with professional and related interest in public procurement;
- (o) facilitate the resolution of procurement complaints
- (p) undertake any activity that may be necessary for the execution of its functions,

- (q) administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act; and
 - (r) undertake research and surveys nationally and internationally on procurement matters;
- (2) For the purposes of the discharge of its functions under this Act, the Authority shall be entitled:
- (a) to be advised of the award and, where applicable, the variation of any public contract by the procuring entity responsible for such contract;
 - (b) subject to Section 12 of this Act, to have access to all books, records, documents, or other property belonging to the procuring entity or a contractor or a supplier or a consultant, whether in the possession of any officer of a procuring entity or a contractor, supplier, consultant or any other person;
 - (c) to have access to any premises or location where work on a public contract has been or is being or is to be carried out;
 - (d) in relation to any matter which is the subject of investigation by the Authority, to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person.
 - (e) have access to any premises or location where it has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;
 - (f) within reasonable hours to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as it considers necessary to any matter being investigated by it; and
 - (g) subject to the provisions of Sections 11 and 12, to retain any such document, record or other property referred to in paragraph (f).

- (3) Where -
- (a) the Authority has authorized a member of staff of the Authority to enter premises; and

(b) the authorized officer is refused or prevented from gaining entry to the premise,
a magistrate may on application, be empowered to issue a warrant authorizing any police officer to forcibly enter the premises to conduct the search and make copies or take extracts of documents therein.

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

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

Scope of investigations by the Authority

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

- (a) the registration of contractors, suppliers or consultants in relation to the specific procurement;
- (b) tender procedures relating to contracts awarded by the public bodies;
- (c) the award of any public contract;
- (d) the implementation of the terms of any public contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed license,
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of any prescribed license.

(2) The Authority shall with a prior written direction of the Permanent Secretary of the Ministry of Finance investigate:

- (a) any public contract or any matters concerning any such contract entered into for the purposes of defense or for the supply of equipment to the security forces;
- (b) the grant or issue of any prescribed license for the purposes of defense or for the supply of equipment to the security forces,

and any report or comment thereon by the Authority shall be made only to the Permanent Secretary of the Ministry of Finance and, or the Minister.

Initiation
of invest-
igation

9. Any investigation pursuant to Section 8 may be undertaken by the Authority on its own initiative or as a result of representations made to it, if in its opinion, such investigation is warranted.

Procedure
in respect
of investi-
gation

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

Evidence

11.-(1) Subject to the provisions of subsection (3) and Section 12(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 such information and produce any document under the control of that officer, member or other person.

(2) The Authority may summon before it:

- (a) any person who has made representations to it; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Authority is able to furnish information relating to the investigation.

(3) No person shall, for the purposes of an investigation, be compelled to give any evidence, or produce any document or thing, which he could not be compelled to give or produce in proceedings in any court of law.

Restric-
tion of
disclosure
of certain
matters

12.-(1) Where the Permanent Secretary of the Ministry of Finance, acting on his own initiative or acting 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, would:
- (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, or
 - (ii) prejudice the relations of the United Republic with the government of any other country or with any international organization; or
 - (iii) prejudice the detection of offences, the Authority or its employees or any member of its staff shall not communicate to any person for any purpose any document or information specified in the notice or any documents or information of a class so specified,
- b) certifies that the giving of any information or the answering of any question or production of any document would prejudice the security or defense of the United Republic, the Authority or its employees or staff shall not further require such information or answer to be given or such document or thing to be produced.

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

Procedure
after
investiga-
tion

13.-(1) After conducting investigation under this Act the Authority shall, in writing inform the accounting officer or chief executive officer of the public body concerned of the result of that investigation and make such recommendations as it considers necessary in respect of the matter on which investigation was conducted.

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

Disciplinary action against public officers

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

(2) The Authority shall refer the matter to the person or persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all such cases shall submit a special report to the Minister.

Proceedings of Authority

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

Powers of the Authority

16.-(1) In the exercise of its regulatory functions, the Authority shall have the power to -

- (a) require any information, documents, records and reports in respect of any aspect of the public procurement process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any procuring entity or supplier, contractor or consultant;
- (b) summon witnesses, call for the production of books of accounts, plans, documents and examine witnesses and parties concerned on oath;
- (c) commission or undertake investigations and institute procurement contract and performance audits;
- (d) cause to be inspected any procurement transaction to ensure compliance with a tender award by a procuring entity;
- (e) act upon complaints by procuring entities, suppliers, contractors or consultants and any other entity or person in respect of any party to a procurement proceedings in accordance with the procedure set out in Part VI of this Act;

- (f) commission any studies relevant to the determination of award of contracts; and
 - (g) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere.
- (2) The Public Procurement Regulatory Authority may:
- (a) require the chairman of a tender board, accounting officer or chief executive officer of a public body:
 - (i) to furnish any information or produce any records or other documents relating to a contract;
 - (ii) to answer all relevant questions;
 - (b) examine such records or other documents and take copies or extracts there from.

Action on
recommen-
dation
of the
Authority

17.-(1) The Authority may recommend to the competent authority, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act-

- (a) the suspension of officers concerned with the procurement process in issue;
- (b) the replacement of the head of a Procurement Management Unit, the Chairman, or any member of a Tender Board, as the case may be;
- (c) the disciplining of the accounting officer or chief executive officer; or
- (d) the temporary transfer of the procurement functions of a procuring entity to a third party procurement agent.

(2) The competent authority shall respond in writing to the Authority's recommendations within a period prescribed by Regulations made under this Act.

(3) Where the competent authority rejects the Authority's recommendations under subsection (1), the Authority shall:

- (a) Communicate its recommendations and all related supporting documentation to the relevant law enforcement and oversight agencies for their action, and
- (b) Request for any other appropriate action within the power of the competent authority.

(4) The competent authority shall respond in writing to the Authority's recommendation within a period to be specified in the regulations made under this Act, on the precise action taken on the Authority's recommendations, or give an explanation if no action is deemed necessary.

(5) The Authority shall, in its Annual Performance Evaluation Report include:

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

Establishment and Composition of the Board of Directors

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

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

(3) The First Schedule to this Act shall have effect regarding the composition, appointment and procedures of the Board of Directors of the Public Procurement Regulatory Authority.

(4) Members of the Board shall be appointed by the Minister from among persons of good standing and recognized for their high levels of professionalism, competence and integrity.

Committees of the Board of Directors

19.-(1) The Board may establish –

- (a) a Complaints Review Committee which shall handle complaints from bidders and any other interested parties arising out of the execution of the procurement function by the procuring entities;

- (b) an advisory committee which shall review the performance of the Authority, the procuring entities and the Complaints Review Committee; and
- (c) any other committee that may be necessary for the better carrying out of the functions of the Authority.

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

Appoint-
ment of
Chief
Executive

20.-(1) There shall be Chief Executive Officer of the Authority who shall be appointed by the President on such terms and conditions as he determines on contract for four years, renewable for only one further term.

(2) The Chief Executive Officer shall be appointed from among the registered professionals who has at least ten years of experience in either engineering, architecture, law, materials management, quantity surveying, business administration, economic development planning or in any related fields and who have had substantial academic qualifications and experience in such fields including proven record of procurement experience.

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

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

(4) The Chief Executive Officer shall be the accounting officer of the Authority and shall not engage in any business, profession, occupation or paid employment elsewhere.

Directors,
consultants
and other
staff of the
Authority

21.-(1) There shall be employed by the Authority Directors, who shall be principal assistants to the Chief Executive Officer.

(2) There shall be employed by the Authority such other officers, staff, employees of the Authority 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.

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

(4) The Authority shall establish a competitive selection procedure for the appointment of all employees, consultants and experts.

(5) The Authority shall, comply with the competitive selection procedure established under Subsection (4), whenever it appoints employees, consultants or experts unless, because of the urgency of the appointment or other special circumstances, the procedure is not reasonably practical in any particular case.

(6) A person who was chairman or member of the Board, the Chief Executive Officer as well as an employee of the Authority shall not, during a period of eighteen 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 organization who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority;
- (b) acquire or hold any financial interest, whether as an employee, partner, shareholder, officer or joint venture, in any business or organization supplying services to any person or organization who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority.

Funds
of the
Authority

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

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

(2) The Authority may:

- (a) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the performance of its functions.
- (b) charge and collect fees on documents.

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

- (a) the salaries, allowances and loans of the staff of the Authority,
- (b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Authority when engaged on the business of the Authority, at such rates as the Minister may determine; and
- (c) any other expenses incurred by the Authority in the performance of its functions.

(4) The Authority may, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

(5) The Authority shall open and maintain bank accounts in banks approved by the Board.

Books of
accounts

23.-(1) The Authority shall, maintain proper books of accounts and other records relating to its accounts and prepare an annual statement of accounts including the income and expenditure account and the balance sheet in such form and manner as may be prescribed by the Accountant General.

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

Audit of
accounts

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

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

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

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

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

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

(6) The Minister shall cause the accounts and the audit report received under subsection (5) to be laid, as soon as they are received, before Parliament.

Annual
Management
Plan and
budget

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

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

(3) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the fiscal year in which the expenditure is to be incurred, or in the supplementary budget for that year.

Annual
Report

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

- (a) the Minister, an Annual Performance Evaluation Report in respect of that year's activities consisting of:-
 - (i) financial statements and the Annual Management Plan;
 - (ii) an evaluation of the operations of the Authority and the procuring entities;
 - (iii) any other information the Board may direct; and
- (b) the Controller and Auditor-General the accounts of the Authority for the financial year; and
- (c) the Annual Performance Evaluation Report referred to in paragraph (a).

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

(3) The Controller and Auditor General shall submit the Audited Report to Parliament within four months from the date of receiving the accounts.

Internal
Audits and
Periodic
Audit
Reports

27.-(1) In addition to any other function assigned to him by the Chief Executive Officer, the Head of Internal Audit shall be responsible for the internal auditing of the Authority's accounts and shall submit to the Chief Executive Officer a report in respect of every three months' period of a financial year.

(2) The Chief Executive Officer shall submit every report referred to in sub-section (1) to the Board for its consideration.

PART III TENDER BOARDS

Tender
Boards

28.-(1) There shall be in each Ministry, Independent Department of Government, Region, District, Local Government Authority, and Parastatal Organisation, a tender board for procurement of goods, services and works.

(2) The composition of tender board, the method of appointment of members, and the procedures to be followed by such tender boards other than Local Government Authority Tender Board, shall be as prescribed in the Second Schedule to this Act.

(3) The composition of Local Government Authority tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be prescribed in Regulations made pursuant to the provisions of section 65 of the Local Government (Finances) Act, 1982.

(4) Members of the Tender Board shall be appointed with regard to their technical competence and skills required for the discharge of the functions of the Tender Board.

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

Notification to the Authority of composition of Tender Board

29.-(1) The Accounting Officer or Chief Executive Officer shall inform the Authority of the composition of the Tender Board and the qualifications of its members not later than fourteen days from the date of its appointment.

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

Functions of Tender Boards

30. A Tender Board shall be responsible for -

- (a) adjudication of recommendations from the Procurement Management Unit and award of contracts;
- (b) review all applications for variations, addenda or amendments to ongoing contracts;
- (c) approving tendering and contract documents;
- (d) approving procurement and disposal by tender procedures;
- (e) ensuring that best practices in relation to procurement and disposal by tender are strictly adhered by Procuring Entities;
- (f) ensure compliance with this Act; and
- (g) liaising directly with the Authority on matters within its jurisdiction.

Award of contracts

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

- (a) advertise, invite, solicit or call for tenders or proposals in respect of a contract unless authorised by the appropriate tender board; and
- (b) award any contract unless the award has been approved by the appropriate tender board.

(2) No person or firm shall sign a contract with any public body unless the award has been approved by the appropriate tender board.

(3) For all procurements whose value exceed the limit set out in the Regulations made under this Act, procuring entities shall, within fourteen days, inform the Authority of commencement of the procurement process for such procurements.

(4) Where it comes to the knowledge of a tender board that a contract has been awarded or is about to be awarded in breach of this Act or Regulations made under the Act, appropriate tender board shall forthwith report the matter to the Authority, Controller and Audit General and to the Permanent Secretary to the Treasury, recommending such actions as it may deem appropriate.

(5) The acceptance of a tender shall be communicated in writing to the tenderer by the Procurement Entity.

Powers of
tender
board

32.-(1) In the exercise of their powers under this Act, tender boards may -

- (a) call for such information and documents as they may require from any public body;
 - (b) commission any studies relevant to the determination of award of contracts;
 - (c) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere, and
 - (d) do all such acts and things as they may consider incidental or conducive to the attainment of their objects;
- (2) Tender boards may -
- (a) require the chairman, accounting officer or chief executive officer of a public body:
 - (i) to furnish any information or produce any records or other documents relating to a contract;
 - (ii) to answer all relevant questions;
 - (b) examine such records or other documents and take copies or extracts therefrom.

Accounting
Officer or
Chief
Executive

33. The Accounting Officer or Chief Executive of a procuring entity shall have the overall responsibility for the execution of the procurement process in the procuring entity, and in particular, shall be responsible for:

- (a) establishing a tender board in accordance with this Act;
- (b) appointing the members of the tender board specified in the second schedule;
- (c) causing to be established a Procurement Management Unit staffed to an appropriate level;
- (d) advertising tender opportunities;
- (e) appointing the evaluation committee;
- (f) communicating award decisions;
- (g) certifying the availability of funds to support the procurement activities;
- (h) signing contracts for the procurement activities on behalf of the procuring entity;
- (i) investigating complaints by suppliers, contractors or consultants;
- (j) submitting a copy of complaints and reports of the finding to the Authority; and
- (k) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award.

Establish-
ment and
Composi-
tion of a
Procure-
ment
Manage-
ment Unit

34.-(1) In every procuring entity there shall be established a Procurement Management Unit staffed to an appropriate level.

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

(3) Procuring entities shall identify all those engaged in procurement within their organizations and identify the skills need in each post and shall set out strategies to meet the needs of the Procurement Management Units.

(4) The Procurement Management Unit shall be headed by a person with sufficient academic qualifications and experience in procurement functions.

Functions
of a
Procure-
ment
Manage-
ment Unit

35. Procurement Management Unit shall -

- (a) manage all procurement and disposal by tender activities of the procuring entity except adjudication and the award of contract;
- (b) support the functioning of the Tender Board;
- (c) implement the decisions of the Tender Board;
- (d) liaise directly with the Authority on matters within its jurisdiction;
- (e) act as a secretariat to the Tender Board;
- (f) plan the procurement and disposal by tender activities of the procuring entity;
- (g) recommend procurement and disposal by tender procedures;
- (h) check and prepare statements of requirements;
- (i) prepare tendering documents;
- (j) prepare advertisements of tender opportunities;
- (k) prepare contract documents;
- (l) issue approved contract documents;
- (m) maintain and archive records of the procurement and disposal process;

- (n) maintain a list or register of all contracts awarded;
- (o) prepare monthly reports for the Tender Board;
- (p) co-ordinate the procurement and disposal activities of all the departments of the procuring entity; and
- (q) prepare other reports as may be required from time to time.

User
Depart-
ment

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

- (a) liaise with and assist the Procurement Management Unit throughout the procurement or disposal by tender process to the point of contract placement;
- (b) initiate procurement and disposal by tender requirements and forward them to the Procurement Management Unit;
- (c) propose technical inputs to statements of requirements for procurement requirements to the Procurement Management Unit;
- (d) propose technical specifications to the Procurement Management Unit when necessary;
- (e) input with technical evaluation of tenders received as required by the Procurement Management Unit;
- (f) certify for payments to suppliers, contractors or consultants;
- (g) report any departure from the terms and conditions of an awarded contract to the Procurement Management Unit;
- (h) forward details of any required contract amendments to the Procurement Management Unit for action;
- (i) maintain and archive records of contracts management; and
- (j) prepare any reports required for submission to the Procurement Management Unit, the Tender Board or the Accounting Officer.

(2) The user department shall prepare a work plan for procurement based on the approved budget, which shall be submitted to the Procurement Management Unit for implementation when required.

Evaluation
Committee

37.-(1) All evaluations shall be conducted by an evaluation committee, which shall report to the Procurement Management Unit.

(2) The membership of the evaluation committee shall be recommended by the Procurement Management Unit, in accordance with Regulations made under this Act, and approved by the Accounting Officer or Chief Executive.

(3) The number of the members of the evaluation committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three members.

(4) The members shall be of an appropriate level of seniority 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 are not available within the procuring entity or where members are indisposed or have a conflict of interest.

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

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

Indepen-
dence of
functions
and powers

38. Subject to the provisions of this Act, the Accounting Officer or Chief Executive, the Tender Board, the Procurement Management Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers.

Delegation
of powers
by the
Accounting
Officer or
Chief
Executive

39.-(1) An Accounting Officer or Chief Executive may delegate the procurement function of the procuring entity to:

- (a) a sub-division of that entity; or
- (b) another procuring entity; or

(c) a third party procurement agency,
in accordance with the terms and conditions specified in Regulations made under this Act.

(2) An Accounting Officer or Chief Executive 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 and for a period not exceeding the period, the Accounting Officer shall himself serve in that position.

Third party
procure-
ment

40.-(1) Where it is deemed that there is lack of technical capacity, and subject to guidelines of the Authority, a procuring entity may engage third party procurement services

(2) On deciding to invite third party procurement services, a procuring entity shall:-

- (a) secure prior written assurance of the Accounting Officer that funds are available to pay in full and on time for those services;
- (b) follow the procedures laid down by the Authority in its Regulations.

Disagree-
ments
between
Tender
Boards,
Procure-
ment
Managem-
ent Unit and
User
Depart-
ments

41. Disagreements between a Tender Board and a Procurement Management Unit, and between a Procurement Management Unit and 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, shall be resolved in accordance with the procedures set out in the Regulations made under this Act.

Confidentiality of documents

42.-(1) Every 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 8 no person in possession of or control over any document or information relating to any business or transaction of the procuring entity shall communicate or attempt to communicate any information contained in such document or pass on such documents to any person other than the Accounting Officer or Chief Executive, a member of the Tender Board or the Procurement Management Unit.

Tender boards and procuring entities to strive to achieve standards of equity

43. In the execution of their duties, tender boards and procuring entities shall strive to achieve the highest standards of equity, taking into account:

- (a) equality of opportunity to all prospective suppliers, contractors or consultants;
- (b) fairness of treatment to all parties; and
- (c) the need to obtain the best value for money in terms of price, quality and delivery having regard to set specifications and criteria.

PART IV PUBLIC PROCUREMENT PRINCIPLES

Duties of procuring entities

44.-(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 -

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- (a) in respect of a head of expenditure, the Accounting Officer designated as such for that head of expenditure under the Public Finance Act, 2001; and
- (b) in respect of a head of expenditure the Accounting Officer designated as such for that head of expenditure under the Local government (Finances) act, 1982;

(c) in respect of a parastatal body, the chief executive officer of that parastatal body, to ensure that such procurement of goods, works or services is in accordance with the procedures prescribed by or under this Act or Regulations.

(2) The auditor of every public body shall, in his annual report, state whether or not section 44(1) of this Act has been complied with.

(3) Subject to the provisions of subsection (4) of this section, every Accounting Officer or chief executive officer shall be accountable for failing to comply with the provisions of subsection (1).

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

(5) Where an Accounting Officer or chief executive officer satisfies the Authority that he is, under the provisions of any written law, subject to the control or direction of any other person, board, committee or other body and that it was such control or direction of such other person, board, committee or other body which caused the failure to comply with the provisions of subsection (1), then such other person or every member of such board, committee or other body shall also be accountable for such failure to comply.

(6) In respect of any failure to comply with the provisions of subsection (1), the respective tender board shall take such appropriate corrective or punitive measures as it may consider necessary.

Procure-
ment
Planning

45. A procuring entity shall plan its procurement in a rational manner and in particular shall:

- (a) avoid emergency procurement wherever possible;
- (b) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;

- (c) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;
- (d) avoid splitting of procurement to defeat the use of appropriate procurement methods unless such splitting is to enable wider participation of local consultants, suppliers or contractors in which case the Authority shall determine such an undertaking; and
- (e) integrate its procurement budget with its expenditure programme.

Qualifica-
tions of
suppliers,
contrac-
tors and
consultants

46.-(1) In order to participate in procurement proceedings, suppliers, contractors and consultants shall have to qualify by meeting appropriate criteria set out by the procuring entity and, where appropriate, by the approving authority for those particular procurement proceedings.

(2) Local suppliers, contractors or consultants wishing to participate in any procurement proceeding shall satisfy all relevant requirements for registration with appropriate current professional statutory bodies in Tanzania.

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

(4) Any qualification criteria shall be made known to, and shall apply equally to all suppliers, contractors or consultants and a procuring entity shall impose no discriminatory criteria, requirement or procedure with respect to the qualifications of any supplier, contractor or consultant.

Pre-qualification proceedings

47. A procuring entity may engage in pre-qualification proceedings with a view to identifying suppliers, contractors or consultants either prior to inviting tenders for the procurement of goods, works or services, or after taking part in any other procurement proceedings.

Post-qualification

48.-(1) If tenderers have not been pre-qualified, the procuring entity and the tender board shall determine whether the tenderer whose tender or proposal has been determined to offer the lowest evaluated tender, in the case of procurement or the highest evaluated tender in the case of disposal of public assets by tender, has the capability and resources to carry out effectively the contract as offered in the tender.

(2) The criteria to be met shall be set out in the tendering documents and if the tenderer does not meet any of these criteria, the tender shall be rejected and the procuring entity and tender board 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) A procuring entity and tender board may require a tenderer which has submitted a lowest evaluated tender in the case of procurement or highest evaluated tender in the case of disposal by tender to demonstrate again its qualifications before the award of contract is confirmed.

(4) The criteria and procedures to be used in subsection (3) shall be the same as those used in the pre-qualification proceedings set out in Section 47 of this Act and shall be specified in the tendering documents prepared by the procuring entity.

(5) If tenderer with the lowest or highest evaluated tender fails to post-qualify, the procuring entity and tender board shall reject its tender and shall select the next lowest or highest evaluated tender from the remaining tenders, subject to the right of the procuring entity to reject all remaining tenders.

National preferences

49.-(1) Suppliers, contractors or consultants are allowed to participate in procurement proceedings without regard to their nationality, except where the procuring entity has limited participation in procurement proceedings on the basis of nationality in accordance with this Act, the Regulations, or any other provisions of any written law.

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

(3) Tanzania Contractors or consultants shall be eligible to be granted a margin of preference as provided for in subsection (2) of this section only if they meet the following criteria, namely -

- (a) for individual companies -
 - (i) they are incorporated or registered in the United Republic of Tanzania;
 - (ii) at least fifty percent of the authorised capital of the company is owned either by the Government or by citizens of Tanzania;
 - (iii) they do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign contractors or consultants provided that the domestic company is qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the domestic company, fees and expenses paid to the domestic company;
 - (iv) 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 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 of Tanzania;
 - (ii) at least fifty percent of the ownership of the individual companies are held by citizens of Tanzania;

- (iii) the joint venture itself is registered in Tanzania;
- (iv) do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, provided that the domestic partner or partners are qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the partners and fees and expenses paid to the partners;
- (v) do not have arrangement whereby any major part of the net profits will accrue or be paid to persons 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 -
 - (i) the majority of capital shares are held by citizens of Tanzania;
 - (ii) the partners or individual persons shall not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, partners or individual persons.

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

Exclusive preference to local persons or firms

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

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

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

(4) If the procuring entity receives no acceptable offers from responsible local persons or firms, the set-aside procurement shall be withdrawn and if the requirements are still valid, new offers shall be resolicited on unrestricted basis.

Procurement from government Stores Department

51. Where financial resources are exclusively provided by a Tanzanian public body, a procuring entity may procure from the Government stores following a procedure to be prescribed in the regulations made under this Act.

Language

52.-(1) Except as provided for in sub-section (2) of this section, pre-qualification documents and tender documents shall be written in English and tenders shall be invited in that language.

(2) In case a procuring entity has limited participation in the procurement to Tanzania nationals in addition to sub-section (1) of section 22, tender documents may be written in either Kiswahili or English and tenders may be requested to tender in either language.

Tender securities

53.-(1) Where the procuring entity requires suppliers, contractors or consultants who are submitting tenders to provide any form of tender security, or any form of guarantee or bond against satisfactory performance of the contract, such requirement shall apply equally to all suppliers, contractors or consultants.

(2) The Authority shall issue guidelines, which shall 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 all tenders or all proposals

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

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

- (a) there is lack of effective competition;
- (b) tenders or proposals are not substantially responsive to the tender dossier or to the request for proposals and terms of reference;
- (c) the economic or technical data of the project have been altered; or
- (d) tenders or proposals involve costs substantially higher than the original budget or estimates.

(3) Lack of competition shall not be determined solely on the basis of the number of tenderers or persons who made proposals, and where all tenders or proposals are rejected, the procuring entity shall review the causes justifying the rejection and shall consider -

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

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

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

Acceptance
of tender
and entry
into force
of a pro-
curement
contract

55.-(1) Subject to the provisions of section 54, the tender or proposal that has been ascertain to be the successful tender or proposal pursuant to section 68(a) and 71(1) of this Act shall be accepted.

(2) The procuring entity on whose behalf the tenders, offers or proposals were invited shall be notified by the tender board of the tender board's acceptance of the tender, offer or proposal and the notice of acceptance of the tender shall be given by the procuring entity promptly to the supplier, contractor or consultant who submitted the tender, offer or proposal.

(3) The notifications referred to in subsection (2) of this section shall be in writing and signed by authorised officers.

(4) Where a tender, offer or proposal has been accepted by the tender board, the procuring entity on whose behalf the invitation for tender, offer or proposal was issued and the person whose tender, offer or proposal has been accepted shall enter into a formal contract for the supply of goods, services of the undertaking of works, as the case may be.

(5) A formal contract shall be in such form and shall contain such terms, conditions and provisions as contained in the solicitation documents, request for proposals or tender dossiers.

(6) Any formal contract arising out of the acceptance of a tender, offer or proposal under this Act shall be ratified by the competent State Attorney before being signed by the parties.

(7) The procurement contract shall enter into force when a written acceptance of a tender has been communicated to the successful supplier, contractor or consultant.

(8) The Procuring Entity shall notify the Authority, within the time set out in the Regulations made under this Act, the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made.

Records,
information
and notices

56.-(1) Each procuring entity and each approving authority shall maintain a record of procurement proceedings in which each 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 within a reasonable time during that period to the Minister and the Controller and Auditor-General or any other officer authorized by accounting authority.

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

(3) A list of those submitting 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.

(4) The manner and specific duration of keeping different kind or records shall be prescribed in the Regulations made under this Act.

Blacklistin
g of
suppliers,
contractors
and
consultants

57.-(1) The Authority shall have power to blacklist and bar a supplier, contractor or consultant for a specified time from participating in public procurement proceedings and shall notify all procuring entities on such actions

(2) A supplier, contractor or consultant shall be blacklisted and barred from participating in public procurement proceedings for a period of time where:

- (a) a supplier, contractor or consultant has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign institutions on grounds of fraud or corruption
 - (i) shall automatically be blacklisted and barred from participating in public procurement in the United Republic for such period as is barred by that foreign country, international organisation or foreign institution
 - (ii) plus a further period to a total maximum of ten years;
- (b) a supplier, contractor or consultant has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign institutions on grounds other than fraud or corruption
 - (i) shall automatically be blacklisted and barred from participating in public procurement in the United Republic for such period as is barred by that foreign country, international organisation or foreign institution
 - (ii) plus a further period to a total maximum of five years.

(3) A supplier, contractor or consultant blacklisted under subsection (2) shall not be permitted to start a new supplies, contracting or consulting firm during that period.

(4) Procuring entities and tender boards shall not procure from, contract with or engage a person, firm, supplier, contractor or consultant who has been blacklisted and barred from participating in public procurement proceedings pursuant to this section”.

PART V METHODS OF PROCUREMENT

Applica-
tion of
the basic
principles
of procure-
ment and
disposal

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

(2) Subject to this Act all procurement and disposal shall be conducted in a manner to maximize competition and achieve economy, efficiency, transparency and value for money.

Selection
of methods
of procure-
ment

59.-(1) Except as provided for in sections 60, a procuring entity engaging in the procurement of goods, works or services or disposal by tender shall apply competitive tendering, using the methods prescribed in the Regulations depending on the type and value of the procurement and, in any case, the successful tender shall be the tender offering the lowest evaluated cost.

(2) In circumstances where -

- (a) suppliers, contractors or consultants have already been pre-qualified pursuant to section 47;
- (b) there is an urgent need for the goods, works, or services such that it would be impracticable to engage in open national or international tendering on competitive selection; or

(c) there is need to achieve certain social objectives by calling for the participation of local communities
the procuring entity may either restrict the issue of tenders in accordance with the procedures set out in the Regulations provided that -

- (i) the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor caused by dilatory conduct on its part; and
- (ii) the procuring entity shall include in the records required under section 56 of this Act a statement of the grounds for its decision and the circumstances on which it relied on to justify the restriction.

(3) Public bodies undertaking solicited or unsolicited public private partnership projects shall follow procedures set out in the Regulations made under this Act

Competitive tendering for goods or works

60. A procuring entity wishing to commence competitive tendering shall provide all eligible prospective suppliers or contractors with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required goods or works.

Invitation to tender and advertising

61.-(1) A procuring entity wishing to commence competitive tendering proceedings shall prepare a tender notice inviting suppliers or contractors to submit priced offers for the supply of the goods or for undertaking the works required and such tender notice shall be submitted within reasonable time before the planned issue of the tender to the Secretary of the tender.

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

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

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

Issue of tender documents

62.-(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 and terminologies which discriminate unfairly against participation by suppliers, contractors or consultants.

(4) It shall be lawful to deviate from the requirements of subsection (3) if the circumstances demand provided any such deviation is made on basis of provisions of the Regulations made under this Act.

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

Content
of tender
document

63.-(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 and works to be provided.

Validity of
tenders and
tender
security

64. The procuring entity shall require tenderers to make their tenders and tender securities valid for periods specified in the tendering documents, and such periods shall be sufficient to enable the procuring entity to complete the comparison and evaluation of the tenders and for the appropriate tender board to review the recommendations and give its approval for the contract or contracts to be awarded whilst the tenders are still valid.

Evaluation
criteria

65.-(1) The basis for tender evaluation and selection of the lowest evaluated tender shall be clearly specified in the instructions to tenderers or in the specifications to the required goods or works.

(2) The tender documents shall specify and factor, 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

66.-(1) The tender board that approved the issue of the tender documents shall receive tenders using procedures set out in the Regulations made under this Act..

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

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

(4) The names and addresses of each tender and the total amount of each tender, and of any alternative tenders, if they have been requested or permitted, shall be read aloud by the Chairman of the meeting and recorded by the Secretary of the tender board or his delegate, as each tender is opened.

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

Evaluation and
comparison
of tenders

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

(2) Any relevant factor or factors in addition to price to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated tender shall be specified in the tender documents for goods and equipment but the tender evaluation for works shall be undertaken strictly in monetary terms and completion period.

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

(4) The procuring entity shall prepare 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.

Approval
of award of
contract

68. The tender board shall review the evaluation and recommendation made by the procuring entity and may either -

- (a) approve the recommendation and authorize the procuring entity to accept the tender and award a contract in the form specified in the tender documents; or
- (b) refuse to authorize acceptance of any of the tenders and refer the evaluation back to the procuring entity with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.

Alteration and
amendments

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

- (a) to the benefit of the Government or is not disadvantageous to the Government; and
- (b) is endorsed by the approving authority.

(2) Any additions to the value of a procurement contract shall be reviewed and agreed by the approving authority.

Selection
of
consultants

70.-(1) A procuring entity may, when selecting consultants use any one of the following principal selection methods -

- (a) selection based solely on technical quality by evaluation of the firms competence, the staff seconded to the assignment and the technical value or quality of the proposal, or
- (b) selection based on the technical quality with price consideration; or
- (c) selection based on the lowest price after establishing compatibility of technical proposals and the service to be provided.

(2) Circumstances to justify the Procuring Entity to depart from the use of selection methods set out in subsection (1) shall be set out in the Regulations and the alternative approaches to be used instead.

(3) Procuring entities shall use the appropriate Standard Request for Proposals and Standard Forms of Contract issued by the Authority with minimum changes acceptable to the respective tender board, as necessary to address specific project issues, and any such changes shall be introduced only through contract data sheets, or through special conditions of contract and not by introducing changes in the wording of the general conditions of contract included in the standard form.

(4) Notwithstanding the provisions of subsection (2), 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.

Negotiation
and Award
of Contract
for Consul-
tancy
Services

71.-(1) Depending on the method of selection of consultant used, the firm submitting the best proposal shall be invited for negotiations.

(2) Negotiations shall include discussions of the terms of reference, the methodology, staffing, procuring entity's inputs and special conditions of contract and the discussions shall not substantially alter the original terms of reference or the terms of the contract.

(3) Where the negotiation under subsection (2), fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and after consultation with the appropriate tender board, invite the next ranked firm for negotiations.

(4) After negotiations are successfully completed, the procuring entity shall within the time set out in the Regulations notify other firms on the short list that they were un-successfully.

PART V PROHIBITIONS

Fraud and
corruption

72.-(1) Procuring and approving entities as well as tenderers, suppliers, contractors and consultants 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 or an approving authority is, after appropriate investigations, satisfied that any person or firm, to which it is proposed that a tender be awarded, has engaged in corrupt or fraudulent practices in competing for the contract in question, the entity or authority may -

- (a) reject a proposal for award of such contract;
- (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.

(3) The procuring entity or an approving authority may, after determination by a court of law or following a special audit by the Controller and Auditor-General, that corrupt or fraudulent practices were engaged in by any person or firm during the procurement, award of contract or the execution of that contract -

- (a) cancel the portion of the funds allocated to a contract for goods, works or services; and
- (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract;

(4) Any member of the procuring entity or approving authority 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 section 76 of this Act.

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

Conducts
influencing
Public
Officers

73.-(1) No person, whether such person has made an offer or not shall, with intent to gaining any 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 any office with respect to any matter that is before that tender board or committee or that is expected to come before a tender board or a committee.

(2) No procuring entity, member of an approving authority or any public officer or other Government authority shall accept a gratuity in any form, any offer of employment or any other thing, service or value as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity or by the approving authority in connection with any procurement proceedings or tender,, and a procuring entity shall promptly reject a tender of any supplier, contractor or consultant who gives, agrees to give or offers, directly or indirectly, any such inducement.

(3) Procurement shall not be made from a public officer or associate of a public officer 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 ay tender document any condition or specification such as to favour any one supplier, contractor or consultant.

(5) Any member of an approving authority or a member of its staff or of a procuring entity or member of staff of a procuring entity shall declare any interest that he may have in any supplier, contractor or consultant, and shall take no part, nor seek to influence in any way, procurement proceedings in which that supplier, contractor or consultant is involved or liable to become involved.

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

(7) A supplier, contractor or consultant whose tender or proposal has been rejected or revoked on the grounds of inducement and corrupt practices shall not be able to qualify or pre-qualify in any procurement proceedings during the ten years following the date of the notice of such rejection or revocation.

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

(9) A supplier, contractor or consultant blacklisted under subsection (7) shall not be permitted to start a new supplies, contracting or consulting firm during that period.

Disclosure
of payment
made by
way of
commission
etc.

74.-(1) A supplier, contractor or consultant, in relation to the public contract shall, within thirty days after the execution of the contract, furnish in writing to the Prevention of Corruption Bureau and the Tanzania Revenue Authority -

- (a) stating particulars of any consideration given or to be given to any person or organization for the purpose of or as a commission for obtaining the contract; and
- (b) giving the names of the persons to whom and the organization to which any such consideration was or is to be given.

(2) If no such consideration is to be given to any person or organization, 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 of the body corporate; and
 - (ii) if the contract is a subsidiary of another body corporate, shall also 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 Ordinance in relation to the determination of whether a body corporate is the subsidiary of any other body corporate shall apply.

Conduct
of
directors,
servants or
agents

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

- (a) by a director, servant or agent of the body corporate within the scope of the actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, whether giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent, shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

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

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

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first mentioned person, when the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent, shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

Institution of criminal proceedings
Cap.16
Act No.3
of 1971

76. The measures provided by this Act shall not preclude the institution of criminal proceedings pursuant to the Penal Code, the Prevention of Corruption Act, 1971 or any other written Law against any person discharging functions or exercising powers under this Act or regulations made under this Act.

PART VI DISPUTES SETTLEMENT

Establishment of the Appeals Authority

77-(1) There is hereby established in the Ministry of Finance, the Public Procurement Appeals Authority.

(2) The Third Schedule to this Act shall have effect regarding the composition, appointment and procedures of the Members of the Public Procurement Appeals Authority.

Functions of the Public Procurement Appeals Authority

78. The Public Procurement Appeals Authority shall entertain appeals against tender boards, clarify the issues in dispute between the parties and shall endeavour to bring about agreement between the parties upon mutually acceptable terms, and the parties shall co-operate in good faith with the Public Procurement Appeals Authority in order to enable it to carry out its functions and they shall be bound by its decisions.

Right to review

79.-(1) Subject to sub-section (2) of this section, any supplier, contractor or consultant 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 or an approving authority by this Act may seek a review in accordance with sections 81 and 82 of this Act, provided that the application for a review is received by the procuring entity or

approving authority within twenty-eight days of the supplier, contractor or consultant becoming aware of the circumstances giving rise to the complaint or when the supplier, contractor or consultant should have become aware of those circumstances

(2) The review referred to in subsection (1) of this section 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 49 of this Act or in accordance with the prescribed Regulations;
- (c) a decision by the procuring entity to reject all tenders pursuant to section 54 of this Act;
- (d) failure to cite this Act, Regulations made under this Act or any other law relating to the procurement proceedings;
- (e) in the case of services, a refusal by the procuring entity to respond to an expression of interest in request for proposals proceedings.

Settlement
of
Complaints
or disputes
by
procuring
entities and
approving
authorities

80.-(1) Complaints or disputes between procuring entities and suppliers, contractors or consultants which arise in respect of procurement proceedings and awards of contracts and which cannot be resolved by mutual agreement shall be reviewed and decided upon a written decision by the Accounting Officer, Chief Executive of a Procuring Entity, unless the procurement has been reviewed and approved by an approving authority, in which case that approving authority shall review and decide on the dispute and give reasons for its decision in writing.

(2) The head of the procuring entity or of the approving authority shall not entertain a complaint or dispute unless it is submitted within twenty eight days from the date the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or when that supplier, contractor or consultant should have become aware of those circumstances, whichever is earlier.

(3) The head of a procuring entity or of the approving authority shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

(4) Unless the complaint or dispute is resolved by mutual agreement of the supplier, contractor or consultant that submitted it and the procuring entity, the head of the procuring entity or of the approving authority shall, within thirty days after the submission of the complaint or dispute 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.

(5) Where the head of the procuring entity or of the approving authority does not issue a decision within the time specified in subsection (4), the supplier, contractor or consultant submitting the complaint or dispute or the procuring entity shall be entitled immediately thereafter to institute proceedings under section 81, 82, or 85 and upon such institution of such proceedings, the competence of the head of the procuring entity or of the approving authority to entertain the complaint or dispute shall cease.

(6) The decision of the procuring entity or approving authority shall be final unless the supplier, contractor or consultant applies for administrative review by the Authority except for complaints or disputes made against the Public Procurement Regulatory Authority which shall be submitted to the Public Procurement Appeals Authority in accordance with section 81.

Adminis-
trative
Review

81.-(1) A supplier, contractor or consultant who is aggrieved by the decision of a procuring entity or an approving authority may refer the matter to the Authority for review and administrative decision.

- (2) Where -
 - (a) the Accounting Officer does not make a decision within the period specified in sub - section 80(6); or

- (b) the tenderer is not satisfied with the decision of the Accounting Officer,

the tenderer may make a complaint to the Authority within fourteen working days from the date of communication of the decision by the Accounting Officer.

(3) The Authority shall within thirty days after the, submission of the complaint or dispute 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.

(4) The decision of the Authority shall be final unless an action is commenced under section 82 of this Act.

Review by
the Public
Procurement
Appeals
Authority

82.-(1) Complaints or disputes not amicably settled by the Authority shall be referred to the Public Procurement Appeals Authority.

(2) A supplier, contractor or consultant entitled under section 79 to seek review may submit a complaint or dispute to the Public Procurement Appeals Authority -

- (a) if the complaint or dispute cannot be submitted or entertained under section 80 or 81 because of entry into force of the procurement contract and provided that the complaint or dispute is submitted within fourteen days from the date when the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that supplier, contractor or consultant should have become aware of those circumstances;
- (b) if the head of the procuring entity does not entertain the complaint or dispute because the procurement contract has entered into force, provided that the complaint or dispute is submitted within fourteen days after the delivery of the decision not to entertain the complaint or dispute;

- (c) pursuant to subsection 80(5) provided that the complaint or dispute is submitted within fourteen days after the expiry of the period referred to in subsection (4) of section 80, or
- (d) if the supplier, contractor or consultant claims to be adversely effected by a decision of the head of the procuring entity or of the approving authority under section 81 provided that the complaint or dispute is submitted within fourteen days after the delivery of the decision.

(3) Upon receipt of a complaint or dispute, the Public Procurement Appeals Authority shall give notice of the complaint or dispute to the procuring entity or the approving authority.

(4) The Public Procurement Appeals Authority may, unless it dismisses the complaint or dispute, recommend one or more of the following remedies:

- (a) declare the legal rules or principles that govern the subject matter;
- (b) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procuring entity that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- (d) annul in whole or in part an unlawful act or decision of the procuring entity or approving authority other than any act or decision bringing the procurement contract into force;
- (e) revise an unlawful decision by the procuring entity or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
- (f) require the payment of compensation for any reasonable costs incurred by the supplier, contractor or consultant submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the procuring entity or approving authority; or

(g) order that the procurement proceedings be terminated.

(5) The Public Procurement Appeals Authority shall, within thirty days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.

(6) The decision of the Public Procurement Appeals Authority shall be final unless an action is commenced under section 85 of this Act.

Certain
rules
applicable
to review
proceed-
ings

83.-(1) After the submission of a complaint or dispute under sections 80, 81 or 82, the head of the procuring entity or of the approving authority or the Public Procurement Appeals Authority, as the case may be, shall notify all suppliers, contractors or consultants participating in the procurement proceedings to which the complaint or dispute relates, of the submission of the complaint or dispute and of its substance.

(2) Any supplier, contractor or consultant or any Government authority whose interests are or could be affected by the review proceedings, shall have a right to participate in the review proceedings and a supplier, contractor or consultant who fails to participate in the review proceedings and supplier, contractor or consultant who fails to participate in the review proceedings shall be barred from subsequently making the same claim.

(3) A copy of the decision of the head of the procuring entity or of the approving authority or of the Public Procurement Appeals Authority, as the case may be, shall be furnished within five days after the delivery of the decision, to the supplier, contractor or consultant submitting the complaint or dispute to the procuring entity and to any other supplier, contractor or consultant or Government authority who participated in the review proceedings and in addition, after the decision has been delivered, the complaint or dispute and the decision shall be made available for inspection by the general public, provided however that, no information shall be disclosed if its disclosure would -

- (i) be contrary to law;
- (ii) impede law enforcement;
- (iii) not be in the public interest;
- (iv) prejudice legitimate commercial interest of parties;
or
- (v) inhibit fair competition.

Suspension of
procurement
proceed-
ings

84.-(1) The timely submission of a complaint or dispute under sections 80, 81 and 82 shall suspend the procurement proceedings for a period of seven days, provided the complaint or dispute is not

frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier, contractor or consultant will suffer irreparable injury in the absence of a suspension and shows that it is probable that the complaint or dispute will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to the suppliers, contractors or consultants.

(2) Where the procuring contract enters into force, the submission of a complaint or dispute under section 81 shall suspend the performance of the procurement contract for a period of seven days provided the complaint or dispute meets the requirement set forth in subsection (1).

(3) The head of the procuring entity or of the approving authority or the Public Procurement Appeals Authority may extend the suspension provided for in subsection (1) and the Public Procurement Appeals Authority may extend the suspension provided for in subsection (2) in order to preserve the rights of the supplier, contractor or consultant submitting the complaint or dispute or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed thirty days.

(4) The suspension provided for by this section shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement to proceed and the certification, shall state the grounds for such findings and shall be conclusive with respect to all levels of review except judicial review.

(5) Any decision by the procuring entity under this section and the grounds and circumstances for it shall be made part of the record of the procurement proceedings.

Judicial
Review

85. The Court of competent jurisdiction shall have Jurisdiction over actions pursuant to section 79 and petitions for judicial review of decisions made by bodies or failure of those bodies to make a decision within the prescribed time-limit, pursuant to sections 80, 82 and 83.

PART VII
MISCELLANEOUS PROVISIONS

Codes of
Conduct

86.-(1) Public officers as well as experts engaged to deliver specific services under this Act shall sign the Code of Ethical Conduct.

(2) All suppliers, contractors or consultants shall be required to sign a declaration of compliance with those Codes of Conduct determined by the Authority from time to time.

Offences

87.-(1) A person commits an offence who:

- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons issued under this Act;
- (b) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under paragraph (a)(ii) of subsection (2) of section 32;
- (c) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required by paragraph (a) of subsection of (2) of section 32;
- (d) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or procuring entity or member of tender board in the performance of his functions or in the exercise of his her power under this Act;
- (e) connives or colludes to commit a fraudulent act of corrupt act defined in section 3;
- (f) contravenes or fails to comply with a provision of this Act and Regulations made under this Act,

and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

(2) where a procuring entity consistently contravenes this Act, it shall, on the recommendation of the Authority and on the approval of the Minister, have its procurement function transferred to a third party procurement agency appointed by the Authority until the Authority is satisfied that the causes of the contravention have been rectified.

Regulations

88.-(1) The Minister may make regulations and rules for the better carrying out of the provisions of this Act, and such Regulations shall include yearly review of the limits of authority for Accounting Officers and Chief Executives.

(2) All Regulations, rules and directions made in connection with this Act shall be published in the *Gazette*.

Guidelines

89.-(1) The Authority shall issue guidelines from time to time for the better carrying out of the objectives or any functions under this Act.

Repeal and savings Act No.3 of 2001

90.-(1) The Public Procurement Act, 2001 is hereby repealed.

(2) Notwithstanding subsection (1), every order, direction or appointment which was issued, given, or made pursuant to the provisions of the Public Procurement Act, 2001 and every office which was created in pursuance thereof shall remain valid until otherwise cancelled, revoked or varied under the provisions of this Act.

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

Transitional provisions

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

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

FIRST SCHEDULE

(Under section 18)

COMPOSITION, APPOINTMENT AND PROCEDURES OF THE AUTHORITY

Interpre- tation	<p>1. In this Schedule "Appointing Authority" means:</p> <p>(a) in the case of the Chairman of the Authority, the President of the United Republic of Tanzania; and</p> <p>(b) in the case of Members of the Authority, the Minister for the time being responsible for finance;</p>
Composi- tion and appoint- ment of the Authority	<p>2. The Board of Directors shall consist of the following members -</p> <p>(a) a non-executive Chairman who shall be appointed by the President;</p> <p>(b) six members at least three of whom are experts or specialists in procurement, law, management, engineering, commerce, etc, who shall be appointed by the Minister,</p> <p>(c) the Chief Executive Officer who shall be appointed by the President</p>
Tenure of office	<p>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.</p> <p>(2) Under exceptional circumstances, the Appointing Authority may extend the tenure of the Board member or members for a period not exceeding six months from the date of expiry of the initial period of appointment.</p> <p>(3) The Appointing Authority may determine the appointment of the Chairman, members and Chief executive of the Board at any time for.</p> <p>(a) abuse of office;</p> <p>(b) corruption;</p> <p>(c) incompetence;</p> <p>(d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;</p> <p>(e) failure to attend three consecutive meetings of the Board meetings without reasonable grounds;</p> <p>(f) conviction of an offence involving moral turpitude; and</p> <p>(g) being adjudged bankrupt by a court of law.</p> <p>(4) Any member of the Board may resign upon giving one month's notice in writing to the Appointing Authority.</p> <p>(5) If 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.</p>

- Attendance by non-members **4.** The Board may invite Government officers of ministries or departments whose procurement is under consideration or any other person with a legitimate interest in the procurement being reviewed to attend its meetings for the purpose of assisting the Board, but such persons shall have no vote.
- Meetings **5.**-(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Chief Executive Officer, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the Board shall meet at such times and such places being not less than once in a month as the Chairman may determine.
- (2) The Chairman, or in his absence or inability to act, the Chief Executive Officer, shall convene a special meeting of the Board upon receipt of a request in writing signed by no fewer than three members of the Board, save that such requests shall not be made without justifiable cause.
- Quorum **6.**-(1) One half of the members of the Board shall form a quorum for a meeting of the Board.
- (2) In the absence of the Chairman, the members present at a meeting of the Board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman.
- (3) At any meeting of the Board, a decision of the majority of the members present shall be recorded as a decision of the Board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting.
- Minutes **7.** Minutes of each meeting of the Board shall be recorded by the Secretary in a proper form and shall be confirmed by the Board and signed by the Chairman and the Secretary at the next following ordinary meeting of the Board and filed at the offices of the Authority.
- Notification of decisions **8.** Notification of decisions made by the Board and all other communications sent on its behalf shall be signed by the Chief Executive Officer, or by an officer of the Secretariat of the Board who has been authorised in writing by the Secretary to act on his behalf and the Secretary shall communicate the decisions, including any refusal and the grounds for the refusal, to the Accounting Officer or Chief Executive Officer within seven days from the date of the meeting when such a decision was made.
- Regulation of proceedings **9.** The Board shall have power to regulate its own proceedings.
- Subcommittees **10.** The Board may establish subcommittees and appoint as members, of such subcommittees, persons who are or are not, members of the Board for the purposes of advising the Board on any specific matter.

Fees and allow-
ances

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

SECOND SCHEDULE

(under section 28(2))

COMPOSITION, APPOINTMENT AND PROCEDURES OF TENDER BOARDS

- | | |
|--|---|
| Interpre-
tation | 1. -(1) In this Schedule, "the board" means the Tender Board for the Ministry, Independent Department of Government, Region, District, and Parastatal Organisation... |
| Composi-
tion and
appoint-
ment | <p>2. The board shall consist of –</p> <p>(a) a Chairman, who shall be one of the heads of department or a person of similar standing and who shall be appointed by the Accounting Officer or Chief Executive as the case may be.</p> <p>(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 or Chief Executive as the case may be.</p> <p>(c) the Secretary, shall be a procurement specialist, who shall be the head of the procurement management unit or department of that procuring entity and who shall be appointed by the Accounting Officer or Chief Executive as the case may be.</p> |
| Tenure of
Appoint-
ment | <p>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.</p> <p>(2) Under exceptional circumstances, the Accounting Officer or Chief Executive may extend the tenure of the Board member or members for a period not exceeding six months from the date of expiry of the initial period of appointment.</p> <p>(3) The Accounting Officer or Chief Executive may determine the appointment of the Chairman and members of the Board at any time for:</p> <p>(a) abuse of office;</p> <p>(b) corruption;</p> <p>(c) incompetence;</p> <p>(d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;</p> <p>(e) failure to attend three consecutive meetings of the Board meetings without reasonable grounds;</p> |

- (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 or Chief Executive as the case may be.
- (5) If any member is absent from three consecutive meetings of the Board without providing reasonable excuse, the Board shall advise the Accounting Officer or Chief Executive to terminate the appointment of that member and appoint another member in his place.
- Attendance by non-members
4. The board may invite Government Officers from within the procuring authority or other public authority to attend its meetings for the purpose of assisting the board, but such person shall have no vote.
- Meetings
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, being not less than once in a month as, the Chairman may determine.
- Quorum
6. One half of the members of the board shall form a quorum for a meeting of the board.
- (2) In the absence of the Chairman, the members present at a meeting of the board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman.
- (3) At any meeting of the board, a decision of the majority of the members present and voting shall be recorded as a decision of the board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.
- Minutes
7. Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and the Secretary at the next following meeting of the board.
- Notification of decisions
8. Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the Permanent Secretary or Chief Executive as the case may be.
- Regulation of proceedings
9. A board shall conduct its proceedings in accordance with the prescribed Regulations.
- Subcommittees
10. A 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 **11.** The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the board.

THIRD SCHEDULE

(under section 77(2))

COMPOSITION AND PROCEDURES OF THE PUBLIC
PROCUREMENT APPEALS AUTHORITY

Interpre-
tation

1. In this Schedule:

(a) "Appointing Authority" means –

(i) in the case of Chairman and Secretary of the Public Procurement Appeals Authority the President of the United Republic of Tanzania;

(ii) in the case of Members of the Public Procurement Appeals Authority, the Minister for the time being responsible for finance

(b) "the Authority" means the Public Procurement Appeals Authority.

Composi-
tion and
appoint-
ment

2. The board shall consist of –

(a) a non-executive Chairman who shall be appointed by the President of the United Republic.

(b) six other members, at least two of them drawn from private sector and from procurement professional body, appointed by the Minister with professional knowledge and experience in public procurement, finance, commerce, business, administration or law from among institutions having no direct vested interest in public procurement

(c) a Secretary who shall be an expert in procurement with training in law or any other relevant discipline and who shall be appointed by the President of the United Republic of Tanzania on such terms and conditions as he determines on contract for four years, renewable for only one further term.

Tenure of
Appoint-
ment

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

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

(3) The Appointing Authority may determine the appointment of the Chairman, members and 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 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 Authority may resign upon giving one month's notice in writing to the Appointing Authority.

(5) If any member is absent from three consecutive meetings of the Authority without providing reasonable excuse, the Authority shall advise the Appointing Authority to terminate the appointment of that member and appoint another member in his place.

Meetings

4.-(1) An ordinary meeting of the Authority shall be convened by the Chairperson, 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.

(2) The Public Procurement Appeals Authority may act notwithstanding any vacancy in its membership.

(3) Where, by reason of illness, absence from the United Republic or other sufficient cause a person appointed Chairperson is unable to perform the functions of his office, he may appoint a member of his staff to perform those functions for a period not exceeding two months and shall forthwith inform the President of the United Republic of the appointment, but if the Chairperson is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period exceeding two months, the President of the United Republic, may appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

(4) No act or proceeding of the Authority shall be invalid by reason of any defect or irregularity in the appointment of any member or by reason that any person who purposed bona fide to act as a member at the time of the act or proceeding was in fact disqualified or not entitled to act as a member

(5) In resolving disputes or complaints, the Authority shall conduct the dispute resolution under procedures acceptable for alternative dispute resolution mechanism by requiring exchange of documents between the parties concerned and may accept both oral and written communication between and from the parties.

Quorum

5.-(1) One half of the members of the Authority shall form a quorum for a meeting of the Authority.

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

(3) At any meeting of the Authority, a decision of the majority of the members present shall be recorded as a decision of the Authority, save that a member who dissents from that decision shall be entitled to have his decision and the reasons thereof be re- corded in the minutes of that meeting.

Minutes 6. Minutes of each meeting of the Authority and all other communications sent on its behalf shall be signed by the Chairman or by an officer of the Authority who has been authorised in writing by the Chairman to act on his behalf.

Notificatio
n of
decisions 7. Notification of decision made by the Authority and all other communications sent on its behalf shall be signed by the Chairman or by an officer of the Authority who has been authorised in writing by the Chairman to act or her behalf.

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

Passed in the National Assembly on the 12th November, 2004

DAMIAN S SOKA,
Clerk of the National Assembly