

SUBSIDIARY LEGISLATION

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**THE PUBLIC PROCUREMENT ACT
(CAP.410)**

REGULATIONS

(Made under Section 105)

THE PUBLIC PROCUREMENT REGULATIONS, 2013

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THE PUBLIC PROCUREMENT ACT
(CAP. 410)

REGULATIONS

(Made under Section 105)

THE PUBLIC PROCUREMENT REGULATIONS, 2013

PART I
PRELIMINARY PROVISIONS

Citation **1.** These Regulations may be cited as the Public Procurement Regulations, 2013.

Application **2.-(1)** Subject to sub-regulation (2), these Regulations shall apply to-

- (a) all procurement of goods, works and non-consultancy services undertaken by a procuring entity except where the context provide otherwise in which case the provisions of the Act shall prevail;
- (b) selection and employment of consultants;
- (c) disposal of public assets by tender; and
- (d) procurement under public private partnership.

(2) These Regulations shall not apply to disposal of public assets by other methods.

Interpre- **3.** In these Regulations, unless the context requires
tation otherwise-

“accounting officer” means a government officer appointed in

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- Cap 348 accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention;
- Cap 410 “Act” means the Public Procurement Act;
 “Agency” means Government Procurement Services Agency;
 “Appeals Authority” means the Public Procurement Appeals Authority established under section 88 of the Act;
 “approving authority” means an accounting officer or a tender board of a public body;
 “Authority” means the Public Procurement Regulatory Authority established by section 7 of the Act;
 “best net outcome” means to maximize the overall benefit to the government from the disposal of an asset;
 “call off order” means an order placed by a procuring entity under general terms and pricing on a range of goods under framework agreement, without having to negotiate terms every time;
 “closed framework agreement” means an agreement with specified terms and conditions with an agreed price;
 “common use items and services” means goods, works and services that are required continuously or repeatedly over a set period of time and are common to more than one procuring entity and are subject to common procurement;
 “company” means a company or firm constituted under civil or commercial law, including corporations, whether public or otherwise, co-operative societies and other legal persons and partnerships governed by public or private law;
 “contract” means a contract or agreement made between a procuring entity and a tenderer as a result of procurement proceedings;
- Cap. 103 “contracting authority” shall have the meaning ascribed to it under the Public Private Partnership Act;
 “contractor” means a firm, company, corporation, organisation, partnership or an individual person

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- engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovations, and who is, according to the context, a potential party or the party to a procurement contract with the procuring entity;
- “corrupt practice” means the offering, giving, receiving, or soliciting anything of value to influence the action of a public officer in the procurement process or contract execution;
- “counter proposal” means the offer given by other interested tenderers to counter-march with the original project proponent’s proposal;
- “foreign consultant” means an individual consultant whose nationality is that of a foreign country or a consulting firm whose majority of its share capital, as far as the ownership thereof is or can be publicly known, is owned by citizens of foreign countries;
- “framework agreement ” means a contractual arrangement which allows a procuring entity to procure goods, services or works that are needed continuously or repeatedly at an agreed price over an agreed period of time, through placement of a number of orders;
- “Journal” means the Tanzania Procurement Journal;
- “limit of authority” means the maximum value of any single contract that may be approved by an accounting officer without prior approval of tender board;
- “micro procurement” means acquisition of standard and low value goods or services of the aggregate amount of which does not exceed the micro procurement threshold specified in these Regulations;
- “minor value” means an amount of money up to a maximum limit for the procurement of goods, works or consultancy of a minor nature;
- “national tenderers” means a firm whose nationality is that of the United Republic or firm whose majority share capital, as far as the ownership thereof is or can be publicly known, is owned by citizens of the United

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- Republic;
- “open framework agreement” means an agreement with specified terms and conditions without an agreed price;
- “original project proponent” means a private party who submits a Public Private Partnership proposal to the contracting authority with respect to any project which has not yet been approved or notified;
- “parastatal organisation” means-
- (a) a body corporate established by or under any Act other than the Companies Act;
 - (b) any corporation registered under the Companies Act, in which not less than fifty percent of the share capital is owned by the 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
 - (c) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act;
- “performance security” means a guarantee or a bond from a successful tenderer’s bank or an Insurance Company, which should be provided by the successful tenderer to the procuring entity with the aim of compensation for any loss resulting from the tenderer’s failure to complete its obligations under the contract;
- “private party” shall have the meaning ascribed to it under the Public Private Partnership Act;
- “procurement agent” means a person, a private or public firm specialised in procurement, acting for another person called the principal in dealing with third parties in matters relating to procurement;
- “procurement expert or specialist” means a person who is

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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 and Supplies Professional and Technician Board;

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

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

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

“running contract” means a contract extending over a period of time for an estimated or variable quantity of goods, services or works obtained through request for submission of unit rates which are applied over an extended period of time and which offer the procuring entity to engage such tenderers without further competitive tendering;

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

“solicited project proposal” means any proposal relating to the implementation of a project which is submitted in response to a request or solicitation issued by the Unit or a contacting authority within the context of a competitive selection procedure;

“solicitation for expression of interest” means the process whereby consultants are invited to submit details of their resources and capabilities so that a procuring entity can determine which consultants meet the minimum criteria necessary for being considered for competitive selection of consultants;

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- “tender board” means a tender board established under section 31 of the Act;
- “tender or solicitation document” means a written or electronic document or request for proposal inviting tenderers to participate in procuring or disposal by tender proceeding and includes document inviting potential tenderers for pre-qualification;
- “tender period” means the period between the date of the first publication of the invitation to tender or the date of the mailing of the invitation to tender and the closing date for the submission of tenders;
- “tender price” means the sum stated by a tenderer in his tender for carrying out the contract;
- “Tenders Portal” means a web portal of the Authority containing all information relating to public tenders;
- “tender security” means a guarantee or bond from a tenderer’s bank or an insurance company which should be provided by the tenderer as part of its bid with the aim of protecting the procuring entity against the risk of tenderer’s conduct during the tender period which would warrant the security’s forfeiture or otherwise returned to the tenderer after tender process.
- “Tender Securing Declaration” means a security by way of declaration provided by the tenderer when the procurement is within the exclusive preference limits; provided under the Ninth and Thirteenth Schedules to these Regulations;
- “tender validity period” means the period of time subsequent to the closing date for submission of tenders for which the tender price and the conditions of the tender shall not be subject to any change by the tenderer;
- “unsolicited project proposal” means any proposal relating to the implementation of a project which is not submitted in response to a request or solicitation issued by the Unit or a contracting authority within the context of a competitive selection procedure.

PART II
GENERAL PROVISIONS
(a) Public procurement principles

Basic principles for undertaking or approving procurement and disposal of public assets

4.-(1) The basic principles of public procurement shall be to make the best possible use of public funds with honesty and fairness.

(2) All public officers including accounting officers and members of tender boards shall, when undertaking or approving procurement, be guided by the following basic considerations:

- (a) the need for economy and efficiency in the use of public funds in the implementation of projects, including the provision of related goods and services;
- (b) the best interests of a public body in giving all eligible tenderers equal opportunities to compete in providing goods or executing works or providing services;
- (c) encouragement of national manufacturing, contracting and service industries;
- (d) the importance of integrity, accountability, fairness and transparency in the procurement process.

(3) The principles of disposal of public assets shall base on the need to achieve the best available net return when disposing off public assets by tender, while conducting all disposals with honesty and fairness.

(4) All public officers including accounting officers and members of tender boards shall, when undertaking or approving disposal of public assets, be guided by the following basic considerations:

- (a) the need for best net outcome and efficiency in the use of public funds in the implementation of projects including disposal of assets;

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- (b) the best interests of a public authority, in giving all eligible buyers equal opportunities to compete in buying the assets; and
- (c) the need to ensure that national, social, economic and environmental interests are protected.

Economy
and
efficiency

5.-(1) Public officers and members of tender boards shall, when undertaking or approving procurement or disposal of public assets by tender, choose appropriate procedures and cause the procurement or disposal of assets to be carried out diligently and efficiently, so that the prices paid or received by the procuring entity represent the best value or net outcome that can reasonably be obtained for the funds applied for or the assets disposed off.

(2) In furtherance to sub-regulation (1), public officers and members of tender boards shall ensure that-

- (a) the goods, works or services procured are of satisfactory quality;
- (b) the goods, works, or services are appropriate to the public body requirements and, where necessary, goods or consultancy services or services are compatible with any similar goods or services already supplied or provided for public authority's use or for a particular project;
- (c) the goods are delivered, the services are provided, or the works are completed in a timely manner in accordance with the procuring entity's priorities; and
- (d) the public assets to be disposed of by tender are disposed in a manner which attracts maximum competition while reducing the administration and transaction costs.

Eligible
tenderer

6.-(1) A tenderer who qualifies for consideration under these Regulations shall be eligible to participate in procurement or disposal proceedings unless the tenderer is

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precluded by the Act or these Regulations.

(2) A procuring entity shall not deny pre-qualification, if required, to a firm for reasons other than legal capacity, financial capability and experience to successfully perform the contract.

(3) Notwithstanding sub-regulation (2)-

(a) a foreign firm, goods manufactured in a foreign country, a contractor or a consultant from a foreign country shall be excluded if-

(i) as a matter of law or Regulations, the United Republic prohibits commercial relations with that country;

(ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the United Republic prohibits any import of goods from that country or any payments to persons or entities in that country; or

(iii) it is proved beyond reasonable doubt that, the foreign supplier, contractor or consultant does not satisfy relevant Regulations governing the procurement of goods, works or services in the United Republic;

(b) a tenderer who is engaged by a procuring entity for provision of goods, works or services and any of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than a continuation of earlier contract) or acquiring assets from the same project.

(4) Sub-regulation (3) shall not apply to tenderers who perform the contractors' obligations under a turnkey or design and build contract.

(5) A government owned enterprise may participate if the enterprise-

(a) is legally and financially autonomous;

(b) operates under commercial law; and

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(c) is registered by the relevant professional registration body or authority .

(6) A dependent agency of the procuring entity under a public financed project shall not tender or submit a proposal for the procurement of goods or works under a project within the procuring entity other than force account units, as prescribed under regulation 167.

(7) A tenderer who is declared ineligible by the Government in accordance with the Act or these Regulations shall be ineligible to be awarded a public financed contract.

Probity and ethics in procurement or disposal by tender

7.-(1) All public officers and members of tender boards concerned with procurement or disposal of public assets by tender shall be scrupulous and honest in their dealings with tenderers, members of the public and with the procuring entity itself.

(2) A procuring entity shall conduct procurement and disposal by tender proceedings with complete probity and in a manner that the procuring entity is respected and trusted as a client or customer while maintaining good reputation with tenderers.

(3) A procuring entity shall reject a tender of a tenderer who gives or agrees to give directly or indirectly to any public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or omission or decision of or procedure followed by the procuring entity in connection with that tender or proposal or any other tender or proposal.

(4) Procurement or disposal shall not be made to a member of staff of a procuring entity or a person who has direct influence on the decisions of the procuring entity acting in private capacity, either alone or as a partner in a partnership or as an officer of a company.

(5) A procuring entity shall not include in any tender document any condition or specification such as to favour any tenderer.

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(6) Any person or a member of staff of a procuring entity who is involved in procurement or disposal by tender proceedings of a procuring entity shall declare any interest that he may have in any tenderer and shall not take any part in, nor seek to influence in any way procurement or disposal by tender proceedings in which that tenderer is involved or likely to be involved.

(7) The disclosure of interest made under this regulation shall be recorded in the minutes of the meeting at which it is made.

Equality of participation

8. In order to ensure widest possible participation by tenderers on equal terms in inviting tenders for goods, works, services, provision of consultancy services or disposal of assets, procuring entities shall take the necessary measures to-

- (a) ensure publication of invitations to tender or to submit expression of interest or proposal in the Journal, Tenders Portal, newspapers of wide circulation and other appropriate means as prescribed in the First Schedule to these Regulations;
- (b) eliminate discriminatory practices, technical specifications or description of services which may limit participation on equal terms;
- (c) ensure that all the selection criteria are specified in the tender documents or prequalification and request for proposal; and
- (d) ensure that the tender or proposal selected conforms to the requirements of the tender documents or request for proposal and meets the prescribed selection criteria.

Eligibility

9.-(1) Unless otherwise specified in these Regulations, participation in the invitations to tender or proposal and awarding contracts shall be open on equal terms to-

- (a) natural persons, companies or firms or public or

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semi-public agencies of Tanzania and foreign countries;

(b) cooperative societies, community based organisation, civil society organisations, farmers' associations and other legal persons governed by public or private law;

(c) joint ventures, consortium or association of firms.

(2) A tenderer shall be permitted to participate in the selection proceedings without regard to nationality, except in cases where the procuring entity decides, on grounds specified in these Regulations or according to the provisions of any written law, to limit participation in selection proceedings on the basis of nationality.

(3) A procuring entity that limits participation on the basis of nationality pursuant to sub-regulation (2), shall include, in the record of the selection proceedings, a statement of the grounds and circumstances on which it relied in making limitation.

(4) The procuring entity shall, when first soliciting the participation of tenderers in the selection proceedings, declare to foreign tenderer that they may participate in the selection proceedings regardless of nationality and such a declaration shall not later be altered, but if the procuring entity decides to limit participation pursuant to sub-regulation (2) it shall so declare to tenderers.

(5) An eligible tenderer shall provide to the procuring entity evidence of his eligibility, proof of compliance with the necessary legal, technical and financial requirements and their capability and, adequacy of resources to carry out the contract effectively.

(6) The procuring entity shall prepare a document in respect of all tenders submitted and the document shall be dated and set out in accordance with the applicable laws or practice and shall certify whether or not provisions of sub-regulation (8) applies to the tenderers.

(7) A natural person, company or firm shall not be eligible for the award of contract if-

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- (a) such person is declared bankrupt or, in the case of company or firm, insolvent;
 - (b) payments in favour of the person, company or firm is suspended in accordance with the judgement of a court of law other than a judgement declaring bankruptcy and resulting, in accordance with the national laws, in the total or partial loss of the right to administer and dispose of its property;
 - (c) legal proceedings are instituted against such person, company or firm involving an order suspending payments and which may result, in accordance with the national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of the property;
 - (d) the person, company or firm is convicted, by a final judgement, of any offence involving professional conduct;
 - (e) the person, company or firm is found guilty of serious misrepresentation with regard to information required for participation in an invitation to tender or to submit proposals;
 - (f) the person, company or firm is in breach of contract with the procuring entity or other procuring entities;
 - (g) the person, company or firm is blacklisted in accordance with section 62 of the Act or ineligible in accordance with section 84(7) of the Act.
- (8) A firm which has been declared ineligible by the Government in accordance with section 84 of the Act shall be ineligible to be awarded a public financed contract.
- (9) A tenderer who is a citizen of Tanzania may tender independently or in joint venture with foreign firm save that joint ventures or other forms of association between national and foreign firms shall not be made mandatory.

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(10) Where a solicitation document allows a tenderer to submit a tender as part of a joint venture, consortium or association, the solicitation document shall require, where appropriate, that-

- (a) a party to a joint, consortium or association shall be jointly and severally liable for the performance of the contract;
- (b) a party to a joint venture, consortium or association shall be eligible to participate in the procurement or disposal by tender and where one party is deemed to be ineligible, the whole joint venture, consortium or association shall be declared ineligible;
- (c) a copy of the joint venture, consortium or association agreement, or the proposed agreement, shall be required to be submitted as part of the tender or as a condition of contract effectiveness;
- (d) a joint venture, consortium or association shall appoint a lead member who shall have the authority to bind the joint venture, consortium, or association and the lead member shall at the time of contract award confirm the appointment by submission of a power of attorney to the procuring entity;
- (e) any tender from a joint venture, consortium or association shall indicate the part of proposed contract to be performed by each party and each party shall be evaluated or pre-qualified or post qualified with respect to its contribution only; or
- (f) the responsibilities of each party in paragraph (e) shall not be substantially altered without prior written approval of the procuring entity.

(11) A tender to be submitted shall contain the following information:

- (a) copies of original documents defining the constitution or legal status, and establishing the

- place of registration or statutory seat and, if it is different, the place of central administration of the company, firm or partnership or, if a joint venture, of each party constituting the tenderers;
- (b) details of the experience and past performance of the tenderer or of each party to a joint venture on contracts of a similar nature and details of other contracts in hand including details of the actual and effective participation in each such contract;
 - (c) where applicable, the major items of equipment proposed for use in carrying out the contract; the qualifications and experience of key personnel proposed for administration and execution of the contract, both at and away from the place of execution of the contract;
 - (d) proposals relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any elements of the contract amounting to more than ten percent of the tender price is envisaged;
 - (e) reports on the accounting and financial standing of the tenderer or of each party to a joint venture such as profit and loss statements, balance sheets and auditor's reports, an estimated financial projection for the next two years, and an authority from the tenderer or authorised representative of a joint venture to seek references from the tenderer's bankers; and
 - (f) information regarding any current legal or arbitration proceedings or dispute in which the tenderer is involved, provided that the information referred to shall be confined to matters of direct interest to the award or performance of the contract.

Transparenc
y and
fairness

10.-(1) A procuring entity shall maintain adequate written records of all procurement, selection or disposal

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proceedings in which it is involved, and such records shall prescribe tenderers who have responded to advertisements or were approached to tender or to submit expression of interest or proposal, the successful tenderers, the unsuccessful tenderers and the reasons.

(2) Subject to sub regulation (1), the records shall be made accessible to any authorised person or body, and part of it, as specified in these Regulations, shall be published in the Journal and Tenders Portal.

(3) Without prejudice to sub-regulation (2), information relating to project particulars shall be made available to the general public in a manner and format as shall be prescribed in the guidelines issued by the Authority

(4) A procuring entity shall ensure that payments due to tenderer are made properly and promptly in accordance with the terms of each procurement contract entered into, with a view to maintain the credibility and creditworthiness of a procuring entity, and the procuring entity shall ensure that the commitments are recorded against the allocated funds before any contract is signed.

Donor
funded
procurement

11.-(1) In dealing with donor funded procurement, the procuring entity shall observe the provisions of section 4(1) of the Act.

(2) A procuring entity shall not seek clearance of tender documents or award recommendations from a foreign government, agency or institution that extended the loan, credit or grant before obtaining internal clearance of the same from an appropriate approving authority.

(3) To the extent that the clearance or approval of the appropriate internal approving authority conflict with the external clearance or approval of an external approving authority arising out of the loan or credit or grant agreement, the clearance or approval of the external approving authority shall prevail, but in all other respects, the internal clearance or approval shall prevail.

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Form of communication

12.-(1) Subject to the provisions of these Regulations communication between tenderers and a procuring entity shall be in written or electronic form that provides a record of the content of the communication.

(2) Communications between a tenderer and a procuring entity may be made by means of communication that does not provide a record of the content of the communication, provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which provides a record of the confirmation.

(3) The procuring entity shall not discriminate against or among tenderers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

(4) All communications to a tender board shall be addressed to the secretary of tender board through the postal, physical or electronic means.

Clarification and modifications of solicitation documents

13.-(1) A tenderer may request a clarification of the solicitation documents from a procuring entity, provided that such request is submitted to a procuring entity at least:

- (a) in the case of competitive tendering methods, fourteen days prior to the deadline for the submission of the tenders; and
- (b) in the case of non competitive tendering methods, three days prior to the deadline for the submission of the tenders.

(2) The procuring entity shall, within three working days after receiving the request for clarification, communicate in writing to all tenderers to which the procuring entity has provided the solicitation documents without identifying the source of the request so as to enable the tenderers to take into account the clarification received in the preparation of their tenders.

(3) At any time prior to the deadline for submission

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of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a tenderer, modify the solicitation documents by issuing an addendum.

(4) The addendum shall be communicated promptly to all tenderers to which the procuring entity has provided the solicitation documents and shall be binding on those tenderers provided that the procuring entity shall extend the tender period if deemed necessary.

(5) Where it is decided to extend the submission date, the notice of any extension of the deadline shall be given promptly to tenderers to which the procuring entity provided the solicitation documents.

Rules concerning documentary evidence provided by tenderers

14. Where a procuring entity requires the authentication of documentary evidence provided by tenderers to demonstrate their qualifications in procurement or disposal proceedings, the procuring entity shall not impose any requirements as to the authentication of the documentary evidence other than those provided for in the relevant written laws.

Record of procurement or disposal proceedings.

15.-(1) A procuring entity shall maintain a record of the procurement or disposal proceedings containing at a minimum, the following information:

- (a) a brief description of the goods, works or services to be procured, or of assets to be disposed of;
- (b) the names and addresses of tenderers who were pre-qualified, short listed or selected and invited to submit tenders including the procedure used to select them;
- (c) the names and addresses of tenderers that submitted tenders and the name and address of the tenderers with whom the procurement or disposal contract is entered into and the contract price;

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- (d) information relating to the qualifications, or lack thereof, of tenderers that submitted tenders;
- (e) the price, valuation of assets or the basis for determining the price, and a summary of the other principal terms and conditions of each tender and of the procurement or disposal contract, where these are known to the procuring entity;
- (f) a summary of the evaluation and comparison of tenders, including the application of any margin of preference pursuant to these Regulations;
- (g) where all tenders are rejected pursuant to regulation 17, a statement to that effect and the grounds thereof, in accordance with regulations 17(1) and 17(2);
- (h) where procurement, selection or disposal proceedings did not result in a procurement or disposal contract, a statement to that effect and of the grounds thereof;
- (i) the information required for rejection of a tender as provided under regulation 7(3);
- (j) method of selection used and justification, if other than competitive selection process;
- (k) a statement required of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used in procurement proceedings as provided to regulation 141 (3);
- (l) a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation in procurement or selection proceedings in which the procuring entity limits participation on the basis of nationality, as provided in regulation 9(3);
- (m) a summary of any requests for clarification of the pre-qualification, request for expression of interest or solicitation documents or request for

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proposals, the responses thereto as well as a summary of any modification of those documents; and

- (n) a summary of all complaints lodged by tenderers before the award of the contract and decisions thereof.

(2) The procuring entity shall, within fourteen days from the date of contract award, submit to the Authority, the records referred to in sub regulation (1) for publication in the Journal and Tenders Portal.

(3) The record referred to in of sub-regulation (1) (a) and (b) shall, on request, be made available to any person within fourteen days of the submission of such request.

(4) The part of the record referred to in sub-regulation (1) (c) to (i) shall, on request, be made available to tenderers that submitted tenders or applied for pre-qualification, or to any other user of such information within fourteen days after:

- (a) a tender has been accepted; or
- (b) procurement selection or disposal proceedings have been terminated without resulting in a procurement or disposal contract.

(5) The procuring entity shall not disclose information referred to in sub regulation (1) (d) to (e) except when ordered by the Authority, Appeals Authority or a competent court and subject to the conditions of such order, and where-

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

- (b) the information relates to the examination, evaluation and comparison of tenders and tender prices, other than the summary referred to in sub-

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regulation (1) (f).

(6) The records under this regulation shall be kept for a period of not less than five years from the date of completion of the contract and may be made available within a reasonable time during that period to the Minister and the Controller and Auditor General, the Authority or any other officer authorised by the accounting officer; provided that where special circumstances demand such records may be kept for not less than seven years.

(7) The procuring entity shall not be liable to tenderers for damages owing solely to a failure to maintain a record of the procurement or selection proceedings in accordance with these Regulations.

Rejection of
all tenders

16.-(1) Subject to approval by the tender board, and if so specified in the solicitation documents, the procuring entity may, prior to awarding the contract and notwithstanding the stage reached in the proceedings leading to the conclusion of the contract:

- (a) either decide to reject all tenders at any time or annul the tender or selection proceedings in accordance with sub-regulation (2) and order that the proceedings be recommenced, if necessary, using another method; or
- (b) where the project is divided into lots, award only certain lots and possibly decide that the others be the subject of another tender or other tenders, if necessary, using another method.

(2) Rejection of a tender or selection proceeding may take place where:

- (a) no tender or proposal is responsive to the tender documents or request for proposals;
- (b) no tender or proposal satisfies the criteria for the award of the contract as set out in the tender documents or request for proposal;
- (c) the economic or technical data of the project have been altered;

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- (d) exceptional circumstances render normal performance of the contract impossible;
- (e) every tender or proposal received exceeds the budgetary resources available;
- (f) the tenders or proposals received contain serious irregularities resulting in interference with the normal play of market forces;
- (g) funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available; or
- (h) there has been no competition.

(3) The accounting officer shall apply for the approval of the Authority prior to rejecting all tenders.

(4) The Authority shall consider the application for rejection of all tenders and shall respond to the procuring entity within five days of receipt of such application.

(5) In the event of rejection of all tenders or annulment of selection proceeding, all tenderers who submitted tenders or proposals shall be notified by the procuring entity within seven days after approval from the Authority.

(6) Neither the Authority nor the procuring entity shall incur liability solely by virtue of invoking sub-regulations (1) and (3) towards tenderers that submitted tenders.

(7) When the rejection of all tenders or annulment of selection proceeding is caused by circumstances which do not necessitate the opening of tenders, the unopened and sealed envelopes containing the price proposals, where appropriate, and in any event, the other elements of the tender or proposal shall be returned to the tenderers.

(8) Where all tenders are rejected pursuant to this regulation:

- (a) the procuring entity shall review the causes justifying the rejection and consider whether revision of the specifications or terms of reference or modification in the project or both are required

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before inviting new tenders or opt for another procurement method;

- (b) new tenders shall be requested from tenderers who were invited to submit tenders in the first instance plus new tenderers, and a reasonable amount of time shall be allowed for the submission of the new tenders; or
- (c) the procuring entity may, where it considers appropriate, require that the whole tender or selection proceeding be recommenced.

Rejection of
abnormally
low tender

17.-(1) A procuring entity may reject a submission if the procuring entity has determined that the price in combination with other constituent elements of the submission is abnormally low in relation to the subject matter of the procurement and raise concerns with the procuring entity as to the ability of the tenderer that presented that submission to perform the procurement contract.

(2) Before rejecting an abnormally low tender the procuring entity shall:

- (a) request an explanation of the tender or of those parts which it considers contribute to the tender being abnormally low;
- (b) take account of the evidence provided in response to a request in writing; and
- (c) subsequently verify the tender or parts of the tender being abnormal.

(3) The decision of the procuring entity to reject a submission in accordance with this regulation and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the tenderer concerned.

(4) The accounting officer shall seek the approval of the Authority prior to rejecting a tender under this regulation.

(5) Neither the Authority nor the procuring entity shall incur liability solely by virtue of invoking sub-regulations (1) and (4) towards tenderers that submitted tenders.

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(6) For purposes of this regulation “an abnormally low tender” means, in the light of the procuring entity’s estimate and of all the tenders submitted, the tender appears to be abnormally low by not providing a margin for normal levels of profit.

Publication
of general
procurement
notice

18.-(1) A procuring entity intending to procure goods, works or services shall prepare its general procurement notice based on its annual procurement plan and submit it together with its summary to the Authority for publication in the Journal and Tenders’ Portal.

(2) The summary shall indicate the name of the procuring entity, total approved budget, the budget for all planned procurement, the number of tenders and total estimated values in each category of works, goods, consultancy services, non consultancy services and disposal of public assets and where the full tender details should be obtained.

(3) A procuring entity shall publish the summary in the Journal and a full general procurement notice in the Tenders’ Portal at least one month prior to any publication or notification of a tender or a request for proposals to prospective tenderers.

(4) Any revisions made by the procuring entity to the general procurement notice shall be posted in the Journal and Tenders Portal.

Publication
of specific
procurement
notice

19.-(1) Procuring entities shall prepare a tender notice for national and international tenders and submit the same to the Authority for publication in the Journal and Tenders Portal.

(2) Subject to sub-regulation (1), procuring entities shall advertise each approved tender notice in accordance with the First Schedule to these Regulations.

(3) In the case of international tendering, procuring entities may publish a similar notice in appropriate foreign or international publications or professional or trade journals

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which are likely to be seen by the greatest number of potential tenderers.

Publication of procurement awards and contract execution

20.-(1) A procuring entity shall submit contract award information in respect of any procurement made without regard to the method of procurement used to the Authority within fourteen days from the date of award for publication in the Journal and Tenders Portal.

(2) Subject to sub-regulation (1), the contract award information shall be in a prescribed form issued by the Authority and shall contain the-

- (a) names of participants of the tender in question;
- (b) read out tender price;
- (c) reasons for those eliminated in the tender;
- (d) name of the winner of the tender and the contract amount;
- (e) date when the award was made; and
- (f) contract period.

(3) After completion of the contract, the accounting officer shall, within twenty one days from the date of completion of the contract, provide the Authority with complete information on contract implementation including the original contract period, the final contract period, original approved contract sum and the final contract amount paid to the tenderer, and any deductions made by the procuring entity.

Fees for services rendered by the Authority

21. The Authority shall charge fees for services rendered by it as prescribed in the Second Schedule to these Regulations.

Rules concerning description of goods, works, services or assets

22.-(1) Any terms, specifications, plans, drawings and designs prescribing the-

- (a) technical or quality characteristics of the goods, works or services to be procured, and
- (b) requirements concerning testing and test methods, packaging, marking or labelling or conformity certification, and

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- (c) symbols and terminology, or
- (d) description of services that create obstacles to participation, including obstacles based on nationality of tenderers in the procurement proceedings,

shall not be included or used in the pre-qualification documents, solicitation documents or other documents for solicitation of tenders.

(2) Any terms, specifications, plans, drawings, designs and requirements or descriptions of goods, construction or services shall be based on the relevant objective, technical and quality characteristics of the goods, construction or services to be procured and no reference to a particular trade mark, name, patent, design, type, specific origin or producer shall be issued.

(3) Where no other sufficiently, precise or intelligible way of describing the characteristics of the goods, works or services to be procured is provided, the words “or equivalent” shall be used.

(4) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, in formulating any statement of requirements, specifications, plans, drawings and designs to be included in the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.

(5) Due regard shall be made for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the pre-qualification documents, solicitation documents or other documents for solicitation of tenders.

(6) Solicitation documents or notices for disposal of assets by tender, and any additional information made available to a prospective tenderer shall specify that the asset

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is to be sold on “as is, where is” basis and shall disclaim liability after sale.

(7) Notwithstanding sub-regulation (6), a procuring entity shall give a full and accurate description of an asset to be disposed of.

(8) The description of an asset shall, where appropriate, address the risk and cost of dismantling and removing the asset upon completion of the disposal proceedings.

Tender
Security

23.-(1) Where the procuring entity requires tenderers submitting tenders to provide a tender security-

- (a) the requirement shall apply to all tenderers;
- (b) the solicitation documents shall stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, and the form and terms of the tender security, have to be acceptable to the procuring entity;
- (c) the confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the grounds that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks credit worthiness.

(2) Notwithstanding the provision of sub-regulation (1) (b) and unless the acceptance by the procuring entity of a tender security would be in violation of laws of Tanzania, a procuring entity shall not reject a tender security on the grounds that the tender security was not issued by an issuer in Tanzania if the tender security and the issuer otherwise conform to the requirements prescribed in the solicitation documents,.

(3) Prior to submitting a tender, a tenderer may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer and the procuring entity shall respond promptly to

such request.

(4) The tender security or tender securing declaration shall be in accordance with the form of the bid security or bid securing declaration included in the solicitation documents or any other form approved by the procuring entity prior to the tender submission.

(5) The tender security, at the tenderer's option, shall be in the form of a certified cheque, a letter of credit, a bank guarantee from a reputable bank or an insurance bond from a reputable insurance firm.

(6) The procuring entity shall specify, in the solicitation documents, any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security.

(7) Any requirement that refers directly or indirectly to conduct by a tenderer submitting the tender shall not relate to conduct other than:

- (a) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stipulated in the solicitation documents;
- (b) disagreement to arithmetical correction made to the tender prices;
- (c) failure to sign the procurement or disposal contract if required by the procuring entity to do so;
- (d) failure to provide a required security for the performance of the contract or to comply with any other condition precedent to signing the procurement or disposal contract specified in the solicitation documents.

(8) Tenderers shall be allowed to submit bank guarantees directly issued by a bank of their choice, or insurance bonds issued directly by a firm of their choice located in any country.

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| Validity of tender security or declaration | <p>24. The tender security or tender securing declaration shall remain valid for a period of not less than twenty eight days beyond the validity period of the tender, in order to provide the procuring entity time to act if the security is called for.</p> |
| Release of tender security for unsuccessful tenderers | <p>25. The tender securities of unsuccessful tenderers shall be released not more than thirty days after the expiration of the tender validity period, as extended where appropriate in accordance with regulation 191 (3) and (4) or upon the award of contract, whichever is earlier.</p> |
| Discharge of tender security or tender securing declaration | <p>26. The tender security or tender securing declaration of the successful tenderer shall be discharged when the tenderer has signed the contract and furnished the required performance security to the satisfaction of the procuring entity.</p> |
| Application of tender securing declaration | <p>27. Tender securing declaration shall apply for procurement the value of which does not exceed the threshold for exclusive preference as provided in the Ninth and Thirteenth Schedules to these Regulations.</p> |
| No claim by procuring entity to tender security amount | <p>28. The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of the tender security document, after whichever of the following that occurs earliest:</p> <ul style="list-style-type: none">(a) the expiry of the tender security;(b) the entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the solicitation documents;(c) the rejection by the procuring entity of all tenders pursuant to these Regulations;(d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such |

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withdrawal is permitted.

Performance
security

29.-(1) The procuring entity shall require the successful tenderer to submit a performance security to guarantee the faithful performance of the contract and payment of all labourers, suppliers, mechanics and subcontractors, if any.

(2) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required performance security.

(3) Within a period prescribed in the tender documents, the successful tenderer shall, after receipt of the notice of acceptance, furnish the procuring entity with the performance security in accordance with conditions of contract and in the form prescribed in the tender documents.

(4) The procuring entity may require the successful tenderer to submit the performance security in any of the following forms:

- (a) cash, certified cheque, cashier's or manager's cheque, or bank draft;
- (b) irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the letter shall be confirmed or authenticated by a reputable local bank;
- (c) bank guarantee confirmed by a reputable local bank or, in the case of a successful foreign tenderer, bonded by a foreign bank;
- (d) surety bond callable upon demand issued by any reputable surety or insurance company; or
- (e) any other forms.

(5) Where circumstances necessitate the amendment of the contract after signature, and such amendment is effected, the procuring entity shall require the successful tenderer or consultant to provide additional performance

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security to cover any cumulative increase of more than ten percent of the contract price.

(6) The performance security shall be kept by the procuring entity until the final completion of the contract and shall be released after issuance of the certificate of acceptance of the final report or certificate of completion of works or services if there is no claim filed against the tenderer, contract guarantor or the surety company.

(b) Preference and exclusive preference to local persons or firms

Promotion
of local
industry

30. The purpose of these Regulations is to promote local industry and support socio-economic development by defining the-

- (a) target group and eligibility requirements for benefitting from the preference and reservations schemes;
- (b) percentage margin of preference, where applicable;
- (c) goods, works and services set aside or reserved for specified target groups; and
- (d) means of measuring its effectiveness in achieving the objectives.

Eligibility

31. A person or a firm is qualified to benefit from the preference schemes if that person or firm meets the criteria specified in section 54 of the Act and-

- (a) has the necessary qualifications, capability, experience and, where appropriate, resources, equipments and facilities to provide the goods or services intended to be procured;
- (b) has the legal capacity to enter into procurement contract;
- (c) is not insolvent, in receivership, bankrupt or in the process of being wound up, and is not the subject of legal proceedings relating to any subject matter under this paragraph;

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- (d) is not debarred from participating in procurement proceedings under section 62 of the Act; and
- (e) is registered by the Authority under regulation 32.

Registration for purposes of preference schemes

32.-(1) A tenderer who wishes to be granted preference according to these regulations shall apply for registration with the Authority in the form set out in the Eighteenth Schedule.

(2) In order to avoid duplication of efforts, where a particular group of tenderers are registered by a statutory body, the Authority shall liaise with such statutory body to obtain necessary information required to establish eligibility for the preference scheme.

(3) The Authority shall request all necessary details to establish eligibility for preference scheme for tenderers who are not registered by the Authority or any statutory body.

(4) In addition to registration to qualify for preference, the Authority shall for the purpose of understanding the procurement market, establish and maintain a register of tenderers and shall post the register in the Journal and Tenders Portal, which shall contain-

- (a) reliable and up-to-date information on the competency of existing tenderers in the market, and the structure of the market for various services, supplies or specialities; and
- (b) a record of current or past contracts and performance by tenderers.

(5) Except where a tenderer intends to benefit from a preference scheme pursuant to regulations 33 and 39, a tenderer shall not, as a condition of participation in any procurement or disposal process, be required to register with the Authority.

(6) A procuring entity shall, in granting a margin of preference or applying exclusive preference, use the Authority's register of tenderers to determine whether or not tenderers are qualified for margin of preference or exclusive preference.

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National preference

33.-(1) A procuring entity shall, when procuring goods, works or services by means of international and national competitive tendering or selection, grant a margin of preference for the benefit of local firms or association between local and foreign firm tendering for works or services and for certain goods manufactured, mined, extracted or grown in the United Republic.

(2) Tenderers who are citizens of Tanzania or associations between local and foreign firms, shall be eligible to be granted a margin of preference as provided for in sub-regulation (1) only if they meet the criteria provided in section 54 of the Act, and are registered by the Authority pursuant to regulation 32 or any other statutory body acceptable to the Authority.

Preference to local persons or firms

34. A procuring entity shall grant a margin of preference of up to ten percent to local firms or association between local and foreign firms as prescribed in the Ninth Schedule to these Regulations where the contracts for works, consultancy or non consultancy services are to be awarded on the basis of-

- (a) international tendering or selection; or
- (b) national competitive tendering or selection in which foreign firms are participating.

Inclusion of local firms and experts in consultancy contracts

35.-(1) In the case of consultancy assignments carried out by foreign firms, procuring entities shall ensure that inclusion of local experts and local firms in the assignments is achieved through apportioning proper weight in the criteria for evaluation to encourage partnering of foreign and local firms.

(2) A procuring entity shall, for the purpose of sub-regulation (1), assign weights as follows:

- (a) in the criteria for participation of local firms in the assignment a maximum weight of fifteen percent shall be included in the request for proposal, and firms that demonstrate inclusion of local firms up

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- to fifty percent shall be granted a full score;
- (b) in the criteria for participation of national experts in the assignment a maximum weight of ten percent shall be included in the request for proposal, and firms that demonstrate that more than sixty percent of their key staff are Tanzanian shall be granted a full score.

Use of local experts in goods, works and non-consultancy services contracts

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

- (a) in addition to shareholding structure in the joint venture, the extent of inclusion of key local staff in the joint venture;
- (b) the extent of use of materials locally manufactured, produced or mined.

Preference to local goods

37. In contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the Ninth Schedule to these Regulations.

Applicability of margin of preference

38.- The margin of preference shall only be applied in the cost comparison of the submitted tenders and the calculation of the margin of preference in the course of evaluating tenders, and shall, in addition, be in accordance with the conditions and methods prescribed in Ninth Schedule to these Regulations.

Exclusive preference scheme to local persons or firms

39.-(1) The procurement of works, goods, consultancy or non consultancy services with a value not exceeding the amount prescribed in the Ninth and Thirteenth

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Schedules to these Regulations, shall be reserved exclusively for local persons or firms who meet the requirements of section 51 of the Act.

(2) A joint venture or an association between a foreign and local firm in which the contribution of the local firm in that joint venture or association is greater than sixty percent, shall also be eligible to participate in the exclusive preference scheme.

(3) In applying exclusive preference to local contractors, consultants or service providers, a procuring entity shall ensure that the selected person or firm is capable of providing quality works or services.

(4) The Minister may, on the advice of the Authority, grant special consideration for procurement of goods, services or works for the purpose of promoting the growth of local companies or public owned local companies in which the Government has shares.

Preferences
to local
communities

40. A procuring entity may reserve works, goods, consultancy or non consultancy services with a value not exceeding the amount prescribed in the Ninth and Thirteenth Schedules to these Regulations to local firms who are based and operate in local government authorities or regions, except where it is established that local capacity is not available.

Tender
Securing
Declaration

41.-(1) Tender securities shall not be required from tenderers participating in the exclusive preference scheme.

(2) Notwithstanding sub-regulation (1), tenderers shall be required to complete and sign the Tender Securing Declaration Form set out in the Nineteenth Schedule.

(3) Any tenderer who fails to comply with the terms of the Tender Securing Declaration Form shall be liable to debarment pursuant to section 62 of the Act.

Splitting of
tenders

42.- (1) A procuring entity may, for the purpose of ensuring maximum participation of local firms in public procurement, split tenders in practicable size and quantities

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in accordance with Section 49 of the Act.

(2) A procuring entity shall divide a tender into several lots of the same size and invite firms to tender for a single or several lots, but shall limit the award of contract to a number of lots that will allow many firms to participate.

(3) The size of the packages shall depend on the capability of local firms targeted to benefit from the exercise.

(4) A procuring entity shall submit to the Authority details of the tender that is targeted for splitting, and the Authority shall, within seven days, give its approval to the procuring entity to proceed with the tender process.

Capacity
building of
local firms

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

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

(3) Reserved contracts for capacity building shall not be subjected to competitive tendering and in such case the procuring entity shall use negotiated procurement methods stipulated in these Regulations.

(4) The relevant statutory bodies shall ensure that necessary support is provided to the local firms involved in the capacity building scheme to enable them perform in accordance with the terms of contract.

Timely
payment of
certificates
or invoices

44.-(1) For purposes of supporting the growth of local firms and enabling such firms to meet their contractual obligations, procuring entities shall ensure that timely payments are made to the tenderers.

(2) A procuring entity shall, before signing a contract under the preference or reservation scheme, ensure that commitments are recorded against voted funds as stipulated in regulation 10(3) of these Regulations.

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Monitoring
of
Compliance

45.-(1) Application of the preference schemes by procuring entities shall be monitored by the Authority through procurement audits.

(2) All procurement awards by procuring entities where exclusive preference scheme was applied shall be reported to the Authority..

(3) The Authority shall maintain a database of all contract awards under preference scheme and shall publish it in the Journal and Tender Portal.

(c) Delegation of procurement authority and handling of disagreements

Delegation
and
contracting
out
procurement
functions

46.-(1) Subject to the provisions of the Act and these Regulations, an accounting officer may-

- (a) delegate certain procurement and disposal by tender functions of the accounting officer to a member of staff of that entity;
- (b) delegate certain procurement and disposal by tender functions of the tender board or procurement management unit to a sub-division of that entity; and
- (c) contract out certain procurement and disposal by tender functions of the tender board, procurement management unit or user department to another procuring entity, procurement agent or the Agency

(2) Delegation of functions referred to under paragraphs (a) and (b) of sub-regulation (1) shall be within the procuring entity and contracting out of functions referred to under paragraphs (c) of sub-regulation (1) shall be outside the procuring entity.

(3) Notwithstanding delegation under sub-regulation (1), the accounting officer shall remain accountable for all decisions taken under the delegated authority.

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(4) Where a function is delegated or contracted out, an accounting officer shall ensure the independence of functions and powers in accordance with section 41 of the Act.

(5) A function may be delegated or contracted out where it is cost effective because of the work load or nature of work or lack of technical capacity or where the structure of the procuring entity does not allow the formation of the tender board or a procurement management unit.

(6) Delegation shall not be used for the purpose of avoiding responsibilities and accountability under the Act, these Regulations or guidelines issued under the Act.

(7) A person to whom a procurement function is delegated or a firm or procuring entity to which the procurement functions has been contracted out shall, at all times, comply with the Act, these Regulations, guidelines issued under the Act and any conditions of the delegation or contracting.

Delegation
of the
Accounting
Officer own
functions

47.-(1) An accounting officer may delegate in writing his functions to a member of staff of the procuring entity except for the following functions:

- (a) establishment of and appointment of members of a tender board;
- (b) establishment of a procurement management unit;
- (c) investigation of a complaint by a tenderer; and
- (d) submission of reports of findings in respect of complaints to the Authority

(2) Where the functions of accounting officer of a procuring entity are delegated to a member of tender board or a staff of a procurement management unit, such member or staff, as the case may be, shall not be involved in the activities of the respective tender board or procurement management unit while exercising the delegated authority.

(3) An accounting officer shall not appoint a person to a tender board if he delegates to that person his functions on a regular basis.

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Delegations
of the
functions of
tender board
or
procurement
management
unit

48.-(1) An accounting officer may delegate any of the procurement or disposal by tender functions of the tender board or procurement management unit to a sub-division of the procuring entity subject to any value limitations or other exceptions where:

- (a) the procuring entity has a large procurement or disposal by tender workload which would be more effectively managed by the sub-division;
- (b) the procuring entity has a specialized procurement or disposal by tender workload which would be more effectively managed by the sub-division;
- (c) the sub-division is geographically distant from the head office of the procuring entity and a delegation would reduce practical and logistical problems or reduce costs;
- (d) the sub-division operates in practical terms as an independent entity and would operate more effectively under delegated authority; and
- (e) any other reasonable circumstances arises.

(2) Where an accounting officer delegates to a sub-division, he shall-

- (a) appoint a delegated tender board for the respective sub-division; and
- (b) cause to be established a delegated procurement management unit for the respective sub-division.

(3) When procurement or disposal functions are delegated to a sub-division of the procuring entity, the tender board and procurement management unit of the procuring entity shall-

- (a) ensure the process is in compliance to the provisions of the Act and remain responsible for work and decisions of the bodies to whom the procurement or disposal function by tender is delegated;

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- (b) submit consolidated reports covering all the procurement or disposal activities of the procuring entity to the Authority or any other body;
 - (c) liaise with the Authority or any other body on behalf of the body to whom the procurement or disposal by tender functions are delegated; and
 - (d) advise the body to whom the procurement or disposal functions are delegated on all matters relating to public procurement and disposal of public assets by tender.
- (4) A delegated tender board and procurement management unit shall-
- (a) submit such reports to the main tender board of the procuring entity as may be required;
 - (b) give a copy of the minutes of all its meetings to the main tender board of the procuring entity;
 - (c) seek advice from the main tender board and procurement management unit on all matters relating to public procurement and disposal of public assets by tender;
 - (d) request the main tender board and procurement management unit to act on its behalf on matters requiring liaison with the Authority or any other body.
- (5) An accounting officer shall not delegate any of the following functions of procurement management unit to a sub-division of the procuring entity:
- (a) preparing reports required for submission to the tender board or accounting officer;
 - (b) providing overall guidance on procurement development within the procuring entity;
 - (c) making recommendations to the accounting officer in respect to delegation of functions;
 - (d) coordinating the procurement and disposal activities of all the departments of the procuring entity;

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- (e) maintaining a list or register of all awarded contracts;
- (f) planning and managing all procurement and disposal by tender process of the procuring entity.

(6) An accounting officer may revoke the delegation of the authority through written instructions to the holder of the delegated function in the case-

- (a) the holder of the delegated functions is not complying with the Act, these Regulations, guidelines made under the Act and conditions of the delegation;
- (b) the circumstances prompting the delegation have changed;
- (c) a malpractice is alleged, proved or suspected; or
- (d) of any other justifiable reason.

Contracting
out to
another
procuring
entity

49.-(1) Subject to the provisions of the Act, an accounting officer may contract out entire procurement or disposal by tender process to another procuring entity:

- (a) where the procuring entity is unable to comply with the Act, these Regulations or guidelines due to its size or any other factor;
- (b) where the accounting officer decides that it would be more economical or efficient to contract out the function; or
- (c) in any other reasonable circumstance.

(2) The accounting officer may contract out limited procurement or disposal by tender function to another procuring entity where-

- (a) other procuring entity has specialized knowledge, expertise or experience in the subject matter of the procurement or disposal by tender;
- (b) a requirement is subject to common procurement or disposal by tender;

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- (c) a project is being jointly implemented;
 - (d) it would be more economical or efficient to contract out a requirement; or
 - (e) any other reasonable circumstances.
- (3) Where the procurement or disposal by tender function is contracted out to another procuring entity, the accounting officers of the two procuring entities shall agree on-
- (a) any function that may be excluded from the contract in the case of entire contracting out;
 - (b) the type of requirements or projects to be subject of the contract, in the case of limited contracting out;
 - (c) the mechanism for implementation of a procurement or disposal by tender requirement;
 - (d) reporting, monitoring, procedures and responsibilities;
 - (e) any limitations or exceptions to the contract ; and
 - (f) any costs to be paid.
- (4) An agreement for contracting out shall be confirmed in writing and signed by the accounting officers of the two procuring entities.
- (5) Where a limited procurement or disposal by tender requirements are contracted out to another procuring entity, the institutional arrangements for the approval of the requirements shall be agreed upon by the accounting officers, but may include-
- (a) approval of the tender board of the procuring entity initiating the requirements;
 - (b) approval of the tender board of the procuring entity to which the procurement has been contracted;
 - (c) a requirement that a representative of the initiating tender board may observe or participate in the meetings of the tender board to which the procurement is contracted;

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- (d) a requirement for approval by a joint tender board established by both procuring entities
- (6) The procuring entity shall furnish the Authority with the copy of the contract entered between the two entities.

Contracting
out to
procurement
agent

50.-(1) A procuring entity may procure the services of a procurement agent to undertake any or all of those procurement or disposal functions which would otherwise be carried out by that entity if the procurement functions are carried out in conformity with the Act and in accordance with these Regulations.

(2) A procuring entity may contract out any of the following procurement and disposal by tender functions of a procuring entity to a procurement agent:

- (a) advising user department on an individual procurement or disposal by tender methods or practice;
- (b) recommending appropriate procurement and disposal methods;
- (c) preparing:
 - (i) a statement of requirements or terms of reference;
 - (ii) solicitation documents and any clarifications or amendments;
 - (iii) contract documents;
 - (iv) contract amendments;
 - (v) receiving bids;
 - (vi) coordinating bid openings; and
 - (vii) managing the bid evaluation process.

(3) A procuring entity may contract out the following contract management functions of a user department to a procurement agent:

- (a) administering and managing contracts;
- (b) reporting to the procurement management unit any departure from the terms and conditions of the awarded contract;
- (c) preparing change orders in accordance with the

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terms and conditions of the contract; or

(d) certifying invoices for payment to consultants.

(4) A procuring entity shall-

(a) be responsible for instructing any procurement agent that may be appointed to observe the relevant provisions of the Act and of these Regulations; and

(b) authorise a procurement agent to act on its behalf to ensure that any procurement is reviewed and authorised by the appropriate approving authority before any contract is placed.

(5) The procurement agent shall, on behalf of the procuring entity, comply with the procurement procedures prescribed in these Regulations including the use of standard tender documents and guidelines issued by the Authority.

(6) Where the procurement, disposal by tender or contract management function is contracted out to a procurement agent, the accounting officer and the procurement agent shall enter into an agreement specifying-

(a) type of requirements or projects to be subject of the contract;

(b) the mechanism for implementation of a procurement, disposal by tender or contract management functions;

(c) the mechanism for reporting, monitoring procedures and responsibilities;

(d) any limitations or exceptions to the contract ;
and

(e) the payment conditions for any costs involved.

(7) An agreement for contracting out shall be confirmed in writing and signed by the accounting officers of a procuring entity and the procurement agent or their duly authorized representatives.

(8) A procuring entity shall not contract out both the procurement and disposal by tender functions and the contract management functions to the same procurement agent where

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potential conflict of interest is likely to arise.

(9) The functions of the accounting officer and the tender board shall not be contracted out to a procurement agent.

(10) The procuring entity shall furnish the Authority with a copy of the contract entered between the procuring entity and the procurement agent.

Disagreement between the Accounting Officer and the Tender Board

51. Where the accounting officer disagrees with the decision of the tender board regarding application or interpretation of any procurement method, process or practice by tender under these Regulations, the accounting officer shall-

- (a) return the decision to the tender board for review giving written reasons for the dissatisfaction; and
- (b) where the accounting officer is not satisfied with the outcome of the review, request for an independent review by the Authority stating the reasons for disagreement.

Disagreements between the Tender Board and the procurement management unit

52.-(1) Where a tender board disagrees with the recommendations of the procurement management unit, the tender board shall return the submission to the procurement management unit for review and shall, in addition, give reasons, in writing, for such decision.

(2) Where the tender board is dissatisfied with an outcome of the review, the chairperson of the tender board shall refer the matter to the accounting officer for further review.

(3) Where the tender board disagree with the outcome of the review by the accounting officer, the tender board shall refer the matter to the Authority for directives.

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Disagreements between the procurement management unit and the user department

53.-(1) Where a procurement management unit disagrees with the user department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the two parties may jointly consult any two members of the tender board for review and guidance in resolving the disagreement.

(2) Where the review under sub-regulation (1) fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the tender board for its formal decision.

Disagreements between the procurement management unit and the evaluation committee

54.-(1) Where the evaluation and preparation of the report is not conducted in accordance with evaluation guidelines, the procurement management unit shall return the evaluation report to the evaluation committee for re-evaluation.

(2) Where the re-evaluation fails to resolve the disagreement or, where procurement management unit disagrees with the evaluation committee on any other matter pertaining to the evaluation report, the procuring management unit shall refer the matter to the tender board for decision.

(d) Approving authority of procurement and disposal by tender

Approval of procurement

55.-(1) Any procurement by a procuring entity shall be authorised by an accounting Officer.

(2) The procurement management unit shall, before inviting tenders, furnish to the tender board for its approval, the text of the invitations to tender and the specifications or the expression of interest and terms of reference, other tender or proposal and draft contract documents together with a description of the advertising procedure to be followed for the tender or proposal, and shall make such modifications in the said documents or procedures as the tender board shall direct.

(3) Any further modification of the tender or proposal documents shall require the tender board's approval before it is issued to the prospective tenderers.

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(4) Where tenders are received and evaluated, the procurement management unit shall furnish to the tender board, within fourteen day for its review, a detailed report on the evaluation and comparison of the tenders or proposals received together with the recommendations for award and such information as the tender board may request.

(5) The tender board shall, if it determines that the intended award would be inconsistent with the Act or these Regulations, promptly inform the procurement management unit and state the reasons for such determination.

(6) In cases where pre-qualification is required, the procurement management unit shall, before pre-qualification is invited, inform the tender board the procedure to be followed, and shall introduce such modifications in such procedure as the tender board shall direct.

(7) The list of pre-qualified tenderers, together with a statement of their qualification and of the reasons for the exclusions of any applicant for pre-qualification, shall be furnished by the procurement management unit to the tender board for the approval of the recommendation and the tender board shall advise the accounting officer to approve the list before the applicants are notified of the procuring entity's decision.

(8) Subject to sub-regulation (7), the procurement management unit shall make additions, deletions or modifications in the list as the tender board may direct except where the tender board determines that such modifications are in contradiction with the provisions of the Act and these Regulations.

Tender
opening
ad hoc
committee

56.-(1) The public opening of tenders shall be attended by-

- (a) the secretary of the tender board who shall be the chairperson;
- (b) not more than two staff from the procurement management unit who shall be the secretariat;
- (c) one co-opted member from any user department

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- or unit within a procuring entity; and
- (d) the tenderers or their representatives.
- (2) The co-opted member shall not be a member of the tender board.

Approval by
tender
boards

57.-(1) Tender documents shall be issued with the approval of the appropriate tender board, which shall examine the draft tender documents before approving the issue of the tender.

(2) A tender board shall establish a time and place for the return of the tenders which shall be specified in the tender documents.

(3) The tender board shall review the evaluation and recommendation made by the procurement management unit and may either-

- (a) approve the recommendation and authorise acceptance of the tender and award a contract in the form specified in the tender documents; or
- (b) refuse to authorise recommendation for award of the tenders and refer the evaluation back to the procurement management unit with the reasons for re-evaluation of the tenders, re-tendering or other action.

Approval
through
circular
resolution

58.-(1) A decision of the tender board may be made by the tender board without convening a meeting through a circular resolution pursuant to the guidelines issued by the Authority.

(2) For purpose of this regulation, “a circular resolution” means issuance of the tender board’s decision without a meeting by circulation of the relevant papers among members of the tender board for approval, and the expression of the views of the majority in writing.

(3) Notwithstanding sub-regulation (2), any member of a tender board is entitled to require the decision be deferred and the subject matter be considered at a meeting of the tender board.

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(4) Half of the members of the tender board shall form a quorum of the decision of the tender board through circular resolution.

Vetting of
contracts by
the Attorney
General

59.-(1) Any formal contract arising out of the acceptance of tender whose value is fifty million shillings or more shall be vetted by the Attorney-General before the contract is signed by the parties.

(2) Subject to sub-regulation (1), a contract whose value is fifty million shillings and above, which is not vetted by the Attorney General shall be void.

(3) The accounting officer shall, within three working days after being notified by the tender board of its award decision, submit to the Attorney General the draft contract for vetting.

(4) The Attorney General shall, within twenty one working days upon receiving the draft contract from the accounting officer, vet the draft contract and provide comments to the accounting officer, if any.

(5) The accounting officer shall, upon receiving the comments on the draft contract from the Attorney General, incorporate them in the draft contract.

Ratification
of contracts
by Legal
Officer of a
procuring
entity

60.-(1) Any formal contract arising out of the acceptance of tender and whose value is below fifty million shillings shall be vetted by a legal officer of a procuring entity before it is signed by the parties.

(2) A legal officer of a procuring entity shall within fourteen working days upon receiving the draft contract from the accounting officer, vet the draft contract and provide comments to the accounting officers, if any.

(3) Without prejudice to sub-regulation (1), a legal officer may seek for an advice of the Attorney General in respect of the contract required to be vetted by that legal officer.

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Contract
alteration
and
amendment

61.- (1) Any amendment to the contract that may change the original terms and conditions of such contract shall be prepared by the procurement management unit in consultation with the user department before it is submitted to the tender board for approval.

(2) A contract amendment shall not be issued to a tenderer prior to-

- (a) obtaining approval from a tender board;
- (b) commitment of the full amount of funding of the amended contract price over the required period of the revised contract; and
- (c) obtaining approval from other relevant bodies including the Attorney General.

(3) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(4) A contract amendment shall not increase the total contract price by more than fifteen percent of the original contract price without the approval of budget approving authority.

Validity of
procurement
authorisation

62.-(1) Where an approval to award a contract and to enter into a written contract is issued but the procuring entity is unable to conclude the contract with the approved tenderer, the approval given shall be valid for ninety days and the procuring entity may, after ensuring that the value of the product or the scope of service or works is not varied significantly with the original submission, extend the validity period for ninety days without changing the terms and conditions of the original contract.

(2) The provision of sub-regulation (1) shall apply where the approved tenderer has-

- (a) agreed to extend the tender validity period pursuant to regulation 192; and
- (b) not been notified of the award of contract.

(3) Where the approval granted by a tender board expires and the approved tenderer has not been notified of the

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award of contract-

- (a) all tenders or proposals received shall be rejected; and
- (b) the procurement proceedings shall be annulled and new tenders or proposals shall be invited from at least all who submitted tenders or proposals in the first instance and the new ones.

(e) Procedures for conducting Emergency Procurement

Emergency
procurement

63.-(1) Subject to the provisions of the Act, where public interest demands the emergency procurement of any goods, services or works, the accounting officer shall-

- (a) evaluate the need for the emergency procurement and decide the preferred procurement method in order to guarantee economy and efficiency;
- (b) ensure the criteria prescribed under section 65 (2) of the Act are complied with;
- (c) identify, specify and prioritize the immediate procurement activities which may be used in the period of the emergency;
- (d) where possible, identify other government bodies that can provide immediate assistance; and
- (e) specify the time frame within which the emergency procurement will be undertaken.

(2) Upon satisfying the requirements under sub regulation (1), the accounting officer shall submit such information to the Agency for approval pursuant to section 65(3) of the Act and shall, in addition, serve a copy of the information to the Authority.

(3) After receiving an application from the accounting officer pursuant to sub regulation (2), the Agency shall consider the merits of the application and grant approval within five working days.

(4) Once the approval is obtained, the accounting officer shall proceed to procure the goods, works or services in accordance with the method of procurement selected and

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pursuant to section 65 (6) of the Act.

(5) In a situation where an application for approval for emergency procurement is impracticable, the accounting officer may proceed with the emergency procurement in accordance with the chosen procurement method and shall immediately notify the Agency and the Authority.

(6) Subject to sub regulation (5), the accounting officer shall submit an application to the Paymaster General for retrospective approval within seven working days from the date of award.

(7) In the application referred to in sub regulation (6), the accounting officer shall state the circumstances which precluded him from complying with sub regulation (2) of this regulation.

(8) Upon receipt of an application for the retrospective approval, the Paymaster General shall seek for the advice of the Authority.

(9) Subject to sub regulation (8), the Authority shall, in collaboration with the Government Assets Management Department and the department responsible for technical audit of the Ministry responsible for finance or, where necessary, with any other competent body, advise the Paymaster General on the appropriate action to be taken.

(10) Where the Paymaster General acts upon the advice given under sub-regulation (9), he shall not be held personally liable for his actions.

Report on
Emergency
Procurement

64.-(1) The accounting officer shall, within fourteen days after completion of the procurement process, prepare and submit a report on emergency procurement to the Paymaster General, the Authority, the Controller and Auditor General, Internal Auditor General and the Agency.

(2) The report under sub-regulation (1) shall be in the format prescribed in the guidelines issued by the Authority.

Prohibition
to Tender
Board

65. A tender board shall not grant retrospective approval for emergency procurement.

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Application
of
Emergency
Procurement

66.- (1) A procuring entity shall not use an emergency procurement method if-

- (a) goods or services fall under common procurement arrangement; or
- (b) the specific event was anticipated and planned.

(2) Notwithstanding sub-regulation (1), where the procurement is reasonably and justifiably necessary, and is inadvertently not included in the annual procurement plan but is within the authority of the accounting officer to approve reallocation within the procuring entity's budget, the value of such procurement shall not exceed the limits for minor and micro values prescribed in the Sixth and Tenth Schedules to these Regulations.

Liability of
Accounting
Officer

67.-(1) Subject to regulation 63 (6), where it is proved that-

- (a) the accounting officer has engaged in unnecessary or extravagant procurement; or
- (b) the procurement was undertaken by lack of foresight or timely action, the accounting officer shall be liable to disciplinary action and shall, in addition to any penalty imposed on him, be ordered to pay the difference between the actual cost of the procurement and what the costs would have been through the appropriate channels.

(2) An award of a contract made by an accounting officer and not approved retrospectively shall be valid and the accounting officer who approved it shall be responsible for the payment of the price involved.

(f) Procurement and disposal planning and financial controls

Planning
implementati
on

68.-(1) Planning for implementation shall involve preparation of a project work plan and identifying the resources necessary to carry out the various project activities.

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(2) Proper planning of procurement of recurrent items shall be based on an adequate stock control system.

(3) The timescale for each procurement shall be calculated on the basis of the standard processing times prescribed in the Eighth and Twelfth Schedules to these Regulations, allowing any necessary margin for delays in transmission of documents or clarification of tenders or proposals.

(4) Subject to sub-regulation (3) the commencing dates and critical points in the procurement process shall be set out in the procurement plans.

Procurement
Planning

69.-(1) Procurement planning shall commence at the design stage during the identification and preparation stages of the project cycle.

(2) A procuring entity shall take a strategic decision whether or not the most economic and efficient procurement can best be achieved by separating contracts for each component.

(3) A procuring entity shall forecast its requirements for goods, services and works as accurately as is practicable with particular reference to services or activities already programmed in the annual work plan and included in the annual estimates.

(4) Subject to sub regulation (3) the forecasts shall include an estimate of the optimum time to the nearest month of performance and completion of services.

(5) The estimate of such requirements shall be compared with the likely availability of voted or donor funds so that priorities for procurement may be determined in accordance with available funds.

(6) The procuring entity shall prepare its estimates based on prevailing market prices as provided by the Authority and updated from time to time.

(7) A procuring entity shall draw up procurement plans for those requirements for which sufficient funds have been included in the approved budget in the current financial

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year or if payment will be due in subsequent financial year, such payment have been budgeted for.

(8) In compiling such plans, a procuring entity shall establish the appropriate method of procurement to be employed for each requirement.

(9) Approval of the accounting officer shall be obtained either by inclusion of that procurement in a procurement plan or by request as an individual item of procurement when not included in the procurement plan.

Timeframe for preparation and submission of annual procurement plan

70. A procuring entity shall prepare its annual procurement plan as part of budget process and submit the plan to the Authority within fourteen days after the completion of the budget process.

Procedures for submitting a tender for packages or lots

71.- (1) In considering how a project may be carried out, account shall be taken of the advantage, for economic and technical reasons, of dividing the project into homogeneous lots or packages which are as large as possible.

(2) Where procurement is divided into packages, the size of the package should be appropriate so as to foster maximum competition and obtaining the most economic contract.

(3) Where similar items of equipment are to be procured for several sub-components in a project or for several projects, it may be convenient to combine them all into one procurement package in order to achieve economies of scale.

(4) Where a project is divided into lots or packages, the instructions to tenderers shall state-

- (a) the number of lots or packages;
- (b) the nature, location and size of each lot; and
- (c) where appropriate, the minimum and maximum number of lots or packages for which a tenderer may tender.

(5) The procedure for submitting a tender for package

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tenders shall be as follows:

- (a) tenderer may submit a tender for each lot or package;
 - (b) unless the instructions to tenderers provide otherwise, a tenderer may include, in his tender, the overall rebate he would grant in the event of amalgamation of some or all of the lots or packages for which he has submitted individual tenders;
 - (c) unless the instructions to tenderers state that lots or packages apportioned to the same tenderer shall form a single contract, each lot shall form a separate contract;
 - (d) where lots or packages are to be apportioned to different tenderers, the invitation to tender document or the instructions to tenderers may provide that the tenderer for a particular lot or packages shall ensure the coordination of the execution of all the lots or packages.
- (6) For purposes of maximising participation in such tenders, tenderers may be permitted to submit tender in separate lots but required to tender for all items in a lot, or individual contracts or a combination of contracts for works or services.

Aggregation
of
requirements

72.-(1) For purposes of maximizing economy and efficiency in its procurement or disposal process, a procuring entity may group goods, works or services of a broadly, similar or related nature, or pool assets for purposes of common disposal into a single tender or number of tenders of a size and type that may be likely to attract a reasonable number of tenderers if such grouping is practicable and may not cause unreasonable delay in the procurement or disposal process.

(2) Where several services to be procured require coordination or collective responsibility of the consultants, a procuring entity shall group these services and seek to employ

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a single consultant for the performance of those services.

(3) The requirements to be debited to different vote sub-heads shall only be combined into one tender if all costs of the procurement can be easily identified and separately debited.

(4) The tenders or proposals under sub-regulation (3) shall be received and opened by the same deadline and evaluated simultaneously with a view to determine the tender or proposal or combination of tenders or proposals that offers the lowest evaluated cost, or the highest evaluated price.

(5) Assets to be disposed of shall be grouped into contracts or lots in a manner that attracts maximum possible competition.

Prohibition
of splitting
tenders and
contracts

73.-(1) A procuring entity shall not divide its procurement into separate contracts for the purpose of avoiding international or national competitive tendering or selection.

(2) The accounting officer of a procuring entity proved to have divided its procurement in contravention of sub-regulation (1) shall be personally liable in accordance with section 104 of the Act.

(3) Notwithstanding the provisions of sub-regulations (1) and (2), a procuring entity shall be allowed, with prior approval of the Authority, to split contracts to enable participation of local firms or persons.

Establishment
of
contract
period

74.-(1) The contract period allowed shall be a realistic assessment of the time in which a reasonable tenderer could be expected to complete delivery of the goods, complete the works, or complete providing the services, having regard to the desired completion date and the locality.

(2) Where the circumstances dictate a shorter than desirable contract period, the prospective tenderers shall be notified of this requirement in the documents.

(3) For particular types of contracts and particular weather conditions, sufficient time shall be allowed for

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seasonal changes.

(4) Where, after the preparation of tender or proposal documents, there is delay for any reason in inviting tenders or proposals, the contract period allowed for completion shall be reviewed immediately prior to invitation for tenders or proposals.

Commitment
of funds

75.-(1) Procuring entities shall ensure that funds are allocated or committed before commencing procurement proceedings.

(2) Notwithstanding the provision of sub-regulation (1), the procuring entity may commence procurement proceedings for scheduled or routine activities if the procuring entity is certain of funds availability in its budget for such activities.

(3) Where the contract extends over several years, an allocation of funds may be issued annually so that the total amount issued does not exceed the contract price plus a percentage for price and physical contingencies, unless specific approvals are obtained for additional work and cost price increase.

Selection of
a method of
procurement

76. Except as otherwise provided for by these Regulations, a procuring entity engaging in procurement of goods, works, services, non-consultant services or public private partnership, and disposal of public assets by tender shall do so by means of competitive tendering.

Procurement
procedures
of the
Authority
and Appeals
Authority

77.-(1) Procurement activities of the Authority and of the Appeals Authority other than minor and micro value procurement shall be contracted out to the Agency.

(2) Where a procurement or disposal by tender function is contracted out to the Agency, the accounting officer of the Authority or the Appeals Authority, shall respectively enter into the agreement with the Agency specifying-

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- (a) the functions that are subject of the agreement;
- (b) the reporting and monitoring procedures and responsibilities;
- (c) any limitations or exceptions to the agreement;
- (d) rights and obligations of the parties to the agreement;
- (e) any costs to be paid; and
- (f) the mechanism for implementation of a procurement plan on respective procurement or disposal by tender requirement.

(3) The procurement or disposal contract shall respectively be entered in writing between the accounting officer of the Authority or the Appeals Authority and the successful tenderer.

(4) The Agency shall be responsible for the whole process during the tender preparatory stage prior to contract signing of the awarded tender.

(5) The Accounting Officer of the Authority and the Appeals Authority shall respectively be responsible for the execution of the awarded contract.

(6) Complaints or disputes between the Agency and tenderers arising out of the procurement proceedings shall be resolved in accordance with the procedures prescribed in the Act.

(g) Prohibition

Fraud and
corruption

78.-(1) Procuring entities, tenderers and procurement agents under public financed contracts shall proceed in a transparent and accountable manner during the procurement or disposal process and execution of contracts.

(2) A procuring entity and a tenderer shall, in any tender for public contracts, not engage in fraud and corruption including bribery in competing for and executing a contract as per memorandum provided in the Third Schedule to these Regulations and shall abide with the laws of the country.

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Improper
inducement

79.-(1) Procuring entities and tenderers shall take measures reasonably within their power to ensure that:

- (a) no part of any payment made in connection with a procurement or disposal contract is received directly or indirectly by or for the benefit of a public officer with decision making responsibility or influence, or of their relatives or business associates;
- (b) subcontracts and purchase orders relating to a procurement contract transactions are not used as a device to channel payments or other benefits directly or indirectly to or for the personal benefit of public officers with decision making responsibility or influence, or of their families relatives or business associates;
- (c) any commission or remuneration paid to any agent, consultant or other intermediary represents no more than appropriate compensation for legitimate services, and that no part of any such payment is passed on by an agent, tenderer or other intermediary as an improper inducement in contravention of these Regulations.

(2) Procuring entities, approving authorities and tenderers shall take appropriate measures to ensure that agents, consultants and other intermediaries are not employed to gain any improper influence in connection with obtaining or retaining any business.

(3) A procuring entity shall not include in any tender document or request for proposal any condition or specification such as to favour any one tenderer.

(4) Any member of a procuring entity shall declare any interest that they may have in any tenderer and shall neither take part in, nor influence, in any way, any procurement or disposal proceedings in which a tenderer is involved or liable to be involved.

(5) A member of staff or an officer of the procuring entity shall be disqualified for being nominated for, or

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appointed or being a member of a tender board if such member or officer, or any partnership in which he is interested, enters into or has entered into any contract in force with any public body for the supply of any goods, the provision of any service, non-consultant service, the execution of any work, the acquisition of any public asset by tender or any other contract in which such member or his firm has any financial interest.

(6) Any effort by a tenderer to influence the procuring entity in the processing of tenders or award decisions may result in the rejection of his tender.

(7) Any tender proved to have been awarded on the basis of inducement shall be revoked and shall be reported to the Authority and any other competent authorities for necessary actions.

(8) A tenderer whose tender or proposal is rejected or revoked on the grounds of inducement, corrupt, fraudulent, collusive, coercive or obstructive practices shall not be able to qualify or pre-qualify in any procurement or disposal proceeding during the ten years following the date of the notice of such rejection or revocation.

(9) The Authority shall notify all procuring entities of tenderers whose tenders or proposals have been rejected pursuant to sub-regulation (8).

Disability of members of the procuring entity and members of the approving authority on account of interest in contracts

80.-(1) Where a member of the procuring entity or a member of an approving authority has any pecuniary interest, direct or indirect, in any tender, contract, proposed contract or other matter and is present at a meeting of the procuring entity at which the contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

(2) A member of a procuring entity or a member of an approving authority who has disclosed an interest in accordance with this regulation shall immediately retire from

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the meeting.

(3) A person who contravenes the provisions of this regulation commits an offence and shall be liable in accordance with the provisions of section 104 of the Act unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

Pecuniary interests

81.-(1) For the purposes of regulation 80 and subject to sub-regulations (2) and (3) of this regulation, a person shall be considered, as having indirectly a pecuniary interest in a contract, proposed contract or other matter if-

- (a) he or his nominee is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

(2) Sub-regulation (1) shall not apply to membership of, or employment under, any public body and a member of a company or other body shall not, by reason only of his membership, be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.

(3) In the case of married persons, the interest of one spouse shall, if known to the other, be considered, for the purposes of regulation 80, to be an interest of the other.

General notices and recording of disclosure information

82.-(1) A general notice given in writing to the accounting officer, in case of an employee of the procuring entity to the effect that he or his spouse is a member or is in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, shall, unless the notice is withdrawn, be

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considered to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body, or to that person which may be the subject of consideration after the date of the notice.

(2) The accounting officer, in the case of an employee of the procuring entity, shall cause to be recorded in a book to be kept for the purposes, particulars of any disclosure made under regulation 80 and of any notice given under these Regulations, and the book shall be open at all reasonable time for inspection by any member of the public.

Prohibition
of running
contracts

83.-(1) A procuring entity shall not invite, accept or place a running contract for the supply of goods, for provision of services or for the execution of works.

(2) The Authority shall issue guidelines in the case of necessity to carry out running contracts.

Non
anticipation
of contracts

84. Acceptance of any tender shall not be anticipated, and orders shall not be placed or an inception report shall not be prepared until the necessary approval is received from the appropriate approving authority.

Tampering
with
submitted
tenders

85.-(1) A person shall not-

(a) open an envelope or other container in which a tender is contained, other than in the due and proper execution of his duties under these Regulations,

(b) burn, tear or otherwise destroy any tender; or

(c) erase or do any other act which falsifies or renders incomplete or misleading any tender.

(2) A person who is proved to have contravened sub-regulation (1) shall be personally liable in accordance with section 104 of the Act.

(3) For the purposes of this regulation, “tender” includes documents or things submitted together with the tender and which are relevant to the tender and which are in the possession of a, procuring entity or any other person.

(h) *Monitoring by the Authority*

Monitoring within the procuring entity

86.-(1) The head of internal audit unit of each public body shall prepare and submit to the accounting officer a quarterly audit report which shall include a report on whether the Act and these Regulations have been complied with.

(2) After receiving the report under sub-regulation (1), the accounting officer shall, within fourteen days, submit to the Authority a copy of such report.

(3) Upon receiving the report, the Authority may, if it considers necessary, require the accounting officer to submit a detailed report on any procurement implemented in violation of the Act and these Regulations for review and necessary action.

(4) Upon the request by the Authority, the accounting officer shall submit the requested report within fourteen days after receiving the request.

(5) The report under this regulation shall be in the format prescribed by the Authority.

Continuous monitoring

87.-(1) For the Authority to continuously monitor procurement activities and contract implementation, procuring entities shall submit to the Authority annual procurement plans, information on tender notices, invitations for quotations, request for proposals, contract award, contract termination and monthly, quarterly and annual procurement implementation reports in the prescribed format and through systems developed by the Authority.

(2) Procuring entities shall submit to the Authority-

- (a) annual procurement plans not later than fourteen days after their approval by appropriate budget approving authorities;
- (b) information on tender, quotation invitations and request for proposals within seven days after the invitation or request;
- (c) monthly and quarterly procurement

implementation reports within seven days after the end of the respective month or quarter; and

- (d) annual procurement implementation reports within thirty days after the end of the respective financial year.

(3) The accounting officer shall-

- (a) not later than seven days after the award of contract resulting from an emergency procurement, direct contracting or single source selection, submit a detailed report to the Authority of the procurement process in the format prescribed by the Authority;
- (b) within thirty days from the date of award, notify the Authority the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made;
- (c) inform the Authority, not later than fourteen days from the date of terminating any contract, giving details of measures taken by the procuring entity before terminating the contract;
- (d) not later than seven days after issuing the instruction to amend, alter or vary any procurement contract, submit a report to the Authority of any amendment, alteration or variation of a procurement contract giving details on the reasons, cost implication and approvals.

(4) The accounting officers of procuring entities and the chief executive officer of the Appeals Authority shall submit to the Authority not later than fourteen days after issuing their decisions, copies of the decisions concerning complaints or disputes in procurement proceedings.

(5) The Authority may, upon receipt of reports of findings from the accounting officer or decision of the

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Appeals Authority, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of the Act.

Procurement
, contract
and
performance
audits

88.-(1) Subject to the criteria as may be prescribed by the Authority, the Authority may, at any time and where circumstances requires, select a procuring entity, project, or contract for audit.

(2) Before the audit, the Authority shall inform the relevant procuring entity on the intention, objectives and compliance indicators to be used for the audit.

(3) For the purpose of enabling the Authority to efficiently carry out the audit, procuring entities shall make available all the documents requested for the audit in a timely manner.

(4) For ease of procurement information retrieval, procuring entities shall be required to keep procurement records in a proper manner as prescribed in the Procurement Records Guideline prepared by the Authority.

(5) Upon completion of the audit and before issuing the final audit report, the Authority shall submit, in writing, the audit findings to the audited procuring entity.

(6) A procuring entity shall submit to the Authority detailed responses to the audit findings within fourteen days of receiving the audit findings.

(7) After approval by the appropriate committee of the Board, the Authority shall submit the audit report to the procuring entity together with recommendations of the Authority.

Procurement
investigation

89.-(1) The Authority shall conduct investigation on any matter it considers necessary or desirable or on any submitted application for retrospective approval or any matters stipulated in the Act.

(2) The budget approving authority may submit to the Authority a request to carry out investigation on any

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procurement if it is not satisfied with the implementation of any procurement or disposal in the organization.

(3) Subject to the provisions of the Act, the Authority may 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, to furnish information and produce any document under his control and such information shall be submitted within seven days from the date of the request.

Cooperation
with other
authorities

90. In the course of, or after conducting an investigation, or procurement, contract and performance audit, the Authority may cooperate with the law enforcement organs, and for that purpose the Authority may establish a mechanism for sharing of information relating to the investigation or procurement, contract and performance audit, or enforcing the findings.

Actions to
be taken in
the course of
monitoring
procurement
activities

91.-(1) The Authority shall, after conducting an investigation or procurement, contract and performance audit, produce a written report containing its findings and recommendations to the competent authority.

- (2) The recommendations may include the-
 - (a) disciplining of the accounting officer, chairman or member of the tender board, the head of procurement management unit, a member of the tender evaluation committee or any other officer concerned with the procurement process;
 - (b) replacement of the head of procurement management unit, the chairman, or any member of the tender board, as the case may be;
 - (c) termination of the procurement proceeding;
 - (d) rectification of the contravention by taking such actions as may be necessary to rectify the same;
 - (e) suspension of the officer concerned to participate in procurement related activities for a specified period.

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Response
and
implementati
on of
Authority's
recommenda
tions

92. The competent authority shall respond in writing to the recommendations of the Authority within fourteen days from the date of receipt of the recommendations indicating the actions to be taken and shall, in addition, prepare and submit to the Authority a report on implementation status within three months from the date of receiving the recommendations.

(i) Debarment from participating in public procurement

Initiation
and grounds
for
debarment

93.-(1) Debarment proceedings may be initiated by the Authority as a result of audit or investigation conducted by the Authority or where a debarment proposal is submitted to it, by any person.

(2) Any debarment by a procuring entity shall be pursuant to section 83 of the Act.

(3) Subject to the provisions of the Act, a tenderer shall be debarred from participating in public procurement or disposal proceedings if-

- (a) corrupt, fraudulent, collusive, coercive or obstructive practices or inducement is established against the tenderer, in which case he shall be barred for a period of ten years;
- (b) the tenderer fails to abide with a bid securing declaration, in which case he shall be barred for a period of not less than six months and not exceeding two years;
- (c) it is established that the tenderer fails to implement a procurement or disposal contract, in which case he shall be barred for a period of not less than one year and not exceeding five years;
- (d) the tenderer makes false representation about his qualification during tender proceedings, in which case he shall be barred for a period of not less than one year and not exceeding five years;
- (e) the tenderer is declared ineligible by a procuring entity to participate in public procurement or disposal in accordance with section 83 of the Act.

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(4) Where a tenderer is barred from participating in public procurement or disposal on grounds other than those specified in sub-regulation (3), the period of debarment may be determined by the Authority depending on the gravity of the offence.

Procedures
for
debarment

94.-(1) A person who wishes to submit a proposal for debarment of a tenderer to the Authority shall do so within twenty eight days of becoming aware of the circumstances or grounds which give rise to the debarment.

(2) Where a procurement proceeding is in progress, a proposal for debarment may include a recommendation that the potential tenderer be suspended from participating in procurement pending the determination of debarment proposal.

(3) A recommendation for debarment as a result of audit or investigation by the Authority or a debarment proposal submitted pursuant to sub-regulation (1) shall specify-

- (a) the name and address of the potential tenderer recommended for debarment;
- (b) the grounds for the proposed action;
- (c) factual record which include all evidences, information and documents; and
- (d) any other information or documents in the possession of, or known to, the person submitting the debarment proposal.

Inquiries by
the
Authority

95.-(1) The Authority may require any public body or person to produce information, documents or any evidence concerning possible grounds for debarment of a potential tenderer.

(2) A public body or a person required under sub-regulation (1) to produce information, documents or evidence, shall produce the documents or evidence within fourteen days from the date of receiving the request.

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Issuance of
notice of
debarment

96.-(1) Where the Authority determines that there are grounds for debarment on the basis of the produced information, documents and evidences, the Authority shall, within twenty one days from the date of receiving the evidence, issue to the respective tenderer a notice of debarment.

(2) The notice of debarment shall inform the tenderer of the facts constituting grounds for the proposed debarment.

(3) The notice shall require the tenderer to make written representation showing cause why he should not be debarred from participating in public procurement for a period specified pursuant to the Act and these Regulations.

(4) The tenderer shall respond to the notice referred to in sub-regulation (3) of this regulation within fourteen days from the date of receiving the notice.

(5) Any representation made under sub-regulation (3) shall contain a certificate signed by the tenderer that the information contained in the representation is true to the best of the knowledge of such tenderer.

Suspension
pending
completion
of the
debarment
proceedings

97.-(1) Upon receipt of the representation under regulation 96, the Authority may, depending on the circumstances of the case, determine whether or not the tenderer should be suspended from participating in procurement proceedings pending the completion of debarment proceedings.

(2) Where the Authority determines that the tenderer should be suspended in accordance with sub-regulation (1), the Authority shall suspend the tenderer for a period that the Authority may determine or, until the final determination of debarment proceedings.

(3) The Authority may terminate the suspension where it considers that the grounds for the suspension are no longer valid.

(4) Any suspension under this regulation shall remain in effect until a decision on the proposed debarment is taken or where a suspension is terminated pursuant to sub-regulation

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(3).

(5) The Authority shall send a copy of its decision under sub-regulations (1) and (2) to the tenderer and where applicable, to the person who proposed the debarment.

Decision on debarment

98.-(1) The Authority shall decide on the proposed debarment within thirty days-

- (a) from the date of receiving the representation from the tenderer;
- (b) from the date of the decision for suspension where the suspension is determined pursuant to regulation 97(1); or
- (c) after the expiry of the period specified in regulation 96(4).

(2) The period of debarment of the tenderer shall be decided in accordance with regulation 93(3) and (4).

(3) The decision of the Authority shall be in writing and shall include a summary of the findings of fact and reasons for the decision.

(4) The Authority shall send a copy of its decision under sub-regulation (3) to the tenderer and to any other person who has legitimate interest on the procurement in question.

Disclosure of the decision

99. The Authority shall notify procuring entities on the decision made pursuant to regulation 98, and shall publish such decision in the *Gazette*, Journal and Tenders Portal.

Register of debarred and suspended tenderers

100.-(1) The Authority shall maintain a register of all suspended or debarred tenderers which shall, among other things, specify the name and address of each tenderer under suspension or debarment, grounds for suspension or debarment and the period under which the tenderer is on suspension or debarment, as the case may be.

(2) The register shall, at all times during office hours, be made available to the public.

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Effect of suspension or debarment

101.-(1) A tenderer who is blacklisted under these Regulations shall not be permitted to start a new supplies, contracting or consulting firm during that period.

(2) Procuring entities shall not procure from, contract with, or engage a tenderer who is blacklisted from participating in public procurement proceedings pursuant to the Act and these Regulations.

(3) Where a tenderer is debarred under the provisions of these regulations, any person who, at the time of debarment, was concerned with the management of the affairs of the debarred company or firm as director, partner, agent or an officer, shall be barred from participating in public procurement or disposal by tender for the same period.

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

Effect on existing contracts

102. Any suspension or debarment of a potential tenderer under these regulations shall not affect any existing contracts entered into between the tenderer and any public body before the debarment decision except where fraud and corruption is established.

Right to appeal against debarment decision

103.-(1) A tenderer who is dissatisfied with the debarment decision made by the Authority under these Regulations, may appeal against the decision to the Appeals Authority within twenty one days from the date of becoming aware of such decision.

(2) The Appeals Authority shall conduct a hearing of appeal or review in accordance with the rules and procedures made under the Act.

(j) Review of procurement or disposal decisions and dispute settlement

Right to review

104. A tenderer who claims to have suffered or who may suffer any loss or injury as a result of breach of a duty imposed on a procuring entity or an approving authority by the Act or these Regulations may apply for a review in accordance

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with section 95 of the Act.

Submission
of
applications
for review to
the
Accounting
Officer

105.-(1) Any application for administrative review shall be submitted in writing or electronically to the accounting officer of a procuring entity and a copy shall be served to the Authority within twenty eight days of the tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute.

(2) The requirements of sub-regulation (1) shall not apply to complaints submitted in response to the notice of intention to award the contract issued to tenderers pursuant to section 60(3) of the Act.

(3) The application for administrative review shall contain-

- (a) details of the procurement or disposal requirements to which the complaint relates;
- (b) details of the provisions of the Act, Regulations or provisions that have been breached or omitted;
- (c) an explanation of how the provisions of the Act, Regulations or provisions have been breached or omitted, including the dates and name of the responsible public officer, where known;
- (d) documentary or other evidence supporting the complaint where available;
- (e) remedies sought; and
- (f) any other information relevant to the complaint.

(4) The accounting officer of a procuring entity shall not entertain a complaint or dispute or continue to do so after the procurement or disposal contract has entered into force.

Administrati
ve review by
accounting
officer

106.-(1) An accounting officer shall, upon receipt of an application for administrative review-

- (a) suspend the procurement or disposal

proceedings of the tender in dispute, until he delivers a written decision on the complaint; and

- (b) notify all tenderers who participated in the tender, of the complaint and of its substance within three working days of receipt of such application and the tenderers who opt to join in the proceeding shall submit written responses within three working days of receipt of such notification.

(2) Sub-regulation (1) (a) shall not apply where certification has been provided by the procuring entity and accepted by the Authority pursuant to section 100(2) of the Act.

(3) Upon receiving an application for review, an accounting officer shall institute an investigation to consider-

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring entity;
- (c) the information provided by other tenderers; and
- (d) any other relevant information.

(4) The investigation instituted in accordance with sub-regulation (3) may be conducted by a review panel appointed in accordance with section 96(2) of the Act.

(5) In appointing members of a review panel pursuant to sub-regulation (4), the accounting officer shall consider their expertise and experience on the subject matter of the tender.

(6) An accounting officer shall, within fourteen days after receipt of the complaint or dispute, deliver a written decision to a complainant and other tenderers who participated in the proceedings.

(7) The decision of accounting officer shall address fully the tenderer's grounds of complaints and shall indicate-

- (a) whether the application is upheld in whole, in

part or rejected;

(b) the reasons for the decision; and

(c) any corrective measures to be taken;

(8) The accounting officer shall submit a copy of the decision to the Authority within seven days from the date of its delivery.

(9) Where the accounting officer does not issue a decision within the time specified in sub-regulation (6), the tenderer submitting the complaint or dispute shall within fourteen days after such specified time, institute proceedings under section 97 of the Act, and upon instituting such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

(10) Where the complainant is not satisfied with the decision of the accounting officer or, where the accounting officer does not issue a decision within the specified time, the complainant shall submit his complaint to the Appeals Authority within fourteen days from the date of communication of the decision by the accounting officer.

Review by
the Appeals
Authority

107.-(1) Complaints or disputes which-

(a) are not settled within the specified period under regulation 106(6);

(b) are not amicably settled by the accounting officer; or

(c) arise after the procurement contract has entered into force pursuant to section 60(11) of the Act,

shall be referred to the Appeals Authority within fourteen days from the date when the tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under regulation 106 (6) or when the tender become aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to section 97 (3) of the Act.

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(2) In determining procurement or disposal disputes, the Appeals Authority shall be guided by its rules made under section 105 (2) (g) of the Act.

(k) Miscellaneous provisions

Procedure
for
amendment
of standard
contract

108.-(1) Every effort shall be made to utilize as far as possible, the samples of standard contract documents prepared by the Authority.

(2) Any deviation from the use of standard tender documents shall obtain prior written approval of the Authority.

Submission
of contract
documents

109. The Accounting Officer shall ensure that copies of all contracts are sent to the Authority, Attorney General, Controller and Auditor General, Internal Auditor General or Government Asset Management Division as the case may be, and the Tanzania Revenue Authority within thirty days from the date of signing a contract.

Amendment
s after
signature

110.-(1) Once signed, the contract or written agreement shall not be altered, except when an alteration is necessary for the benefit of the procuring entity or when an alteration does not prejudice the procuring entity.

(2) The contract extension which includes the remission or reduction of penalties in favour of the tenderer shall be permitted only in the case of *force majeure* or default or shortcoming on the part of the procuring entity.

(3) The proposed variations such as additions or deductions which are not incidental to or arising out of the contract, and which alter the scope, extent or intention of the contract shall, in every case, be referred to the appropriate tender board for approval before instructions are issued to the tenderer.

(4) The procuring entity shall have no power to authorise additions beyond the scope of the contract without having obtained prior written approval from the Paymaster General or appropriate budgetary approving authority for

additional financial authority to meet the cost of such work.

(5) Where the execution of contract has commenced, the cost increases involving all changes which alter the scope, extent or intention of such contracts shall have the prior written approval of the tender board.

(6) For the purposes of this regulation, “changes in the scope of the contract” includes all changes in the quantity or quality of goods to be supplied, services to be provided or work to be performed by a tenderer with whom a contract has been entered into and such changes shall generally be changes of a policy nature such as an increase in the area of a building or finishing to a higher standard than originally specified.

(7) No changes of a policy nature in the scope of the contract shall be made after a financial authority is granted except where it is considered that the scope of the contract be extended because of a change of circumstances.

(8) Without prejudice to sub-regulation (7), the additional financial authority shall be obtained before the increase in the scope of the contract is committed and ordered.

(9) In the case of works projects carried out under the supervision of the ministry responsible for works on behalf of another ministry or department, all changes requested by a client shall be regarded as changes of a policy nature and the term “changes in the scope of contract” shall be regarded as covering the difference between the price to be paid for the prime cost items or provisional sum items and the allowance included for such items in the contract price.

Time
extension
orders

111.-(1) An order for extension of time may be issued only by the accounting officer, and that the reasons for granting such an order shall be fully documented in the contract implementation records.

(2) The order shall state the section of the general conditions of contract under which it is issued, the duration of the extension and the special circumstances which have been taken into account.

(3) Where, for any special circumstances, an

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extension of time is claimed by a tenderer, the claim for such extension shall be submitted in accordance with the conditions of contract.

(4) The orders for extension of time shall be treated strictly and fairly if the procuring entity is to have reasonable prospects of enforcing liquidated damages and if the tenderer resort to arbitration.

(5) For purposes of avoiding invalidation of the procuring entity's right to impose liquidated damages and claims for time extensions, a tenderer shall not be requested to carry out further work on the contract where the contract completion certificate is issued.

(6) A procuring entity shall ensure that any extra work required is arranged independently of the original contract after the contract is accepted and complete

Liquidated
damages

112.- (1) A procurement entity shall impose on a tenderer, a liquidated damages for undelivered materials or goods, undelivered or delayed services or delayed works.

(2) The rates of liquidated damages per day shall be-

- (a) in the case of procurement of goods or materials, 0.10 to 0.20 percent of the contract value per day of delayed materials or goods, up to a sum equivalent to the amount of the performance guarantee;
- (b) in the case of procurement of works, 0.10 up to 0.15 per cent of the contract value per day up to a sum equivalent to the amount of the performance guarantee; and
- (c) in the case of employment of consultant, 0.10 up to 0.20 percent of the contract value per day up to a sum equivalent to the amount of the performance guarantee.

(3) The liquidated damages rates shall be specified in the request for proposals or tender documents and in the contract, and the maximum amount of the liquidated damages shall be equal to the amount of the performance bond or

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guarantee established in the contract.

Termination
of contract
for
abandoning
works or
services

113.-(1) Where a successful tenderer fails to execute the contract or agreement within the specified time or fails to comply with the contract or agreement without a justifiable and acceptable reason which result into the termination of such contract or agreement, the accounting officer shall refer the matter to the Authority and to the Attorney General for information and appropriate action.

(2) Except with the prior written approval of the Authority, a procuring entity shall not procure from, contract with, or engage a tenderer or firm whose contract is terminated pursuant to sub-regulation (1).

Management
of contracts

114. A procuring entity shall be responsible for the effective management of any procurement of goods, services or works for which it is undertaking and shall-

- (a) monitor the costs and timely delivery of goods and services in the correct quantities and to the quality specified in each contract;
- (b) monitor the progress and timely completion of works in accordance with the terms of each contract;
- (c) take or initiate steps to correct or discipline deviations from observance of contract condition; and
- (d) ensure that the responsibilities imposed on it by the contract are fully discharged.

Public
bodies
participating
in tenders
floated by
public body
or private
entity

115.-(1) A public body which participates in tenders floated by another public body or private entity for purposes of carrying out works contracts or obtaining goods and services shall ensure-

- (a) the economy and efficiency in the use of public funds;
- (b) an approval of budget for the purpose of carrying out works contracts or obtaining goods

- and services; and
- (c) the offer price in such tender is based on current market rates.
 - (2) The offer shall be approved by the accounting officer before it is submitted in response to the invited tender.
 - (3) The accounting officer shall maintain all necessary records on how the offer price was arrived at for inspection by the Authority, Controller and Auditor General or any other body with interest on efficient use of public funds.
 - (4) The accounting officer shall furnish the Authority with the name of the client, date of entering into a contract and contract amount for publication in the Journal and Tenders Portal.

PART III
PROCEDURES FOR PROCUREMENT OF GOODS, WORKS AND
NON-CONSULTANCY SERVICES

(a) Conditions for participation

Qualification
of
tenderers

116.-(1) For the purpose of qualifying to participate in procurement proceedings, a tenderer shall-

- (a) possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, and the personnel to perform the assignment;
- (b) have legal capacity to enter into the procurement contract;
- (c) not be insolvent, in receivership, bankrupt or wound up;
- (d) have fulfilled their obligations to pay taxes and social security contributions and that they abide to employment, environmental, health and safety requirements in Tanzania, where

required;

- (e) not, and their directors or officers have not, been convicted of any criminal offences relating to their profession, or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of ten years preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.

(2) Subject to the right of tenderers to protect their intellectual property or trade secrets, a procuring entity may require tenderers participating in procurement to provide such appropriate documentary evidence or other information as it may consider useful to satisfy itself that the tenderers are qualified in accordance with the provisions of sub-regulation (1).

(3) Any requirement established pursuant to this regulation shall be set out in the pre-qualification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations, and shall apply equally to all tenderers.

(4) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of tenderers other than those provided for in this regulation.

(5) The procuring entity shall evaluate the qualifications of tenderers in accordance with the qualification criteria and procedures prescribed in the pre-qualification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations.

Criterion,
requirement,
procedure
etc not to be
discriminatory

117. Subject to regulations 33(1) and 39(1), the procuring entity shall establish no criterion, requirement or procedure that discriminates tenderers on the basis of their nationality, or that is not objectively justifiable.

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Participation of local and foreign tenderers in procurement proceedings

118.-(1) A local tenderer who wishes to participate in any procurement proceeding shall comply with all relevant requirements for registration required by an appropriate statutory body.

(2) A foreign tenderer who wishes to participate in the procurement or proceedings shall be exempted from the provisions of sub-regulation (1).

(3) Where, as a result of the procurement proceedings, any foreign tenderer is selected as the lowest evaluated responsive tender, such tenderer shall, in addition to the requirement for registration with the appropriate professional statutory body, be required to comply with the criteria for post-qualification under regulation 224.

(4) A foreign tenderer shall be required before signing procurement contract be registered or submit evidence of eligibility to register with the relevant professional statutory board

Pre-qualification proceedings

119.-(1) The pre- qualification proceedings may be conducted if-

- (a) an invitation to tender requires capable contractors to carry out large or complex contracts or turnkey contracts or build, own and transfer contracts;
- (b) the quality and performance is of primary importance for supply of goods or equipment or suppliers' back up and maintenance services are critical; or
- (c) a shortlist of capable tenderers is required for tendering.

(2) The shortlist prepared pursuant to sub-regulation (1) (c) of this regulation shall be updated on regular basis.

(3) The provisions of regulation 116 shall apply to pre-qualification proceedings.

(4) Where a procuring entity engages in pre-qualification proceedings, it shall provide a set of pre-

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qualification documents to each tenderer who requests for the documents in accordance with the invitation to pre-qualify and upon payment of prescribed fee.

Contents of invitation for pre-qualification

- 120.**-(1) An invitation to pre-qualify shall contain-
- (a) the name and address of the procuring entity;
 - (b) the nature, quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;
 - (c) the desired or required time for the supply of the goods or for the completion of the works or the timetable for the provision of the services;
 - (d) the criteria and procedures to be used for evaluating the qualification of suppliers, service providers or contractors in conformity with regulation 116;
 - (e) a declaration which may not later be altered that tenderers may participate in the procurement proceedings regardless of nationality or declaration that participation is limited on the basis of nationality pursuant to regulations 33 and 39;
 - (f) the price, currency and terms of payment for the pre-qualification documents;
 - (g) the means of obtaining the pre-qualification documents and the place from which they may be obtained;
 - (h) the language in which the pre-qualification documents are available;
 - (i) the place and deadline for the submission of application to pre-qualify;
 - (j) any other information as the Authority consider necessary and as prescribed in the standard pre-qualification document .
- (2) The invitation to pre-qualify shall be prepared

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by the procurement management unit and approved by the tender board, and shall be advertised in accordance with the method of procurement prescribed in the First Schedule to these Regulations.

(3) A minimum period for national competitive tendering and for international competitive tendering shall be allowed for the preparation and submission of pre-qualification applications as prescribed in the Eighth Schedule to these Regulations.

(4) The pre-qualification documents shall be prepared by the procurement management unit in consultation with the user department and shall be approved by the tender board before issued to tenderers.

(5) Invitations to pre-qualify which are issued without prior approval of the tender board and which do not satisfy these Regulations shall not be considered valid.

Contents of
pre-
qualification
document

- 121.-(1)** The pre-qualification documents shall contain-
- (a) instructions for preparing and submitting pre-qualification applications;
 - (b) a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings;
 - (c) any documentary evidence or other information that must be submitted by tenderers to demonstrate their qualifications;
 - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for suppliers, service providers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procuring entity; and
 - (e) any other requirements that may be established

by the procuring entity in conformity with these Regulations relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.

(2) When a pre-qualification is undertaken, qualification of tenderers by a procuring entity shall be based on the legal capacity, capability and resources of the applicants to perform the particular contract and shall consider-

- (a) experience and past performance on similar contracts;
- (b) knowledge of local working conditions;
- (c) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
- (d) financial position;
- (e) current commitments; and
- (f) compliance with required statutory obligations.

Clarification and evaluation of applications for pre-qualification

122.-(1) A procuring entity shall, at least fourteen days prior to the deadline for the submission of applications to pre-qualify, respond to any request by a tenderer for clarification of the pre-qualification documents that is received by the procuring entity.

(2) The response by the procuring entity under sub-regulation (1) shall-

- (a) be given within three working days with a view to enabling the tenderer to make a timely submission of his application to pre-qualify;
- (b) without identifying the source of the request, be communicated to all tenderers to whom the procuring entity has provided the pre-qualification documents.

(3) Upon receiving the applications for pre-qualification, the appointed evaluation team shall evaluate such application using criteria for qualification prescribed in the invitation to qualify and shall, in addition, prepare an

evaluation report consisting of a list of firms recommended for consideration to pre-qualify.

(4) The evaluation report shall be submitted to the procurement management unit for scrutiny before it is submitted to the tender board for approval, and shall prescribe the criteria used and the justification for the choice made in respect of the pre-qualified and the non pre-qualified firms.

(5) A pre-qualification shall not be used to limit the number of tenderers and that all firms which are capable of performing the contract in accordance with the approved pre-qualification criteria shall be pre-qualified, unless the pre selection proceeding is initiated.

(6) If a procuring entity intends to limit the number of tenderers from which to request proposals pursuant to regulation 15 the procuring entity may engage in pre-selection proceeding

(7) The provision of regulation 116 of these regulations shall apply *mutatis mutandis* to the pre-selection proceedings, except to the extent that those provisions are derogated from in regulation 15.

(8) All tenderers who pre-qualify to participate in a tender shall be invited to do so unless otherwise disqualified by regulation 9.

(9) Firms which have been individually pre-qualified may form a joint venture and submit a tender, and firms which are pre-qualified as partners in a joint venture shall not be allowed to submit individual tenders.

Notification of results of pre-qualification process.

123.-(1) An applicant who has complied with the pre-qualification criteria and who is approved by the tender board shall, within seven days after the approval, be notified in writing by the procuring entity and invited to tender.

(2) The notification shall indicate the terms and conditions under which tender documents shall be obtained and the date, hour and place for latest delivery of tenders by the tenderer, and of the tender opening.

(3) An applicant who is not successful in the pre-

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qualification shall be informed by the procuring entity within seven days after receipt of all the required approvals to the pre-qualification.

(4) A tenderer who is pre-qualified shall be entitled to participate in the procurement proceedings.

(5) A procuring entity shall, upon request -

(a) furnish any member of the general public with the names of all tenderers who are pre-qualified;

(b) communicate to tenderers the ground for their rejection to pre-qualify, and the procurement entity shall not be required to specify the evidence or give the reasons.

Confirmation of verification information

124. The verification of the information provided in the submission for pre-qualification shall be confirmed through a post – qualification process before the notice of intention to award the tender is communicated to the tenderers, and award may be denied to a tenderer who is assessed to have no capability or resources to successfully perform the contract.

Waiver of certain requirements

125.-(1) In a situation where all firms fail to pre-qualify on the basis of the prescribed requirements, the procuring entity may revise some of the requirements and evaluate all firms on the basis of the revised requirements with a view to ensuring that they satisfy the conditions during the tendering of the goods, works or services.

(2) In revising the requirements under sub-regulation (1), the procuring entity may vary, waive or alter the prescribed requirements.

(3) Notwithstanding sub regulation (1), the procuring entity shall not revise requirements establishing the tenderer's experience in carrying out assignments of similar nature and his capability to finance the assignment.

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Tender
relating to
public
security

126. Where the contract involves access to confidential information-

- (a) a procuring entity shall notify the tenderer of the security classification of the contract, elements of the contract and any subsequent revisions in such security classification;
- (b) the tenderer shall, prior to the commencement of the contract, safeguard all classified elements of the contract and shall provide and maintain a system within his own organisation; and
- (c) an authorised representatives of the armed, security or police force shall have the right to inspect the procedures, methods and facilities utilised by the tenderer or the compliance by the tenderer with the security requirements under the contract.

Appointment
of a
consultant
for
procurement
of works

127.-(1) Where the appointment of a consultant is considered necessary for the effective procurement of works, which has not already been undertaken, a procuring entity shall complete selection proceedings and enter into a contract with the selected consultant in accordance with the provisions of these Regulations in sufficient time for that consultant to review the tender documents prior to the issue of tender.

(2) The responsibilities of a consultant in terms of their employment agreement may include the preparation of tendering documents.

(3) Subject to sub-regulation (2) the requirements affecting the procuring entity shall be detailed in writing to the consultant, including the need to use standard tendering documents and associated forms in all tendering documents.

(4) The draft tendering documents prepared by a consultant shall be scrutinized by the procurement management unit to ensure compliance with sub-regulation (3) before they are submitted to the tender board for approval.

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Types of
works or
services
contracts

128. Works and non-consultant contracts may be separated into types specified in the Seventeenth Schedule to these Regulations.

Turnkey
contracts

129.-(1) A procuring entity may issue a tender for a turnkey contract involving a major specialised works project if the supply of goods and the performance of various works need to be closely integrated.

(2) Without prejudice sub-regulation (1), the design and engineering, supply and installation of equipment and the construction of the complete plant or works shall be provided by a single contractor under one contract procured through international or national competitive methods of procurement approved by the tender board.

(3) A procuring entity may-

- (a) remain responsible for the design and engineering, and may, in addition, invite tenders for a single contractor to take responsibility for the supply and installation of all goods and for the works required for a project;
- (b) issue a tender for a single contract for all components of the design and works (“design and build”) contract, and may, in addition, issue separate tenders for the supply of the goods required for a project;
- (c) issue a single tender for a management contractor who may subcontract all the design, engineering, supply and works components of a project and who shall be responsible for the timely completion of the project and all attendant risks which may be involved.

PART IV
PROCUREMENT OF SECTOR SPECIFIC GOODS AND SERVICES
(a) Procurement of common use items and services

Procurement
from the
Agency

130.-(1) A procuring entity shall procure from the Agency any item included in the approved current stores catalogue where such item is available at lower prices than current market prices.

(2) The Agency shall, on quarterly year basis, publish in the *Gazette*, Journal and Tenders Portal, the descriptions of items available on the stores catalogue.

(3) Where the procuring entity submits to the Agency a request for purchase of items in the store catalogue and such items are not available, the Agency shall, within one working day of receipt of the request, issue a non availability certificate to the procuring entity.

(4) On receipt of the certificate referred to in sub-regulation (3), a procuring entity may opt for another appropriate procurement method.

(5) A procuring entity shall procure from the Agency clearing and forwarding service where such service is available at lower prices than current market prices.

Procurement
of common
use items
and services

131.-(1) The Agency shall arrange for procurement of common use items and services by procuring entities through framework agreements.

(2) A framework agreement under this regulation shall not be less than one year and not more than three years.

(3) The Agency shall publish in the Journal and Tenders Portal the list of suppliers and service providers awarded framework agreements.

(4) A procuring entity shall-

(a) by the end of January each year, submit to the Agency, their provisional annual estimates of the required common use items and services which shall include descriptions, specifications, statement of requirements and quantities;

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- (b) procure common use items and services from tenderers awarded framework agreements by the Agency through placing of call off orders prepared by the procurement management unit and approved by the accounting officer or any delegated officer;
- (c) submit to the Agency and Authority, monthly reports on procurement made through framework agreements indicating the names of suppliers, description of goods or services, quantity and the value.

(5) In the case of common use items and services falling under open framework agreements, the procuring entity shall seek approval of the tender board to conduct a mini competition amongst the suppliers or services providers awarded framework agreements.

(6) Where the procuring entity contracts out the procurement and disposal by tender functions to the Agency, procurement procedures to be followed shall be in accordance with these Regulations.

(7) The Agency may on annual basis provide an opportunity to new tenderers to participate in tendering process for common use items and services and the names of successful tenderers shall be included in the current list of suppliers and service providers.

Obligations
of parties to
the
framework
arrangement
s

132.-(1) A tenderer who has entered into framework agreement with the Agency shall comply with terms and conditions of the agreement, and shall-

- (a) honour call off orders prepared and submitted by procuring entities in respect of framework agreements signed;
- (b) supply and deliver all goods and services to the procuring entity at the rates, prices and at places stated in the framework agreement and call off order;

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- (c) where samples are required, provide the samples for approval, and all goods supplied shall be in accordance with the approved samples;
- (d) indemnify the procuring entity in the case of damage or loss of benefit caused by delay in delivery or any other act;
- (e) prepare and submit to the Agency a monthly sales report indicating the value of goods and services sold to procuring entity through call off orders;
- (f) pay fees to the Agency as prescribed in the Fifth Schedule to these regulations.

(2) The procuring entity shall prepare and place call off orders to tenderers who are awarded framework agreements, and, in particular, shall be responsible for-

- (a) effecting payments for goods and services delivered and accepted;
- (b) claiming for damages caused by delayed delivery or any other act; and
- (c) reporting to the Agency and the Authority any breach of contract or unsatisfactory performance by a tenderer under framework agreements.

(3) The Agency shall prepare and sign framework agreements with tenderers, and, in particular, shall be responsible for receiving and reviewing reports on default of framework agreements from procuring entities and where a breach of contract is determined, submit a proposal for debarment of a tenderer to the Authority.

(4) Where reported cases of non performance by tenderer persist, the Agency may terminate framework agreement and report the matter to the Authority.

Agency may
make price
adjustment

133.-(1) The Agency may, at any time during the contract execution, accept a request to make price adjustment and shall make a comparison of the prices requested against the international price indicator guides and verify the justification for such price adjustment.

(2) The Agency shall determine the factor or

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percentage for price adjustment which shall be approved by the Authority.

(3) The Agency shall, in each financial year, prepare and make available to procuring entities, a schedule of prices to be adhered to by such procuring entities in procurement of common used items and services.

(4) The Minister responsible for works shall, in each financial year, prepare and make available to the Agency a schedule of unit rates to be adhered to by procuring entities in procurement relating to construction works.

Payment of fees to Agency

134. The Authority, Appeals Authority, procuring entities and tenderers shall pay fees to the Agency for procurement services rendered by the Agency as prescribed in the Fifth Schedule to these Regulations.

Procurement procedures of the Agency

135.-(1) The Agency shall procure stock items for re-sale for inclusion in the stores catalogue from manufacturers, whole sellers or any other source which offer best value for money.

(2) The Agency may procure petroleum products directly from any source where such products meet the required standards and are available at competitive prices.

(3) Subject to sub-regulation (2), the authorised procurement limit for the Agency shall be as prescribed in the Fourth Schedule to these Regulations.

(b) Procurement of maintenance and repair of motor vehicles, plant and equipment, and the installation of electrical, refrigeration, air conditioning and electronics services in buildings owned by Government

Procurement of motor vehicles, heavy plant, equipment and spare parts.

136.-(1) The ministry responsible for electrical, and mechanical engineering shall prepare detailed and acceptable schedule of requirements and specifications which shall be made available to the Authority for use by procuring entities when procuring such items.

(2) The Secretary to the Cabinet may, on the direction

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of the Cabinet and on the advice of the ministry responsible for electrical, and mechanical engineering, determine the type, make and size of motor vehicles or other motorised equipment to be procured for official use of specified state officials or other senior Government officers and shall issue a circular for that purpose.

(3) The preferred motor vehicles or other motorised equipment under sub-regulation (2) of this regulation shall be procured directly from the manufacturer of the motor vehicles or through competitive quotations from reputable authorised local and international suppliers or dealers of the specified vehicles.

(4) The Authority shall liaise with the ministry responsible for electrical, and mechanical engineering to produce standard specification documents for use by the procuring entities.

(5) Notwithstanding the provisions of sub regulations (2) and (3) of this regulation, the approval of the Government or any organisation for any specific department of Government, ministry or region to increase the fleet of equipment or vehicles shall not specify the make of such equipment or vehicles and equipment or vehicle shall be procured through competitive tendering.

(6) For the purposes of this regulation, “motor vehicles and heavy plant” include both fixed and movable plant and machinery such as engines, generators boilers, lorries, motor cars, motor cycles, tractors, road rollers and motor graders.

Procurement
of Electrical,
Mechanical
and
Electronics
services

137.-(1) The agency responsible for-

- (a) maintenance and repair of government-owned motor vehicles, plant and equipment; and
 - (b) maintenance, repair and installation of electrical, air conditioning and refrigeration, and electronics services in government owned installations,
- shall on annual basis, prepare a standing short-

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list of services providers through pre-qualification.

(2) The agency shall-

- (a) carry out maintenance or repair of Government owned motor vehicles, plant and equipment, maintenance, repair and installation of electrical, air conditioning and refrigeration and electronics services;
- (b) arrange, through open or closed framework agreements, for procurement of-
 - (i) maintenance and repair services of government – owned motor vehicles, plant and equipment;
 - (ii) maintenance, repair and installation of electrical, air conditioning and refrigeration, and electronics services;
- (c) publish, in the Journal and Tenders Portal, the list of service providers awarded framework agreements;
- (d) conduct inspection prior and after the service is provided and shall issue a certificate of approval.

(3) Subject to sub regulation (2)(a), where the agency is unable to carry out the repair and maintenance due to non availability of spare parts, technical knowhow or other resource constraints, it may procure such services from service providers awarded closed framework agreements by call off orders in consultation with the procuring entity.

(4) Every procuring entity shall-

- (a) maintain a record of maintenance, repairs and replacement of each motor vehicle, piece of plant and equipment, maintenance, repair and installation of electrical, air conditioning and refrigeration, and electronics services for inspection by the ministry responsible for electrical, machinery and mechanical engineering, the Controller and Auditor General,

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- the Authority and the agency;
- (b) submit to the agency quarterly reports on procurement made through framework agreements indicating the names of service providers, description of services and value.

(c) Procurement of Information and Communication Technology Equipment

Procurement of computers and other related information technology Equipment and tools

138.-(1) The ministry responsible for information technology services shall prepare detailed and acceptable schedule of requirements, standards and specifications which shall be made available to the Authority for use by the procuring entities in the procurement of computers and other related information technology equipment and tools.

(2) For the purposes of this regulation “computers and other related information technology equipment and tools” includes computers of any type, computer printers, scanners, servers, storage media, software and local area networks.

(d) Procurement of medicines and medical supplies

Definition

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139. For purpose of this Sub-Part-
“catalogue items” means approved list of medicines and medical supplies stocked by the Department;
“Department” means the Medical Stores Department;
“medicines” shall have the meaning ascribed to it by the Tanzania Food, Drugs and Cosmetics Act.
“medical supplies” or “medical devices” shall have the meaning ascribed to it by the Tanzania Food, Drugs and Cosmetics Act; and
“non catalogue items” means the list of medicines and medical supplies which are not stocked by the Department;

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Procurement
of Catalogue
items

140.-(1) The Department shall maintain a list of catalogue items which shall be published on a yearly basis in the Tenders Portal and Journal.

(2) Procuring entities shall, by the end of January each year, submit to the Department the provisional annual estimates of the required catalogue items including descriptions, specifications, statement of requirements and quantities.

(3) The Department shall arrange for procurement of catalogue items which are required continuously or repeatedly over a set period of time and which are common to more than one procuring entity and may be procured through framework agreements by placing call off orders.

(4) A procuring entity shall place order to the Department for any item included in the price catalogue within one working day after reaching the buffer stock.

(5) Where the catalogue items requested to be purchased by the procuring entity are not available, the Department shall, within one working day of receipt of the request, issue a non availability notice to the procuring entity.

(6) Upon receipt of the non availability notice, the procuring entity may opt for another appropriate procurement method.

Procurement
of non
catalogue
items

141.-(1) Procuring entities shall, by the end of January each year, submit to the Department the provisional annual estimates of the required non catalogue items which shall include descriptions, specifications, statement of requirements and quantities.

(2) The Department shall arrange for procurement of non catalogue items that are required continuously or repeatedly over a set period of time and are common to more than one procuring entity and are subject to common procurement.

(3) The Department shall procure non catalogue items for use by procurement entities from suppliers awarded framework agreements through placing of call off orders.

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Procurement
procedures of
the
Department

142.-(1) The Department shall procure catalogue and non catalogue items from manufacturers, wholesalers or any other source which offer best value for money using framework agreements.

(2) In the case of common use items and services falling under open framework agreements, the Department shall, upon prior approval of the tender board, conduct a mini-competition amongst the providers who are awarded framework agreements.

(3) The framework agreements may be concluded with more than one provider for one product where in the opinion of the tender board, one provider cannot meet the full requirements of the Department.

(4) Where the Department intends to conclude a framework agreement with more than one provider, the tender documents shall clearly state that the contract shall be awarded to more than one provider.

(5) A Framework agreement under this regulation shall not exceed three years.

Department
may make
price
adjustment

143.-(1) The Department may, at any time during the contract execution, accept a request to make price adjustment and shall make a comparison of the prices requested against the international price indicator guides and verify the justification for such price adjustment.

(2) The Department shall determine the factor or percentage for price adjustment which shall be approved by the Authority.

General
criterion on
procurement
of catalogue
and non
catalogue
item

144. The Department may procure catalogue and non catalogue items from any prequalified source if the items meet the required standards and are available at competitive prices.

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- Publication of list of suppliers **145.** The Department shall publish, in the Tenders' Portal and the Journal, the list of suppliers who are awarded framework agreements in accordance with regulation 20 of these Regulations.
- Specifications for medicines and medical supplies **146.** The Department shall prepare a detailed and acceptable schedule of requirements and specifications for medicines and medical supplies which shall be submitted to the Authority for use by procuring entities for the procurement of the supplies.
- Procurement of other sector specific goods **147.** The Ministries responsible for specific sector goods shall prepare detailed specifications which shall be made available to the Authority for use by procuring entities in the procurement of goods.

PART V
METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

(a) Rules applicable to the selection of procurement method

- Pre-qualification **148.** Before inviting open tenders, a procuring entity may consider pre-qualifying tenderers in accordance with regulation 120 with a view to identify tenderers who possess the necessary resources and competence for completion of the eventual contract.
- Method of procurement **149.**-(1) The procurement of goods, works and non consultancy services through international and national competitive tendering prescribed in these Regulations shall be considered before other methods of tendering prescribed in these Regulations are used.
(2) Subject to the prior approval, in writing, of the tender board, other methods of procurement may be used where it is established that such methods may have due regard for transparency, economy and efficiency in the

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implementation of the project.

(3) Where a procuring entity uses a method of procurement pursuant to sub-regulation (2), the procuring entity shall include, in the record required under regulation 15, a statement of the grounds and relied circumstances with a view to justify the use of the method.

(4) A procuring entity may select an appropriate alternative method of procurement if-

- (a) the competitive tendering is not considered to be the most economic and efficient method of procurement; and
- (b) the nature and estimated value of the goods, works, or services permit.

(b) Open tendering procedures

International
competitive
tendering

150.-(1) In international competitive tendering, a procuring entity shall, through a notice advertised nationally and internationally, invite tenderers regardless of their nationality, to submit priced tenders for goods, works or services or purchase of public assets.

(2) The international competitive tendering shall be used if-

- (a) payment, in whole or in part, is made in a foreign currency; or
- (b) it is desired to attract tenders from the widest range of tenderers regardless of the estimated value of the goods or works to be procured.

(3) A procuring entity shall advertise tenders under international competitive tendering in accordance with the First Schedule to these Regulations.

(4) For large or specialised contracts, the appropriate tender board may, in addition, require the invitation to tender to be advertised in technical magazines, trade publications or in newspapers of wide international circulation.

(5) Notification shall be given in sufficient time to enable prospective tenderers to obtain pre-qualification or

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tender documents and prepare and submit their responses.

(6) Domestic or national preference shall apply in the evaluation of tenders if stated in the solicitation documents.

National
competitive
tendering

151.-(1) In national competitive tendering, a procuring entity shall, through a notice advertised only in the United Republic, invite tenderers regardless of their nationality, to submit priced tenders for goods, services, works or purchase of public assets.

(2) The national competitive tendering may be used if-

- (a) payment is made wholly in Tanzanian shillings;
- (b) the goods, works or services are available locally at prices below the international market;
- (c) the estimated cost of the goods, works or services does not exceed the threshold for open international tendering prescribed in the Seventh Schedule to these Regulations;
- (d) works or services are scattered geographically or spread over time;
- (e) works are labour intensive;
- (f) the advantages of international competitive tendering are clearly outweighed by the administrative or financial burden are involved;

(3) Notification of the invitation to tender shall be given in sufficient time to enable prospective tenderers to obtain pre-qualification or tender documents and prepare and submit their responses.

(4) Domestic or national preference shall apply in the evaluation of tenders under the national competitive tendering where foreign firms have participated.

Restricted
tendering

152.-(1) A procuring entity may restrict the issue of tender documents to a limited number of specified tenderers if-

- (a) the suppliers, contractors or service providers have already been pre-qualified further to

regulations 119 of these Regulations;

- (b) the goods, works, or services required are of a specialised nature or can be obtained from a limited number of specialised contractors, service providers or reputable sources;
- (c) there is an urgent need for the goods, works or services such that there would be insufficient time for a procuring entity to engage in open national or international tendering, and that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have not been caused by dilatory conduct on its part; or
- (d) there is a need to achieve certain social objectives by calling for participation of local communities or local firms.

(2) Restricted tendering may, in particular, be used by a procuring entity for setting aside contracts for the purpose of building the capacity of local firms.

(3) The justification for restricting procurement under sub-regulation (1) and (2) shall be prescribed in the record of procurement proceedings made pursuant to regulation 15.

(4) Except where tenderers have already been pre-qualified, a procuring entity issuing a restricted tender shall seek tenders from a broad list of potential tenderers with a view to assuring competitive prices.

(5) In cases where only a limited number of tenderers are expected to tender, the list shall include all such tenderers.

(6) Except for advertisement and issuance of tenders, the procedures for competitive tendering prescribed in these Regulations shall apply.

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(b) Procurement methods involving negotiations

(c)

Conditions for use of two-stage tendering, request for proposals or competitive negotiations

153.-(1) A procuring entity may engage in procurement by means of two-stage tendering if-

- (a) the procuring entity establishes that prior discussions with suppliers or contractors are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with the detail required in order to obtain the most satisfactory solution to its procurement needs;
- (b) the tendering proceedings have been engaged in but no tenders were submitted, or all tenders were rejected by a procuring entity pursuant to regulation 16, and in the judgment of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract.

(2) A procuring entity may engage in procurement by means of request for proposals with simultaneous negotiations if-

- (a) it is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement, and in its assessment, simultaneous negotiation with tenderers is needed to obtain the most satisfactory solution to its procurement needs;
- (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
- (c) the procuring entity seeks to undertake procurement of goods, works or services for national defence or national security;
- (d) the tendering proceedings have been engaged in

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but no tenders were submitted, or all tenders were rejected by a procuring entity pursuant to regulation 16, and in the judgment of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract;

(e) due to the technical character of the goods or works, or the nature of the services, it is necessary for the procuring entity to negotiate with tenderers.

(3) A procuring entity may engage in procurement by means of request for proposal with consecutive negotiation if-

(a) it needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals, and

(d) it establishes that consecutive negotiations with tenderers are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the procuring entity.

(4) A procuring entity may engage in procurement by means of competitive negotiation if-

(a) there is an urgent need for the goods, works or services, and engaging in tendering proceedings would be impractical, and the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; or

(b) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using the methods;

(e) the procuring entity seeks to undertake procurement of goods, works, or services for national defence or national security.

(f)

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Two- stage
tendering

154.-(1) The provisions of these regulations for open tendering shall apply to two-stage-tendering proceedings, except where those provisions are derogated from, in this regulation.

(2) The solicitation documents shall call upon tenderers to present, in the first stage of two-stage-tendering proceedings, initial tenders containing their proposals without a tender price.

(3) The solicitation documents may solicit proposals relating to the technical, quality or performance characteristics of the subject matter of the procurement, contractual terms and conditions of supply and, where relevant, the professional and technical competence and qualifications of the tenderers.

(4) A procuring entity may, in the first stage, engage in discussions with tenderers whose initial tenders have not been rejected pursuant to the provisions of these Regulations concerning any aspect of their initial tenders.

(5) Without prejudice to sub-regulation (4), when a procuring entity engages in discussions with any tenderers, it shall extend an equal opportunity to participate in discussions to all tenderers.

(6) In the second stage of two-stage-tendering proceedings, a procuring entity shall invite all tenderers whose initial tenders were not rejected in the first stage to present final tenders with prices in response to a revised set of terms and conditions of the procurement;

(7) In revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by-

- (a) deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of these regulations;
- or

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(b) deleting or modifying any criterion for examining or evaluating tenders initially provided and adding any new criterion that conforms to the requirements of these regulations, only to the extent that the deletion, modification or addition is required as a result of changes made in the technical, quality or performance characteristics of the subject matter of the procurement.

(8) Any deletion, modification or addition made pursuant to sub-regulation (7) shall be communicated to tenderers in the invitation to present final tenders.

(9) A tenderer who does not wish to present a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the tenderer may have been required to provide.

(10) The final tenders shall be evaluated with a view to ascertaining the successful tender.

Request for proposal with simultaneous negotiations

155.-(1) In the request for proposals with simultaneous negotiations, a procuring entity shall solicit proposals by causing an invitation to participate in proceedings to be published unless an exception is expressly provided for under open tendering applies.

(2) The invitation shall include-

- (a) the name and address of a procuring entity;
- (b) a description of the subject matter of the procurement, to the extent known, and the desired or required time and location for the provision of such subject matter;
- (c) the terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
- (d) the intended stages of the procedure;
- (e) the criteria and procedures to be used for ascertaining the qualifications of tenderers and any documentary evidence or other information that

must be presented by tenderers to demonstrate their qualifications, in conformity with Regulation 116;

- (f) the minimum requirements that proposals must meet in order to be considered responsive in accordance with Regulation 122(2) and the terms and conditions of the procurement contract, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;
- (g) a declaration pursuant to conditions for participation of tenderers;
- (h) the means of obtaining the request for proposals and the place where it may be obtained;
- (i) the price, if any, to be charged by the procuring entity for the request for proposals;
- (j) if a price is to be charged for the request for proposals, the means and currency of payment;
- (k) the language or languages in which the request for proposals is available;
- (l) the manner, place and deadline for presenting proposals.

(3) For the purpose of limiting the number of tenderers who request for proposals, a procuring entity may engage in prequalification or pre-selection proceedings.

(4) The procuring entity shall specify in the prequalification or pre-selection documents that it will request proposals from only a limited number of pre-selected tenderers that best meet the qualification criteria specified in the prequalification or pre-selection documents.

(5) The prequalification or pre-selection documents shall set out the maximum number of pre-selected tenderers from which the proposals will be requested and the manner in which the selection of that number will be carried out, and the procuring entity shall bear in mind the need to ensure effective competition.

(6) The procuring entity shall rate the tenderers that meet the criteria specified in the prequalification or pre-

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selection documents according to the manner of rating that is set out in the invitation to prequalify or pre-selection and the prequalification or pre-selection documents, respectively.

(7) A procuring entity shall pre-select tenderers that acquired the best rating, up to the maximum number indicated in the prequalification or pre-selection documents but shall not be less than three, wherever possible.

(8) A procuring entity shall promptly notify each tenderer whether it has been pre-selected and shall, upon request, communicate to tenderers that have not been pre-selected the reasons thereof and shall make available to any person, upon request, the names of all tenderers that have been pre-selected.

(9) A procuring entity shall issue the request for proposals where-

- (a) an invitation to participate in the request-for-proposals-with simultaneous negotiations proceedings has been published in accordance with the provisions of these Regulations, to each tenderer responding to the invitation in accordance with the procedures and requirements specified therein;
 - (b) pre-qualification has been conducted, to each tenderer pre-qualified in accordance with prequalification proceedings set out in these Regulations;
 - (c) pre-selection proceedings have been engaged in, to each pre-selected tenderers in accordance with the procedures and requirements specified in the pre-selection documents;
 - (d) in case of single source selection, to each tenderer selected by a procuring entity;
 - (e) a tenderer has paid the fee, if any, charged for the request for proposals, which shall reflect only the cost of providing it to tenderers.
- (10) The request for proposals shall include, in

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addition to the information referred to in sub-regulation (2)(a) to (f) and (l) of this regulation, the following information:

- (a) instructions for preparing and presenting proposals;
- (b) if tenderers are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be presented;
- (c) the currency or currencies in which the proposal price is to be formulated and expressed, the currency that will be used for the purpose of evaluating proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution and prevailing on a specified date will be used;
- (d) the manner in which the proposal price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (e) the means by which, pursuant to regulation 13, tenderers may seek clarification of the request for proposals and a statement as to whether the procuring entity intends to convene a meeting of tenderers at this stage;
- (f) any element of the description of the subject matter of the procurement or term or condition of the procurement contract that will not be the subject of negotiations during the procedure;
- (g) where the procuring entity intends to limit the number of tenderers that it will invite to participate in the simultaneous negotiations, the minimum number of tenderers, which shall be not less than three, wherever possible, and, where

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- appropriate, the maximum number of tenderers and the criteria and procedure, in conformity with the provisions of these regulations, that will be followed in selecting either number;
- (h) the criteria and procedure for evaluating the proposals;
 - (i) references to the Act, these Regulations, and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;
 - (j) the name, functional title and address of the person authorized to communicate directly with and to receive communications directly from tenderers in connection with the procurement proceedings without the intervention of an intermediary;
 - (k) notice of the right provided under Section 95 of the Act to challenge or appeal against decisions or actions taken by a procuring entity that are allegedly not in compliance with the provisions of the Act or these regulations, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons thereof;
 - (l) any formalities that will be required, once a successful offer has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;
 - (m) any other requirement that may be established by the procuring entity in conformity with the Act and these Regulations relating to the preparation and presentation of proposals and to the

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procurement proceedings;

(11) A procuring entity shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive.

(12) Where a maximum limit on the number of tenderers that can be invited to participate in the dialogue has been established and the number of responsive proposals exceeds that limit, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals.

(13) A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective tenderers whose proposal was rejected.

Conducting
simultaneous
negotiations

156.-(1) A procuring entity shall invite each tenderer that presented a responsive proposal, within any applicable maximum number of tenders, to participate in the simultaneous negotiations.

(2) A procuring entity shall ensure that the number of tenderers invited to participate in the simultaneous negotiations, which shall be at least three, is sufficient to ensure effective competition.

(3) The negotiations shall be conducted by the same representatives of the procuring entity on a concurrent basis.

(4) In the course of the negotiations, a procuring entity shall not modify the subject matter of the procurement, any qualification or evaluation criterion or any minimum requirements established pursuant to regulations 116 and 121(2) of these Regulations any element of the description of the subject matter of the procurement or any term or condition of the procurement contract that is not subject to the dialogue as specified in the request for proposals.

(5) Any requirements, guidelines, documents, clarifications or other information generated during the negotiations that is communicated by the procuring entity to a

tenderer shall be communicated at the same time and on an equal basis to all other participating tenderers, unless such information is specific or exclusive to that tenderer or such communication would be in breach of the confidentiality provisions of Regulation 306.

(6) Following the negotiations, the procuring entity shall request all tenderers remaining in the proceedings to present a best and final offer with respect to all aspects of their proposals. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers.

(7) No negotiations shall take place between the procuring entity and tenderers with respect to their best and final offers.

(8) The successful offer shall be the offer that best meets the needs of the procuring entity as determined in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals.

Request for proposals with consecutive negotiations

157.-(1) Except where it is derogated by this regulation, regulation 162 (1) and (2) shall, with minimum variations, apply to procurement conducted by means of request for proposals with consecutive negotiations.

(2) Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and the procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals set out in the request for proposals, and shall-

- (a) promptly communicate to each tenderer presenting a responsive proposal the score of the technical, quality and performance characteristics of its respective proposal and its ranking;
- (b) invite the tenderer that has attained the best ranking, in accordance with such criteria and procedure, for negotiations on the financial aspects of its proposal; and

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(c) inform other tenderers who presented responsive proposals that their proposals may be considered for negotiation if negotiations with the tenderer with a better ranking do not result in a procurement contract.

(3) Where it is apparent to the procuring entity that the negotiations with the invited tenderer may not result in a procurement contract, the procuring entity may terminate the negotiations and shall, thereafter, communicate to the tenderer its decision to terminate the negotiations.

(4) The procuring entity shall, where it has terminated negotiations under sub-regulation (3), invite for negotiations a tenderer who has attained the second-best ranking and, where the negotiations with that tenderer do not result in a procurement contract, the procuring entity shall invite the other tenderer still participating in the procurement proceedings for negotiations on the basis of the ranking until the procuring entity concludes a procurement contract or rejects all remaining proposals.

(5) In the course of negotiations, the procuring entity shall not modify the subject matter of the procurement, qualification, examination or evaluation criterion, including any established minimum requirements, an element of the description of the subject matter of the procurement or term or condition of the procurement contract other than financial aspects of proposals which are subject to the negotiations as specified in the request for proposals.

(6) The procuring entity shall not re-open negotiations with any tenderer to whom it has terminated negotiations under these Regulations.

Competitive negotiations

158.-(1) Where the procuring entity engages in procurement by means of competitive negotiations, it shall engage in negotiations with a sufficient number of tenderers to ensure effective competition.

(2) Prior to the solicitation, the procuring entity shall cause a notice of the procurement to be published in the

Journal and Tenders Portal.

(3) The notice shall contain the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, and the desired or required time for the supply of the goods, the completion of the construction or the provision of the services;
- (c) a declaration as to whether the participation of tenderers in the procurement proceedings is limited and on which ground; and
- (d) the method of procurement to be used.

(4) Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that is communicated by the procuring entity to a tenderer before or during the negotiations, shall be communicated at the same time and on an equal basis to all other tenderers engaging in negotiations with the procuring entity relative to the procurement.

(5) Notwithstanding sub-regulation (4), the procuring entity shall not communicate the information under sub-regulation (4) to all other tenderers if the information is specific or exclusive to the particular tenderer or the communication would be in breach of the confidentiality provisions of the Act and these regulations.

(6) Following completion of negotiations, the procuring entity shall request all tenderers remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals.

(7) Negotiations shall not take place between the

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procuring entity and tenderers in respect of the best and final offers submitted by the tenderers.

(8) The successful offer shall be the offer that best meets the needs of the procuring entity.

Single source procurement for goods or services

159.-(1) Subject to approval by the tender board, a procuring entity may engage in a single-source procurement in accordance with sub-regulation (3) under the following circumstances:

- (a) the goods or services are available only from a particular tenderer who has exclusive rights in respect of the goods or services, and no reasonable alternative or substitute exists (sole-sourcing); or
- (b) there is an urgent need for the goods or services, and engaging in tendering proceedings or any other method of procurement would therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; or
- (c) a procuring entity, having procured goods, equipment, technology, services or spare parts from a supplier, following national or international competitive tendering satisfactory to these Regulations, determines that additional supplies of the same type as those purchased under an existing contract are required; or
- (d) a procuring entity seeks to enter into a contract with a tenderer for the purpose of research, experiment, study or development, except where the contract includes the product of goods in quantities to establish their commercial viability or to recover research and development costs; or
- (e) procurement involving national defence or national security and where it is determined that a single - source procurement is the most

- appropriate method of procurement; or
- (f) where critical items need to be purchased from a specified supplier to ensure that the output of a process plant shall be guaranteed by the contractor responsible for the process design; or
 - (g) where standardization of equipment is essential for economic and technical reasons and it has been proved to the tender board's satisfaction that compatibility of the existing equipment with another make of equipment cannot be established and that there is no advantage in having an alternative supplier; or
 - (h) where standardization of spare parts is required so that they may be compatible with existing equipment or spare parts or stock items related to specific and specialized equipment or machinery; or
 - (i) where an on-going project, additional items need to be purchased for the completion of implementation.

(2) For purposes of these Regulations, standardization is considered to be appropriate if the original equipment is suitable for the purposes of the project being financed and have been acquired at reasonable prices through national or international competitive tendering satisfactory to the tender board and that the number of the new items to be added is less than the existing value and cannot be obtained from other sources.

(3) In the circumstances prescribed under sub-regulation (1), a procuring entity may procure the goods or services, by soliciting proposal or price quotation from a single supplier.

Procedure for
single source

160.-(1) Subject to approval by the tender board a procuring entity may engage in single-source procurement when procurement from a particular supplier or service provider is necessary and in such a case, the letter of

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invitation to the selected tenderer shall contain-

- (a) the full name and address of the procuring entity;
- (b) instructions for submission of a quotation;
- (c) a full description of the goods or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
- (d) the quantities of any goods, or the desired results of any service to be supplied or provided and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods or management and reporting requirements of a service provider;
- (e) whether any alternatives to the required specifications or characteristics of the goods or services, or to other contractual conditions, are to be permitted;
- (f) the period during which the quotation is to remain valid;
- (g) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
- (h) a statement of the currency in which the supplier or service provider will be paid;
- (i) fees if any, to be charged by the procuring entity for the tender document;
- (j) a statement that the procuring entity does not bind itself to accept the quotation.

(2) The procuring entity shall scrutinize any quotation received and, where necessary, negotiate with the supplier with a view to ensuring that the requirement for the goods or services are complied with, and the price quoted is not excessive and is in line with reasonable expectations.

(3) The procuring entity shall not make undesirable reductions in the quality of the goods or services in order to achieve cost savings.

(4) The justification for single source procurement further to sub-regulations (1) to (5) shall be prescribed in the

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record of procurement proceedings made pursuant to regulation 15.

Single source
procurement
for works

161.-(1) A procuring entity may obtain a priced quotation from a single contractor, negotiate and enter into a direct contract if-

- (a) there is an urgent need for the works such that there would be insufficient time for a procuring entity to engage in tendering or any other method of procurement, provided that the circumstances giving rise to the urgency could not have been foreseen by the procuring entity and have not been caused by dilatory conduct on its part; or
- (b) there is only one particular contractor which a procuring entity can reasonably expect to undertake the required works; or
- (c) there are advantages to a procuring entity in using a particular contractor who has undertaken or is undertaking similar works or who may have already been mobilised with plant, equipment and staff in the vicinity or any other resources as may be appropriate; or
- (d) works which are under execution are to be extended, and the corresponding contract is awarded following national or international competitive tendering.

(2) The letter of invitation to the selected contractor shall contain-

- (a) the full name and address of the procuring entity;
- (b) instructions for submission of a quotation;
- (c) a full description of the works to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings;
- (d) bills of quantities, the location and the required time for their completion;
- (e) any alternatives to the required specifications or

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- characteristics of the works, or to other contractual conditions, if such alternatives are to be permitted;
- (f) the period during which the quotation is to remain valid;
 - (g) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
 - (h) a statement of the currency in which the contractor will be paid;
 - (i) fees if any, to be charged by the procuring entity for the tender document; and
 - (j) a statement that the procuring entity does not bind itself to accept the quotation.

(3) A procuring entity shall scrutinize any quotation received and, where necessary, negotiate with the contractor with a view to ensuring that the requirement for the works is properly addressed and the price quoted is not excessive and is in line with reasonable expectations.

(4) A procuring entity shall not make undesirable reductions in the quality and scope of the works in order to achieve cost savings.

(5) The justification for direct contracting pursuant to sub-regulation (1) shall be set out in the record of procurement proceedings made in accordance with Regulation 15.

(d) Procurement method that does not involve negotiations

Requests for proposals without negotiation to be arranged

162.-(1) A procuring entity may engage in procurement by means of request for proposals without negotiation where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals.

(2) Except where it is expressly provided otherwise under these Regulations, a procuring entity shall invite proposals through the request-for-proposals-without-negotiation proceedings to be published in accordance with

these Regulations.

- (3) The invitation shall contain-
 - (a) the name and address of the procuring entity;
 - (b) a detailed description of the subject matter of the procurement, and the desired or required time and location for the provision of such subject matter;
 - (c) terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
 - (d) criteria and procedures to be used for ascertaining the qualifications of tenderers and any documentary evidence or other information that must be presented by tenderers to demonstrate their qualifications;
 - (e) criteria and procedures for opening the proposals and for examining and evaluating the proposals, including the minimum requirements with respect to technical, quality and performance characteristics that proposals must meet in order to be considered responsive, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;
 - (f) a declaration whether the participation of tenderers in the procurement proceedings is limited and on which ground;
 - (g) the means of obtaining the request for proposals and the place where it may be obtained;
 - (h) the price, if any, to be charged by the procuring entity for the request for proposals;
 - (i) in the case a price is to be charged for the request for proposals, the means and currency of payment;
 - (j) the language in which the request for proposals is available; and
 - (k) the manner, place and deadline for presenting

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proposals.

(4) Upon payment of the prescribed fee, if any, the procuring entity shall issue the request for proposals-

- (a) in the case of an invitation to participate in the request-for-proposals-without-negotiation proceedings has been published, to each tenderer responding to the invitation in accordance with the procedures and requirements specified in the proposal;
- (b) in the case of pre-qualification, to each tenderer pre-qualified in accordance with these regulations;
- (c) in the case of direct solicitation, to each tenderer selected by the procuring entity.

(5) The request for proposals shall include, in addition to the information referred to in sub-regulation (3) (a) to (e) and (k) of this regulation, the following information:

- (a) instructions for preparing and presenting proposals, including instructions to tenderers to submit simultaneously to the procuring entity proposals in two envelopes, one envelope containing the technical, quality and performance characteristics of the proposal, and the other envelope containing the financial aspects of the proposal;
- (b) in the case tenderers are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be submitted;
- (c) the currency or currencies in which the proposal price is to be formulated and expressed;
- (d) the currency that will be used for the purpose of evaluating proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution

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- and prevailing on a specified date will be used;
- (e) the manner in which the proposal price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (f) the means by which, tenderers may seek clarification of the request for proposals, and a statement as to whether the procuring entity intends to convene a pre-bid meeting at this stage;
- (g) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with, and to receive communications directly from, tenderers in connection with the procurement proceedings without the intervention of an intermediary;
- (h) notice of the right to complain on, or appeal from, decisions or actions done by the procuring entity that are allegedly not in compliance with the provisions of the Act, together with information on the duration of the applicable standstill (cool off) period, a statement to that effect and the reasons;
- (i) any formalities required, where the successful proposal is accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by tender board, and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval;
- (j) any other requirement that may be established by the procuring entity in conformity with the Act

and these regulations relating to the preparation and presentation of proposals and to the procurement proceedings.

(6) Before opening the envelopes containing the financial aspects of the proposals, the procuring entity shall examine and evaluate the technical, quality and performance characteristics of proposals in accordance with the criteria and procedures specified in the request for proposals.

(7) The results of the examination and evaluation of the technical, quality and performance characteristics of the proposals shall immediately be included in the record of the procurement proceedings.

(8) Proposals whose technical, quality and performance characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive and shall be rejected on that ground.

(9) A notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, shall promptly be dispatched to each respective tenderer whose proposal was rejected.

(10) The proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and the procuring entity shall promptly communicate to each tenderer presenting the proposal the score of the technical, quality and performance characteristics of its respective proposal and shall invite all such tenderers to the opening of the envelopes containing the financial aspects of their proposals.

(11) The score of the technical, quality and performance characteristics of each responsive proposal and the corresponding financial aspect of that proposal shall be read out in the presence of the tenderers invited to the opening of the envelopes containing the financial aspects of the proposals.

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(12) The procuring entity shall, subject to sub-regulation (2), compare the financial aspects of the responsive proposals and, on that basis, identify the successful proposal in accordance with the criteria and the procedure set out in the request for proposals,

(13) The successful proposal shall be the proposal with the best combined evaluation in terms of the price and the criteria specified in the request for proposals.

Shopping

163.-(1) A tender board may approve and invite competition through request for quotations at international or national level if-

- (a) the goods to be procured are so diversified that it would be of no commercial interest for any single supplier to tender for them; or
- (b) the goods are readily available off-the-shelf or standard specification commodities.

(2) A procuring entity shall not divide its procurement into separate contracts for the purpose of invoking sub-regulation (1) of this regulation.

(3) Procuring entities shall obtain a list of suppliers from a shortlist prepared in accordance with guidelines issued by the Authority or from the shortlist in the Tenders Portal.

(4) The list of tenderers to be contacted shall be submitted to the tender board for approval and the procuring entity shall, thereafter, address a request for quotations to all approved tenderers simultaneously.

(5) The period for international shopping and for national shopping prescribed in the Eighth Schedule to these Regulations shall be allowed for the preparation of quotations:-

Procedures
for shopping

164.-(1) Quotations shall be obtained from at least three suppliers and may include qualified agents of foreign suppliers in Tanzania,

(2) The letter of invitation for quotations and any attachments shall contain-

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- (a) the full name and address of the procuring entity;
- (b) a full description of the goods, works or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
- (c) the quantities of any goods to be supplied and the required time and place of delivery, any requirements for such goods;
- (d) in the case of works, bills of quantities, the location and the required time for their completion;
- (e) in the case of services, a list of targets to be achieved by a service provider, list of specific tasks or duties to be performed, a schedule of deliverables or outputs against which the achievements of the services shall be measured, the duration of the services and method of measuring the performance of services delivered;
- (f) any alternatives to the required specifications or characteristics of the goods, works, services or to other contractual conditions, if such alternatives are to be permitted;
- (g) information of any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges customs duties and taxes, that are to be included in the price;
- (h) the criteria for evaluation of quotations or tenders including any weighting factors that may be applied to technical, price or other factors;
- (i) the period, generally forty five days, during which the quotations are to remain valid;
- (j) the form of contract or Local Purchase Order, to include all conditions and terms of payment; a statement of the currency in which the successful supplier or contractor will be paid, if different from the quoted price;

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- (k) a statement that the procuring entity does not bind itself to accept any quotation and may reject all quotations;
- (l) notice of the tenderers' right to review pursuant to Part IX of the Act;
- (m) the manner in which the quotations shall be submitted;
- (n) the place, date and time for the submission and opening of quotations; and
- (o) fees if any, to be charged by the procuring entity for quotation document.

(3) All prospective tenderers shall be provided with the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis.

(4) Each tenderer is permitted to give only one price quotation and is not permitted to change its quotation and no negotiations shall take place between the tender evaluation committee and tenderer with respect to a tender, proposal, offer or quotation submitted by the tenderer.

(5) The procurement contract shall be awarded to the tenderer who has submitted the lowest-priced quotation that meets the needs of the procuring entity.

(6) Notwithstanding to sub regulation (5) the procuring entity shall have the right to reject excessively low quotation subject to regulation 17 of these Regulations.

Minor value
procurement

165. A procuring entity may procure goods, services or minor works directly from a tenderer if-

- (a) the value does not exceed the limit for minor value procurement prescribed in the Seventh Schedule to these Regulations;
- (b) the price quoted is reasonable;
- (c) no advantage to a procuring entity is likely to be obtained by seeking further quotations or by using other methods of procurement; and
- (d) the contract for the provision of such goods,

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services or works may be a Local Purchase Order.

Micro value procurement

166.-(1) A micro procurement may be conducted by a procuring entity that purchases directly from established supermarkets, shops or drug stores, or similar establishments if the value of such procurement does not exceed the limit set out in the Seventh Schedule to these Regulations.

(2) A micro procurement process shall not require a-

- (a) written solicitation document;
- (b) written bid;
- (c) public bid opening;
- (d) notice of best evaluated bidder; or
- (e) signed contract document.

(3) An original invoice or receipt for the procurement of works, services or supplies and the price paid shall be obtained and annotated with the name of the officer who undertakes the procurement.

(4) A procuring entity may use petty cash, imprest or purchase cards to effect payments under micro procurement.

(5) The procuring entity shall, under the micro procurement method, be responsible for ensuring that the value for money is obtained to the extent practicable.

(6) A procuring entity may delegate authority to a user department to undertake micro procurement of not exceeding the value specified in the Seventh Schedule to these Regulations or not less than the limit set in the guidelines issued by the Authority.

(7) All Micro procurements shall be reported to the tender board on a monthly basis by the holder of delegated authority, using the appropriate procedural form issued by the Authority.

(8) All micro procurements shall be reported to the Authority on quarterly basis using the appropriate procedural form.

(9) A procuring entity shall, where appropriate, use framework contracts for procurement of regularly required

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items.

Force
Account

167.-(1) The use of force account or direct labour may be justified if it meets any of the following conditions:

- (a) the required works are scattered or are in remote locations for which qualified construction firms are unlikely to tender at reasonable prices;
- (b) work is required to be carried out without disrupting ongoing operations;
- (c) risks of unavoidable work interruption are better borne by a procuring entity or public authority than by a contractor;
- (d) there are emergencies which require a prompt attention;
- (e) the procuring entity has qualified personnel to carry out and supervise the required works; or
- (f) the maintenance or construction is part of the routine activity of the procuring entity.

(2) For purposes of this regulation “force account” means a construction by the procuring entity itself or use of public or semi-public agencies or departments concerned, where procuring entity or the public or semi-public agency uses its own personnel and equipment or hired labour.

Community
participation
in
procurement

168.-(1) Where, in the interest of project sustainability or to achieve certain specific social objectives of the project, it is desirable in selected project components to-

- (a) call for the participation of local communities or farmers’ groups;
- (b) increase the utilization of local know - how and locally manufactured products; or
- (c) employ labour intensive and other appropriate technologies,

the procurement procedures, specifications and contract packaging shall be adopted to reflect such interest or objectives.

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(2) The beneficiary community shall be responsible for the procurement activities under the project component.

(3) The Authority shall issue relevant guidelines for community participation in procurement proceedings.

Procurement
of
commodities

169.-(1) The procurement of commodities such as grain, animal feed, cooking oil, fuel, fertilizer and metals, the market prices of which fluctuate depending upon the demand and supply at any particular time, may involve multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favourable market conditions and to keep inventories low.

(2) A procuring entity may prepare a list of pre-qualified suppliers to whom periodic invitations for the supply of commodities may be issued.

(3) The suppliers referred to under sub-regulation (2) may be invited to quote prices linked to the market price at the time of or prior to, the shipments of such commodities with a view to shortening tender validities.

(4) Notwithstanding sub regulation (2), where such commodities are included in the list of common use items under framework arrangements by the Agency, such arrangements shall apply.

(5) A single currency in which the commodity is usually priced in the market may be used for tendering and payment, and for that purpose, the currency shall be specified in the tender document.

(6) The tender documents for supply of commodities may permit tenders to be sent by fax or e-mail where there is no requirement for tender security,

(7) Without prejudice to sub-regulation (6), where the standing tender securities which are valid over a specified period of time are submitted by the pre-qualified suppliers, the standard contract conditions consistent with market practices may be used.

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Procurement
of food stuffs
for schools,
training
institutions,
hospitals and
prisons

170.-(1) An institution responsible for food and drugs safety shall prescribe standards of food types for schools, training institutions, hospitals and prisons in consultation with the-

- (a) ministries responsible for education and local government in respect of schools and training institutions;
- (b) ministries responsible for health and regional administration/local government in respect of hospitals; and
- (c) ministry responsible for home affairs in respect of prisons.

(2) The responsible ministries shall initiate the process of setting standards pursuant to sub regulation (1), which shall be reviewed whenever a need to do so arises.

(3) Schools, training institutions, hospitals and prisons department shall-

- (a) prepare and submit to the Agency, estimates of quantities of food and annual costs required per annum;
- (b) place “call off orders” to identified suppliers and pay directly to suppliers;
- (c) keep records of food stocks, receipt, losses and utilization.

(3) Upon receiving the estimated quantities and costs, the Agency shall plan and enter into framework agreement with suppliers of such food stuff.

(5) In case of shortages or hiking prices in the market, the Agency shall follow appropriate procedures to involve the agency responsible for food reserve on possible additional supply.

(6) For the purposes of this regulation, “food stuff” means any type of grain, cooking oil, sugar, and any similar items, the market price of which fluctuate seasonally.

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Power of Agency to set price adjustment **171.** The Agency shall, in collaboration with relevant authorities, prescribe price adjustment formula to cater for price changes.

Inspection agents **172.**-(1) Where agents are appointed by the Government to undertake pre-shipment inspection and certification of imports, the responsible Minister may exempt goods that have been procured through competitive tendering or otherwise in accordance with these Regulations from price verification, and where the exemption is not granted, any fee payable to inspection agents shall not be included in the price tendered or considered in the evaluation of a tender.

(2) Unless specifically exempted by the responsible Minister, any goods procured by a procuring entity from a source outside the United Republic shall be subject to inspection for quality and quantity prescribed by regulations 244 and 245.

**PART VI
PROCUREMENT OF USED RAILWAY MACHINERY, AIRCRAFTS
AND SHIPS**

Interpretation **173.** In this Part, unless the context requires otherwise-
“item” means a railway machinery, ship or aircraft.

National interest **174.**-(1) A procuring entity that intends to procure any used item shall, before it applies for approval to undertake such procurement, ensure that the intended procurement is in the best interest of the United Republic.

(2) Where the used item may be obtained through leasing or renting, a procuring entity shall consider if the leasing or renting of such item serves the best interest of the United Republic than purchasing the used item.

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(3) Without prejudice to sub-regulation (1), a procuring entity that intends to purchase a used item shall undertake a thorough research and investigation with a view to ascertaining the market trend for the item, or quotes for similar item, or contact known item suppliers or brokers and to establish a fair market value.

Criteria for deciding on procurement of used item

175. A procuring entity shall consider the following criteria in making the determination for procuring a used item:

- (a) manufacturer or brand, type, use and life expectancy of new against used item;
- (b) the purchase price of “new” against “used” item, and “used” against “used” item by comparing at least three used item quotes;
- (c) risks presented by “used” against “new” item, including the possible contamination from prior usage, modification of item that may pose safety hazards or other similar hazards;
- (d) the relative price and general condition of a used item;
- (e) the warranty offered for “used” against “new” item;
- (f) the availability of service, maintenance plans, and parts of a used against new item;
- (g) payment terms; and
- (h) the consideration of the freight and insurance charges, where applicable.

Opportunity for competition

176. Where a supplier offers, at special prices, a used item under new warranty conditions, the offer shall not be accepted without first offering a competition opportunity to other potential suppliers to quote on similar item.

Quality of the used item

177. For the purpose of ensuring the used item intended to be procured is of the required quality, the procuring entity shall-

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- (a) require the supplier of the item to prove, beyond reasonable doubt, the age of the item by presenting the Certificate of Original Purchase;
- (b) demonstrate that the type of used item is of the type whose technology is still in use in the market;
- (c) require the supplier of used item to submit the full history of the item including records of routine and major maintenance undertaken to the plant or machinery;
- (d) ensure that the used item to be procured was well maintained and should not have suffered any material damage other than normal wear and tear;
- (e) ensure the availability of spare parts from the manufacturer of the item for a period that will be determined by the procuring entity;
- (f) require the supplier to submit a certificate of worthiness of the item from recognized national and international bodies; and
- (g) ensure that pre-shipment and destination inspection are conducted by a team of experts, possibly independent assessors before receiving the used item.

Credibility of suppliers

178.-(1) A procurement of a used item shall be made from a supplier who has a sound business records.

(2) A procuring entity may seek references from recognized national and international bodies on the legal, commercial and technical capacity of the supplier prior to engaging the supplier in the procurement of the used item.

Approval by Minister

179.-(1) A procuring entity shall not procure a used item without the prior approval of the Minister.

(2) An application for approval under sub-regulation (1) shall be in a prescribed form issued by the Authority.

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Special
Technical
Advisory
Committee

180.-(1) The Minister shall form a special technical advisory committee of not less than three members and not more than seven members who have knowledge and experience relevant to the subject matter of the procurement to advise on the application submitted to him before granting an approval.

(2) The procedures and terms of reference of the committee shall be prescribed by the Minister.

(3) Upon receiving the application forwarded to the committee by the Minister, the committee shall scrutinize and verify the contents of the application and shall consider all the proof required pursuant to regulations 171 and 172 of these Regulations.

(4) After the verification process under sub-regulation (3) is completed, and in any case within fourteen days, the committee shall prepare and submit to the Minister, a report on the intended procurement which shall contain recommendations or advice to the Minister on whether or not to grant the approval.

(5) Within fourteen days of receiving the report of the committee, the Minister shall grant or reject the application.

PART VII TENDERING PROCEEDINGS

Invitation to
tender and
advertising

181.-(1) A procuring entity that wishes to commence competitive tendering proceedings shall prepare a tender notice inviting tenderers to submit priced offers for the supply of goods, undertaking of works or provision of services required.

(2) All invitations to tender shall be in writing.

(3) A procurement management unit shall, within thirty days prior to the issue of the tender, submit to the appropriate tender board a draft text of the invitation and the tender document for comments and approval, and shall, prior to publication of the invitation and issue of the tender document, incorporate into the final text of the invitation and

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the tender document any agreed amendments.

(4) Invitations which are issued without prior approval of the tender board shall not be considered as sufficient and adequate to satisfy procuring entities' requirements.

(5) The procuring entity shall advertise the approved invitation to tender in accordance with the First Schedule to these Regulations and, in the case of an international tendering, a similar notice shall be published once in the appropriate foreign or international publications or, professional or trade journals.

Contents of
invitation to
tender

182. The invitation to tender shall contain the following information:

- (a) the name and address of the procuring entity;
- (b) the nature, quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;
- (c) the desired or required time for the supply of the goods or for the completion of the works or for the provision of the services;
- (d) a declaration, which shall not later be altered, that tenderers may participate in the procurement proceedings regardless of nationality or declaration that participation is limited on the basis of nationality;
- (e) the means or conditions of obtaining the solicitation documents and the place from which they may be obtained;
- (f) fees if any, to be charged by the procuring entity for the tender document;
- (g) the currency and means of payment for the solicitation documents;
- (h) the language in which the solicitation documents are available;

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- (i) the physical address for the submission of tenders;
- (j) the deadline for the submission of tenders;
- (k) the physical address, hour and date for opening of tenders; and
- (l) the source of financing.

Issue of solicitation documents

183.-(1) The procuring entity shall, immediately after the first publication of the tender notice, issue the solicitation documents to all tenderers who have responded to the tender notice in accordance with the procedures and requirements specified in the invitation to tender.

(2) Where prequalification proceedings are engaged in, the procuring entity shall issue a set of the solicitation documents to each tenderer who is pre-qualified and has paid the prescribed price, if any, for the documents.

(3) The solicitation documents may be sold in order to recover costs but the price shall be calculated to cover only those costs related to printing, copying and distribution and shall not include any element of profit.

(4) The price of solicitation documents shall be approved by the tender board prior to issue of tender notice.

(5) The Authority shall issue guidelines for setting prices for solicitation documents.

Contents of solicitation documents

184.-(1) The solicitation documents shall contain the following information:

- (a) the criteria and procedures relating to evaluation of the qualifications of tenderers and further demonstration of qualification;
- (b) the requirements as to documentary evidence or other information that has to be submitted by a prospective tenderer to demonstrate his qualifications;
- (c) the nature and required technical and quality characteristics, of the goods, works or services

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- to be procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate;
- (d) the criteria to be used by a procuring entity in determining a successful tender, including any margin of preference and any criteria other than price to be used pursuant to regulations 206 and 213 of these Regulations and the relative weight of such criteria;
 - (e) the terms and conditions of the procurement contract, if they are known to the procuring entity, and the contract form, if any, to be signed by the parties;
 - (f) in the case the alternatives to the characteristic of the goods, works, services, contractual terms and conditions or other requirements set out in the solicitation documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared;
 - (g) in the case the tenderers are permitted to submit tenders for only a portion of the goods, works or services to be procured, a description of the portion or portions for which such tenders may be submitted;
 - (h) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services such as an applicable transportation and insurance charges, customs duties and taxes;
 - (i) the currency or currencies in which the tender price is to be formulated and expressed;
 - (j) the language in which tenders are to be prepared;
 - (k) any requirements of the procuring entity with

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- respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by tenderers, and any such requirements for any security for the performance of the procurement contract to be provided by the tenderers who enters into the procurement contract, including securities such as labour and materials bonds;
- (l) in the case the tenderers may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
 - (m) the manner, place and deadline for the submission of tenders;
 - (n) the means by which tenderers may seek clarification of the solicitation documents, and a statement as to whether or not the procuring entity intends to convene a meeting of tenderers;
 - (o) the period of time during which tenders shall be effective;
 - (p) the place, date and time for the opening of tenders;
 - (q) the procedures to be followed for opening and examining tenders;
 - (r) the currency that will be used for the purpose of evaluating and comparing tenders and in the case of foreign currency an exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
 - (s) the name, functional title and address of an officer or employee of a procuring entity who is authorized to communicate directly with and to receive communications directly from tenderers in connection with the procurement;
 - (t) any commitments to be made by a tenderer

outside of the procurement contract, such as commitments relating to counter trade or to the transfer of technology;

- (u) notice of the right for review of an unlawful act, decision of, or procedure followed by, the procuring entity in relation to the procurement proceedings;
- (v) in the case a procuring entity reserves the right to reject all tenders pursuant to regulation 16, a statement to that effect;
- (w) any formalities required where a tender is accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, approval by a higher authority or the public authority and the estimated period of time following the dispatch of the notice of acceptance that requires the approval;
- (x) any other requirements established by a procuring entity in conformity with the Act and the regulations relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.

(2) The solicitation documents shall be prescribed to permit and encourage competition and such documents shall set out clearly and precisely all information necessary for a prospective tenderer to prepare a tender.

(3) A procuring entity shall use the appropriate standard tender documents issued by the Authority to address specific issues of a project in accordance with guidelines issued by the Authority.

(4) Any changes to the standard tender documents shall be introduced only through tender data sheets, or through special conditions of contract.

(5) Where the relevant standard tender documents are not issued, the procuring entity shall use standard tender documents acceptable to the Authority.

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Approval of tender documents

185.-(1) An approval of the tender documents by the tender board shall be required before the tender is advertised.

(2) Before submission of the documents to the board for approval, the procurement management unit shall, in respect of the documents, ensure that-

- (a) there is a checklist consisting of all essential requirements to be met by prospective tenderer;
- (b) questions covered by the general conditions and special conditions of contract or tender data sheet have not been duplicated in or qualified unintentionally by the specifications;
- (c) no departure from standard practice in regard to percentages and terms of payments have been incorporated without proper approval; and
- (d) the correct forms are included.

Number of sets of tender documents

186.-(1) A procuring entity shall prepare sets of tender documents for the use of prospective tenderers at the places to be prescribed in the advertisement and, an additional set shall be reserved for the secretary of the tender board.

(2) A tenderer shall ensure he retains a copy of his tender for records purposes.

Tender period

187.-(1) The time allowed for preparation of tenders shall depend on the magnitude and complexity of the intended procurement and, in no case, shall it be shorter than the time prescribed in the Eighth Schedule to these Regulations:

(2) The tender period shall be approved by the tender board and shall be prescribed in the invitation to tender or in the notification of qualification.

(3) Once the tender period is prescribed and advertised, such period shall not be altered.

(4) Notwithstanding sub-regulation (3), the tender period may be altered, upon the approval of a tender board, only by extending such period if the alteration is intended to foster fair competition amongst tenderers, fairness in the

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treatment of potential tenderers and enhancing the economy of the procuring entity.

(5) Any extension of the tender period shall be done reasonably in advance of the closing date and promptly communicated to all who have collected the tender documents.

Price
adjustment
formula

188.-(1) In the event of inflation, a price adjustment formula shall be used to obtain a reasonable price.

(2) The price adjustment formula shall only be used if such formula is specified in the solicitation documents and shall accommodate both rises and falls in price levels.

(3) The price adjustment formula or amount obtained by the use of an adjustment formula shall not be taken into account during the evaluation and comparison of tenders.

Pre -bid
meeting

189.-(1) A procuring entity shall conduct a pre-bid meeting where it is necessary to provide specific project information, to explain any unusual aspects of the project and to address any question of a potential tenderer.

(2) A pre-bid meeting shall be conducted in accordance with the procedures stipulated in the solicitation document.

(3) Where a procuring entity convenes a pre-bid meeting or any meeting of tenderers, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents, and its responses to the requests, without identifying the source of the requests.

(4) The procuring entity shall, within three working days from the date of a pre-bid meeting, submit to each tenderer to whom the solicitation documents are provided, the minutes of the meeting.

Submission
of tenders

190.-(1) A procuring entity shall prescribe a place and a specific date and time for the submission of tenders.

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(2) A potential tenderer shall, within the prescribed time and in the prescribed form and manner, deliver the tender by hand to the offices of a procuring entity or by mail to the prescribed address of the procuring entity.

(3) Every tender shall be in writing, signed and in a sealed envelope.

(4) Notwithstanding sub-regulation (3), where solicitation documents provides for an alternative method of submitting a tender, a potential tenderer may submit his tender in that other form as prescribed in the solicitation documents.

(5) Except for tenders received through a tender box, a procuring entity shall, on request, issue to a tenderer a receipt prescribing the date and time in which the tender was received.

(6) Where requirements for tender security or other securities are prescribed in the tender documents, a tenderer shall, before the deadline for submitting the tenders, deliver to the procuring entity, such securities in the prescribed amount, form and manner.

(7) Only tenders received within the time limit prescribed in the invitation to tender shall be eligible for consideration.

Period of effectiveness of tender

191.-(1) The validity period required for tenders shall be specified in the tender document.

(2) Any tender which purport to be valid for a shorter period shall be rejected by a procuring entity as being substantially non-responsive.

(3) The period fixed by a procuring entity shall be sufficient to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalise a contract but the period shall not exceed one hundred and twenty days from the final date fixed for submission of tenders.

(4) In exceptional circumstances, prior to the expiry of the original period of effectiveness of tenders, a procuring

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entity may request tenderers to extend the period for an additional specified period of time.

(5) A tenderer may refuse the request under sub-regulation (3) without forfeiting its tender security and the effectiveness of its tender shall be terminated upon the expiry of the un-extended period of effectiveness.

(6) The request and the responses shall be made in writing or by any other means that provide a record of the information contained therein.

Extension of the period of effectiveness of tender

192.-(1) Tenderers who agree to an extension of the period of effectiveness of their tenders shall extend or seek an extension of the period of effectiveness of their tender securities provided by them, or provide new tender securities to cover the extended period of effectiveness of their tenders.

(2) A tenderer whose tender security is not extended or, who has not provided a new tender security shall be considered to have refused the request to extend the period of effectiveness of its tender.

(3) The provisions of regulation 23 regarding discharge and forfeiture of tender security shall apply during the extended period of tender validity.

(4) The successful tenderer shall remain bound by his tender for a further period of thirty days following the receipt of communication notifying him of his selection.

Modification or withdrawal of tenders

193.-(1) Unless otherwise stipulated in the solicitation documents, a tenderer may modify, or withdraw the tender prior to the deadline for the submission of tenders without forfeiting its tender security.

(2) The modification or notice of withdrawal shall be effective if it is received by the procuring entity prior to the deadline for submission of tenders.

Tender sample or inspection of goods

194.-(1) Where a sample is required by a procuring entity and such requirement is specified in the solicitation documents, the sample shall be:

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- (a) submitted as part of the tender, in the quantities, sizes and other details requested in the invitation to tender;
 - (b) carriage paid;
 - (c) received on, or before, the closing time and date for the submission of tenders; and
 - (d) evaluated to determine compliance with all characteristics listed in the invitation.
- (2) The procuring entity shall retain the sample of the successful tenderer.
- (3) A procuring entity shall reject the tender if the sample-
- (a) does not conform to all characteristics prescribed in the solicitation documents and
 - (b) are not submitted within the specified time.
- (4) Where it is not possible to avoid using a propriety article as a sample, a tenderer shall make it clear that the propriety article is displayed only as an example of the type or quality of the goods being tendered for and that competition shall not thereby be limited to that article only.
- (5) Samples made up from materials supplied by a procuring entity shall not be returned to a tenderer nor shall a procuring entity be liable for the cost of making them.
- (6) All samples produced from materials belonging to an unsuccessful tenderer which are not claimed by the tenderer within a period of thirty days from the date of award of contract shall be the property of the procuring entity and shall dispose them in such a manner as may be directed by the accounting officer.
- (7) Arrangements for the inspection of the assets shall be included in the invitation notice or solicitation documents, where appropriate.

Receipt of
tenders

195.-(1) The secretary of the tender board shall-

- (a) on behalf of the board, receive and keep the tenders in a locked tender box or in a secure office space;

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- (b) give each tenderer a receipt showing the time and date that the tenders were received, particularly when the envelopes containing the tenders are too large to be placed in the tender box, or if no such box is available, all tenders that are not placed in a tender box shall be kept unopened in a secure place until the deadline for opening of that tender.
 - (c) be responsible for holding securely envelopes or packages containing any tenders which cannot be placed in a locked tender box.
- (2) On receipt of tenders, in case where the tender box is not used, the envelopes shall be recorded in a special register in the order in which they arrive.
- (3) The registration number, the date and time of arrival shall be recorded on the envelope and shall remain sealed and be kept in a safe place until they are opened.
- (4) Tenders received after the deadline for the submission of tenders stipulated in the tender documents shall neither be opened nor be considered and shall be returned unopened to the tenderer who submitted it.

Tender
opening

- 196.**-(1) The secretary of the tender board shall convene and chair a meeting for the purpose of opening the tenders which are submitted, in accordance with regulation 56.
- (2) The time for the tender opening shall be the same as the time set for the deadline for receipt of tenders and shall be announced, together with the place for the tender opening, in the invitation to tender.
- (3) All tenders submitted before the deadline 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 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) At a public tender opening the following

information shall be announced:

- (a) the tenderers' names;
- (b) the tender prices and the total amount of each tender, save for tenders for common used items and services, where unit price may not be read out due to the absence of a tender sum;
- (c) written notifications of tender modifications and withdrawals;
- (d) any alternative tenders, if they have been requested or permitted;
- (e) any discounts;
- (f) the presence of the requisite tender security or tender securing declaration as the case may be; and
- (g) such other details as specified in the tender document.

(5) The information under sub-regulation (4) may, on request, be communicated to tenderers who have submitted tenders, but are not present or represented at the opening of tenders and recorded by the secretary of the tender board or his delegate as each tender is opened.

(6) In the case of a "two envelope" system, the announcement shall include the fact that no price envelope has been opened.

Discounts

197. Discounts offered by tenderers shall be read out and announced in public during the process of tender opening, any discount which is not read out at the formal tender opening ceremony shall not be taken into account in the evaluation and comparison of tenders.

Tenders to be numbered consecutively

198. While the tender opening proceedings are in progress, tenders shall be numbered consecutively, the last one being endorsed 'and last' and initialled by the members of the tender opening committee in the presence of tenderers or their representatives.

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Records of the tender opening

199.-(1) The secretary of the tender board shall prepare, for its own records, minutes of the tender opening, including the information disclosed to those present in the tender opening.

(2) The signed minutes of the tender opening may, on request, be provided to tenderers who submitted tenders.

(3) All tenders that are accepted and opened shall be passed promptly, with a copy of the record of the tenders received and those persons attending the meeting, to the respective evaluation committee for evaluation.

Restriction for disclosure to tenderers

200.-(1) An information relating to the examination, tabulation, clarification, evaluation and comparison of tenders and recommendations concerning the intention to award of the contract shall not, before the announcement of the award of contract to the successful tenderer, be disclosed or communicated to tenderers or any person or persons not officially concerned with such process.

(2) The request for clarification referred to in this regulation and the tenderers' responses shall be made in writing.

Influence by tenderer

201. Any attempt by a tenderer to influence the procuring entity in the process of examination, clarification, evaluation and comparison of tenders, and in decisions concerning the award of the contract, shall result in the rejection of his tender.

Evaluation committee

202.-(1) An accounting officer shall form a tender evaluation committee comprising of not less than three and not more than five members.

(2) In exceptional circumstances, the accounting officer may form an evaluation committee of more than five members depending on the value and complexity of the procurement if there are justifiable reasons to increase the number of the evaluation committee.

(3) The tender evaluation committee shall evaluate on

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a common basis opened tenders in order to determine the cost or price 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 or prices.

(4) Prior to the detailed evaluation of tenders, the tender evaluation committee shall carry out a preliminary examination of the tenders to determine whether or not-

- (a) each tender is substantially responsive to the requirements of the tender documents;
- (b) the required securities have been provided;
- (c) the documents have been properly signed; and
- (d) the tenders are otherwise generally in order.

(5) For the purpose of this regulation, a tender is considered to be substantially responsive if it conforms to all the terms, conditions and specifications of the tender document without material deviation or reservations.

Examination,
evaluation
and
comparison
of tenders

203.-(1) The tender evaluation shall be consistent with the terms and conditions prescribed in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents.

(2) Tenders shall be comparable among themselves in order to determine the lowest evaluated cost for procurement of goods, works or services or the highest evaluated price for revenue collection.

Checking of
substantial
responsiveness
to
commercial
terms and
conditions

204.-(1) All tenders shall be checked for substantial responsiveness to the commercial terms and conditions of the tendering documents.

(2) Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following:

- (a) failure to sign the bid form and price schedules by the authorized person or persons;
- (b) failure to satisfy eligibility requirements;
- (c) failure to submit a tender security as specified in the tendering documents;

- (d) failure to satisfy the tender validity period;
- (e) inability to meet the critical delivery schedule or work schedule clearly specified in the tendering documents, where such schedule is a crucial condition with which tenderers must comply;
- (f) failure to comply with minimum experience criteria as specified in the tendering documents;
- (g) conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;
- (h) inability to accept the price adjustment formulae of the tendering documents;
- (i) stipulating price adjustment when fixed price tenders were invited;
- (j) subcontracting in a substantially different amount or manner than that permitted;
- (k) failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender.

Checking of substantial responsiveness to technical requirements

205. All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a tender includes the following:

- (a) failure to tender for the required scope of work as instructed in the tendering documents and where failure to do so has been indicated as unacceptable;
- (b) failure to quote for a major item in the package;
- (c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;
- (d) presentation of absolutely unrealistic and

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inadequate implementation plans and schedules regarding performance, technical or service factors.

Determinatio
n of tender
responsivenes
s

206.- (1) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence.

(2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity, and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

Request for
clarification
of tender

207.-(1) A procuring entity may request a tenderer to clarify his tender in order to assist in the examination, evaluation and comparison of tenders but no advantage shall be sought, offered or permitted to change any matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive.

(2) Notwithstanding regulation 202 (5) -

- (a) a procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders and the procuring entity shall give prompt notice of any such correction to a tenderer that submitted the tender;
- (b) a procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the tender;
- (c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

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- Expression of factors **208.**-(1) Any factors other than price that may be used in determining the lowest or highest evaluated tender shall, as far as is practicable, be expressed in monetary terms.
(2) Penalties for non-material deviation from the tender requirements shall be expressed as a monetary addition to the tender price which may include the cost of making good deficiencies in compliance with the tender specifications.
- Tender below or above pre-determined value **209.** Any procedures under which tenders above or below a pre-determined tender value estimated by a procuring entity are automatically disqualified shall not be accepted.
- Power to reject tender **210.** A procuring entity shall reject a tender if-
(a) the tenderer is not qualified or eligible;
(b) the tenderer does not accept a correction of an arithmetical error made pursuant to regulation 207;
(c) the tender is not responsive;
(d) the tender is not accompanied by an appropriate tender security, if required;
(e) the circumstances referred to in regulation 195 (4) applies.
- Evaluation and acceptance of tenders **211.** A procuring entity shall evaluate and compare all tenders that are accepted in order to ascertain the successful tender, in accordance with the procedures and criteria prescribed in the solicitation documents.
- Successful tender **212.** The successful tender shall be-
(a) the tender with the lowest evaluated tender price in case of goods, works or services, or the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or highest submitted price, subject to any margin of preference applied;
(b) where the procuring entity has stipulated in the

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solicitation documents, the lowest or highest evaluated tender ascertained on the basis of criteria specified in the solicitation documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms;

Determinatio
n of lowest
evaluated
tender

213. In determining the lowest evaluated tender, the procuring entity may consider the following:

- (a) the tender price, subject to any margin of preference applied;
- (b) the cost of operating, maintaining and repairing the goods or construction, the time for delivery of the goods, completion of construction or provision of the services, the functional characteristics of the goods or construction, the terms of payment and of guarantees in respect of the goods, construction or services.

Determinatio
n of highest
evaluated
tender

214. In determining the highest evaluated tender for revenue collection the preferred evaluation method shall be the evaluation based on price only unless other factors, such as end-user or export restrictions, or a need to attach conditions to a sale are taken into consideration, and stated clearly in the solicitation documents.

Conversion
of currency

215. Where tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to the same currency, and according to the rates specified in the solicitation documents, for the purpose of evaluating and comparing tenders.

Rates of
exchange to
be used in
evaluation

216. The rates of exchange to be used in such valuation shall be the selling rates published by an official source and applicable to similar transactions:

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- (a) on a date selected in advance and specified in the solicitation documents provided that such date should not be earlier than fifteen days prior to the date specified for the opening of tenders nor later than the original date prescribed in the tender dossier for expiry of the period of tender validity; or
- (b) on the date of decision to award the contract or on the original date prescribed in the solicitation documents for the expiry of the period of tender validity, whichever is earlier.

Use of CIF or CIP in evaluation and comparison of tenders

217. The evaluation and comparison of tenders for the supply of goods shall be on the CIF or CIP prices for imported goods and the ex-works prices for the goods offered from within the United Republic of Tanzania, together with prices for any required installation, training, commissioning and other similar services.

Demonstration of qualification

218.-(1) Whether or not it has engaged in pre-qualification proceedings, a procuring entity may require the tenderers submitting the tender that has been found to be the successful to demonstrate again its qualifications.

(2) The criteria and procedures to be used for such post-qualification shall be prescribed in the solicitation documents in accordance with section 53 of the Act.

(3) Where post-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(4) Where a tenderer submitting the successful tender is requested to demonstrate again its qualifications but fails to do so, the procuring entity shall reject that tender and shall select a successful tender in accordance with this regulation from among the remaining tenders subject to the right of the procuring entity to reject all remaining tenders.

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Obligation of contractor in works and turnkey contracts

219. Under works and turnkey contracts, a contractor shall be responsible for all duties, taxes and other levies, and a tenderer shall take these factors into account in preparing his tender with view to making evaluation and comparison of tenders strictly in monetary terms.

Report on evaluation and comparison of tenders

220.-(1) A detailed report on the evaluation and comparison of tenders, setting out the specific reasons upon which the determination of the lowest evaluated cost tender or highest evaluated price tender is based, shall be prepared by the evaluation committee.

(2) The evaluation report shall be submitted to the procurement management unit to check if it is in accordance with the tender document and if the procurement management unit is satisfied with the report shall forward the same to the tender board for approval; and where not satisfied it shall return the evaluation report with reasons to the evaluation team for re-evaluation.

(3) The procurement management unit shall, when satisfied with the evaluation report, shall prepare and submit to the tender board a summary of the evaluation and observation, if any using prescribed format by the Authority.

Evaluation with margin of preference for goods

221.- (1) For purposes of comparison of margin of preference for goods manufactured, grown, mined or extracted in the United Republic, responsive tenders shall be classified as-

- (a) Group A, which shall consist of tenders for goods which are manufactured, grown, mined or extracted within the United Republic;
- (b) Group B, which shall consist of all other tenders for goods originating from within the United Republic;
- (c) Group C, which shall consist of tenders for goods from overseas which are to be directly imported.

(2) Without prejudice to sub-regulation (1), a tenderer shall be classified as Group A if the tenderer satisfies the

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procuring entity that-

- (a) the labour, raw materials and components originating from within the United Republic will account for more than thirty per cent of the ex-works price of the goods offered; and
 - (b) the production facility in which the goods will be manufactured, assembled or processed has been engaged in manufacturing, assembling or processing of such goods at least since the time of submission of the tender.
- (3) The ex-works price quoted by Group A and Group B tenderers shall include all duties and taxes paid or payable on the raw or basic materials or components that have been purchased in the domestic market or imported.
- (4) The price quoted in Group C tenderers shall be on CIF or CIP port of entry, border point or other destination, exclusive of customs duties and other import taxes.
- (5) A procuring entity shall first evaluate and compare all responsive tenders so as to determine the lowest evaluated tender within each group.
- (6) The lowest evaluated tenders in each group shall then be compared with each other and if, as a result of this comparison, a tender from Group A or Group B is the lowest, it shall be selected for the contract award.
- (7) Where, as a result of the comparison made under sub-regulation (5), the overall lowest evaluated tender is from Group C, all Group C tenders shall be further compared with the lowest evaluated tender from Group A.
- (8) For purposes of comparison, an amount equal to-
- (a) the amount of the duties and other related import charges which a non-exempt importer would have to pay for the importation of the goods offered in such Group C tender; or
 - (b) fifteen per cent of the CIF or CIP tender price of

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such goods if the said duties and charges exceed fifteen per cent of such price,

shall be added to the evaluated tender price of the imported goods offered in each Group C tender.

(9) Where the Group A tender in such further comparison is the lowest, it shall be selected for the contract award, and if such tender is not selected, the lowest evaluated tender from Group C, as determined from the comparison made under sub-regulation (1), shall be selected.

Goods forming part of a contract package

222.- (1) In the case of tenders for the supply and installation of goods, turnkey contracts or any other form of procurement contract in which a number of discrete items of equipment is grouped into one contract package, a margin of preference shall not be applied to the whole package, but to goods manufactured in the United Republic, as prescribed in regulation 176 (2).

(2) The price for goods offered from abroad shall be quoted CIF or CIP, and the price for goods offered from within the United Republic shall be quoted ex-works, free of sales and similar taxes, all other components, such as design, works, installation, and supervision, shall be quoted separately.

(3) In the comparison of tenders, only the CIF or CIP price for goods offered from outside the United Republic shall be increased, for the purposes of comparison only by the applicable duty and other taxes payable by a non-exempt importer or fifteen percent, whichever is less.

(4) If duties vary from item to item within a package, the appropriate tariff for each goods or piece of equipment shall apply but no preference shall be applied for any associated services or works included in the package.

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Evaluation
with
preference for
works or non-
consultant
service
contracts

223.- (1) Where a procuring entity has allowed a margin of preference in accordance with regulation 26, domestic contractors or service providers, shall be requested to provide, as part of the data for qualification, details of ownership and such other information as shall be required to determine whether a contractor, service provider, a group of contractors, or a group of service providers is qualified for domestic preference.

(2) The tender documents shall clearly indicate that a margin of domestic preference will be granted and the method that will be followed in the evaluation and comparison of tenders to give effect to such preference.

(3) After tenders are received and reviewed by a procuring entity, responsive tenders shall be classified as-

- (a) Group A, which shall consist of tenders offered by domestic contractors or service providers eligible for the preference;
- (b) Group B, which shall consist of tenders offered by associations between domestic and foreign contractors or service providers eligible for the preference;
- (c) Group C, which shall consist of tenders offered by foreign contractors or service providers.

(4) The procuring entity shall first evaluate and compare all responsive tenders with a view to determine the lowest evaluated tender within each group.

(5) The lowest evaluated tenders in each group shall then be compared with each other, and if, as a result of this comparison, a tender from Group A or Group B is the lowest, it shall be selected for the contract award.

Post-qualification and denial of award in a case of limited resources

224.-(1) Where appropriate, post-qualification may be undertaken to determine whether the lowest evaluated tender or the highest evaluated price in case of revenue collection, has the legal capacity, capability and resources to carry out the contract.

(2) The criteria for post-qualification shall be set out in the solicitation documents and shall include-

- (a) experience and past performance on similar contracts;
- (b) knowledge of local working conditions;
- (c) capabilities with respect to personnel;
- (d) equipment and construction or manufacturing facilities where applicable;
- (e) financial capability to perform the contract;
- (f) current commitments;
- (g) legal capacity to make binding decisions on its rights, duties and obligations;
- (h) compliance with health and safety laws, tax and employment laws where applicable;
- (i) litigation record; or
- (j) any other relevant criteria.

(3) A procuring entity may seek independent references of a tenderer and the results of reference checks may be used in determining award of contract.

(4) In case of a foreign company, a procuring entity shall seek independent reference of legal existence of a tenderer from Tanzania diplomatic missions abroad or from any other reliable source.

(5) The criteria for post-qualification shall be limited to that which is necessary for performance of the intended contract and shall not be unduly restrictive.

(6) Where the lowest or highest evaluated tenderer does not meet the post qualification criteria:

- (a) the tender shall be rejected; and
- (b) a post-qualification shall be conducted to the next lowest or highest evaluated tenderer.

(7) The procurement management unit shall obtain approval from the tender board prior to rejecting any tender or undertaking an additional post-qualification on any other tenderer.

(8) Where a tenderer has been pre-qualified, a full post-qualification may not be necessary, but the pre-qualification information submitted shall be verified and an award may be denied to the lowest evaluated tenderer if he is judged to no longer meet the pre-qualification requirements and criteria, the procuring entity shall consider:

- (a) any material change in circumstances since submission of the pre-qualification information; and
- (b) any information which has become available since the pre-qualification submission, which, in the procuring entity's judgement, materially affects the capacity of the tenderer to perform the contract.

(9) A procuring entity may seek to limit the number or total value of awards made to any tenderer in cases where the tenderer's resources are known to be, or are likely to be insufficient for the additional commitments that would result from the proposed contract.

(10) In the cases specified in sub-regulation (9), a procuring entity may recommend that an award be denied to a tenderer that is considered no longer to have the capability or resources to perform the contract successfully.

Negotiations with tenderer.

225.-(1) Negotiations may be undertaken with the lowest evaluated tenderer relating to-

- (a) a minor alteration to the technical details of the statement of requirements;
- (b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;
- (c) a minor amendment to the special conditions of contract;

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- (d) finalising payment arrangements;
 - (e) mobilisation arrangements;
 - (f) agreeing final delivery or work schedule to accommodate any changes required by the procuring entity;
 - (g) the methodology or staffing; or
 - (h) clarifying details that were not apparent or could not be finalised at the time of bidding.
- (2) Negotiations shall not be conducted-
- (a) to substantially change the specification or details of the requirement, including tasks or responsibilities of the tenderer;
 - (b) to materially alter the terms and conditions of contract stated in the solicitation document;
 - (c) primarily for the purpose of reducing prices in case of procurement of goods, works or services;
 - (d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of tender.
- (3) Notwithstanding sub regulations (1) and (2), where a competitive procurement method is used, but only a single tender is received, negotiations may relate to other areas of the tender including the price offered.
- (4) Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee's recommendations-
- (a) of the lowest evaluated tenderer in case of goods, works or services, or highest evaluated tenderer in case of revenue collection, and the need to hold negotiations; or
 - (b) that a single or sole tenderer should be considered for contract award, subject to negotiations in the case of single, sole source procurement of goods or services, or direct contracting for works.
- (5) Negotiations shall only be held with the lowest evaluated tenderer for goods, services or works, or the highest

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evaluated tenderer for revenue collection for national and international competitive tendering.

Negotiation
Team

226.-(1) A procurement management unit shall recommend membership of a negotiation team based on appropriate seniority and experience depending on the value and complexity of the procurement and the membership shall be approved by the accounting officer who shall also name the chairman from amongst the members.

(2) The number of members of the negotiation team shall depend on the value and complexity of the procurement, but shall in all cases be a minimum of three and a maximum of five, and may include members of the original evaluation committee or different officers.

(3) The negotiation team shall comprise of members who have-

- (a) knowledge of end-user requirements;
- (b) negotiation skills;
- (c) procurement and contracting skills;
- (d) financial management skills; or
- (e) technical skills relevant to the subject of the procurement or disposal.

(4) Where the required skill or experience is not available within the procuring entity or where there is a conflict of interest, a member of negotiation team may be external to the procuring entity.

(5) The chairperson of the negotiation team shall be responsible for:

- (a) all arrangements for negotiation meetings;
- (b) chairing all negotiations;
- (c) the conduct of negotiation in accordance with all legal requirements;
- (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
- (e) ensuring all members have a common understanding of the process of negotiations and

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objectives to be achieved;

- (f) ensuring members understand their own role in the negotiations and the standard approach of the team;
- (g) managing communications between the negotiation team and the tenderer or any other body;
- (h) ensuring that the negotiation team has access to necessary information; and
- (i) preparing the final report on the negotiation or ensuring that it is prepared.

(6) The negotiation team shall prepare a negotiations plan which shall specify the issues to be negotiated as specified in the evaluation report and the objectives to be achieved and whenever possible, quantify the objectives and set maximum and minimum negotiating parameters.

Approval of negotiation plan by tender board

227.-(1) The tender board shall approve the negotiations plan prior to any negotiations taking place.

(2) Prior to confirming of any agreement reached, the procurement management unit shall seek approval of the tender board.

Minutes and recommendations of negotiation team

228.-(1) The negotiation team shall produce minutes of the meeting and obtain the tenderer's written agreement that it is a true and accurate record of the negotiations held and submit the minutes to the procurement management unit.

(2) The procurement management unit shall submit the recommendations of the negotiation team to the tender board to:

- (a) proceed with contract award to the recommended tenderer, incorporating the agreements reached during negotiations;
- (b) revise the negotiation objectives and hold further negotiations; or
- (c) terminate the negotiation and reject the tenderer.

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(3) Where the negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend inviting the next ranked tenderer for negotiations in the case of competitive methods of procurement or a new tenderer to submit a tender in the case of direct contracting.

Results of approved negotiations

229. The results of any approved negotiations shall be specified in a letter of tender acceptance and incorporated into the contract document.

Negotiations with next ranked tenderer

230. Where negotiations are commenced with the next ranked tenderer or a new tenderer is invited, the procuring entity shall not reopen earlier negotiations; and the original tenderer shall be informed in writing of the reasons for termination of the negotiations.

Approval of award of contract

231.-(1) Tender board shall, in accordance with section 75 of the Act, approve the recommendations of the evaluation team and inform the accounting officer of its award decision within three working days of making the decision.

(2) Upon receipt of the notification of award decision from the tender board, the accounting officer shall, having satisfied himself that proper procedures have been followed and within three days, issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them fourteen days within which to submit a complaint, if any.

(3) Notwithstanding sub-regulation (2), the accounting officer of a local Government Authority shall not issue a notice of intention to award a contract until conditions of section 60(4) of the Act have been fulfilled.

(4) The notice referred to in sub-regulation (2) shall contain-

- (a) name of the successful tenderer;
- (b) the contract sum and completion or delivery period;

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(c) reasons as to why the tenderers were not successful.

(5) Where complaint is lodged pursuant to sub-regulation (2), the accounting officer shall proceed to determine the matter in accordance with section 96 (6) of the Act.

(6) Where no complaint is lodged pursuant to sub-regulation (2), the accounting officer shall issue a notice of acceptance to the successful tenderer after all necessary approvals within and outside the country are obtained.

(7) The notification referred to in sub-regulations (2) and (4) shall be communicated in written or electronic form as prescribed in the tender document and signed by the accounting officer.

(8) The notification is considered to be dispatched if it is properly addressed or otherwise directed and transmitted to the successful tenderer, or conveyed to an appropriate authority for transmission to such tenderer, by a mode authorized by regulation 12.

(9) A tenderer who is duly served with the notice of intention to award a contract pursuant to section 60(3) of the Act, but does not submit a complaint to the accounting officer within the prescribed time shall be considered to have waived his right to appeal.

Award of contract

232.-(1) The accounting officer shall send a copy of the award letter to the Chief Executive Officer of the Authority, the Controller and Auditor General, the Attorney General and the Internal Auditor General.

(2) The award shall be made within the period of tender validity to the tenderer whose tender has been determined to be the lowest evaluated or the highest evaluated, as the case may be, and meets the required financial and managerial capability, legal capacity, experience and resources to carry out the contract effectively.

(3) The approved tenderer shall not be required, as a condition of award, to undertake responsibilities or work not

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stipulated in the tender documents, or otherwise to modify the tender as originally submitted.

Acceptance
of tender and
entry into
force of
procurement
contract

233.-(1) Where a tender is accepted by the accounting officer, the procuring entity and the person whose tender is accepted shall enter into a formal contract for supply of goods, provision of services or undertaking of works within twenty eight calendar days after fulfilling all conditions prior to the signing of contract.

(2) A formal contract shall be in a prescribed form and shall contain terms, conditions and provisions set out in the tender document.

(3) A procurement contract shall enter into force when a written acceptance of a tender is communicated to the successful tenderer.

(4) Where a successful tenderer fails to sign a written contract as required, or to provide any required security for the performance of the contract, the procuring entity shall, on the recommendation of the tender board, select a competitive tender from among the remaining tenders that are in force, subject to the right of the procuring entity, to reject all remaining tenders.

Submission
of
procurement
report

234. The accounting officer shall, within thirty days from the date of award prepare and submit to the Authority, in accordance with guidelines for reporting procurement information issued by the Authority, a summary indicating the following:

- (a) the names of the person or body to whom the contract is awarded;
- (b) the amount of tender and the date on which the award was made;
- (c) description of the contract, bidding process including tender invitation, issuing of tender documents, pre-tender clarifications, if any and bid opening and evaluation;
- (d) complaints received during tender process, if any.

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Copies of acceptance notices to be forwarded to Authority

235. (1) The accounting officer shall, within thirty days after the communication of award, notify unsuccessful tenderers the name of the person to whom the contract is awarded and the contract amount.

(2) Notwithstanding the generality of sub-regulation (1), for the purpose of enabling information on tender award to be published, recorded and distributed, procuring entities shall ensure that copies of acceptance notices, suitably notated with the number of tenders received, the range of tenders, the estimates and completion time, are submitted to the Authority, and copies shall be posted to the Authority within fourteen days of sending an acceptance notice to the tenderer.

Publication of results of tender award

236. The results of tender award shall be published in the Journal and Tenders Portal on regular basis.

Reasons for not accepting lowest tender

237.-(1) Where the lowest tender is not accepted, reasons may be given orally, on request, to any tenderer who submitted a lower tender than that accepted.

(2) The reasons under sub-regulation (1) shall be given by the tender board and, in no case, shall the authority to give reasons be delegated to any person below the level of the secretary of the tender board.

(3) The minutes of the meetings of a tender board shall specify the reasons for rejecting or accepting a lower tender, and such information shall be confidential.

Request for information

238.-(1) Where any tenderer for a contract on which a decision or recommendation has been made prefers to make a formal approach and accordingly requests information, he is to be given a written statement which shall list the material issues of fact and the broad reasons for the decision as recorded in the tender board's minutes.

(2) A tenderer with a lower price but passed over is to be given more detailed written reasons as to why his tender

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was not accepted, if he so specifically requests, such reasons must conform with those recorded in the tender board's minutes.

(3) Requests for information from other tenderers shall be considered on merits and, except where a tenderer specifically advises otherwise, all details of tenders submitted shall be treated as confidential between the tenderer and the procuring entity.

Selection of sub-contractors and suppliers for provisional and prime cost sums in works contracts

239.-(1) The procuring entity shall decide the manner in which the works or services shall be executed or provided where a provisional or prime cost sum has been provided for in the schedule or contract.

(2) When work is to be carried out as a selected subcontract and the value is such that competitive tenders would be obtained, tenders shall be approved by the tender board which approved the award of the main contractor regardless of the value involved and regardless of whether it is the supplier, service provider, contractor or the procuring entity which calls tenders.

(3) Tenders for provisional or prime cost sum not exceeding the value prescribed in guidelines issued by the Authority, shall be invited by the procuring entity.

(4) Tenders shall be invited in the name of the head contractor or service provider who may be consulted in regard to any special arrangements he may wish to have incorporated in tendering documents for the subcontract.

(5) The tender for subcontract shall be approved by the tender board regardless of whether it is the supplier, service provider, contractor or the procuring entity which calls tenders.

(6) The tender selected by the procuring entity shall first be referred to the head supplier, contractor or service provider for his perusal before instructions to accept it as a subcontract are issued.

(7) Tenders for provisional sums must not be invited prior to the main contract being let.

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(8) The procuring entity shall not invite tenders for works unless drawings and specifications are complete and firm estimates of cost have been prepared.

Process to be confidential

240. Information relating to the examination, clarification sought by the procuring entity after the tender opening, evaluation and comparison of tenders and recommendations for the award of a contract shall not, prior to communication of intention to award a tender, be disclosed to tenderers or to any other person who is not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

Environmental issues

241.-(1) A procuring entity shall avoid wherever possible the procurement of chemicals, pesticides or other goods which are known to have or suspected to have harmful effects on the health of the population, the environment, domestic animals, wildlife and flora.

(2) Where procurement of goods by a procuring entity is necessary, the ministry or department concerned shall ensure that the use of those goods is restricted so that any harmful effect are avoided or limited.

(3) A procuring entity shall assess the impact on the environment of any works at the planning stage of the project and in any case before procurement proceedings are commenced.

(4) A procuring entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before disposing them by tender and procuring new replacements.

**PART VIII
CONTRACT MANAGEMENT**

Management of goods contracts

242.-(1) A procuring entity shall obtain reports on the receipt of goods which are delivered against contracts and shall promptly authorise payment to the supplier.

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(2) Where receipt of goods is delayed, or is likely to be delayed beyond the time for delivery prescribed in the contract, the procuring entity shall seek reports and explanations from the suppliers or their agents and may institute liquidated damages as may be provided for in the contract.

Management
of services
and works
contracts

243.-(1) In the case of contracts for non-consultant services or works, a procuring entity shall monitor the service provider or contractor's performance against the statement of requirements or schedule of works stated in the contract, by means of daily, weekly or monthly reports from the procuring entity's supervisor responsible for the services or works.

(2) The procuring entity shall authorise payments by measurement and certification, at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, if so stated in the contract.

(3) Where the performance of a service provider or contractor is not in conformity to the requirements prescribed in the contract, the procuring entity shall notify the service provider or contractor on any short-comings, and may refuse to authorize further payments until the requirements are met.

(4) Where an agreement to remedy the irregularities in the performance of a service provider or contractor cannot be reached, the procuring entity shall notify the service provider or contractor of the breach of the terms of the contract, and may, in addition, invoke the procedure for instituting disputes prescribed in the contract.

(5) In the event that a service provider or contractor fails to provide services at the required standard, to remedy faults or to complete the works to the satisfaction of the procuring entity, the procuring entity may-

- (a) withhold payment of any moneys retained; or
- (b) call any performance security if such has been furnished by the service provider or contractor.

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- (6) Funds that have been committed under any contingency included in the total contract value may be used:
 - (a) to cover variations in cost according to any formula stated in the contract; or
 - (b) for additional services or works that are considered to be necessary by the procuring entity.
- (7) When the services have been provided or works have been completed to the satisfaction of the procuring entity, and after any period provided in the contract has elapsed, the procuring entity shall promptly authorise final payment to be made to the service provider or contractor on his application, and release the service provider or contractor from any performance guarantee provided the service provider or contractor has made good all the defects identified.

Inspection and acceptance of goods

- 244.**-(1) Goods delivered shall be inspected, sampled and tested by the procuring entity and they shall not be accepted if they are below the standards stipulated in the contract.
- (2) Contracts shall contain a clause that the supplier shall be responsible for all costs and expenses incurred due to a justified rejection of his goods on the ground that they are below standards stipulated in the contract.
 - (3) Subject to sub regulation (1), goods rejected shall be collected by the supplier from the premises of the procuring entity within seven working days from the date of rejection of the goods.

Inspection and acceptance committee

- 245.** The accounting officer shall for each tender, including call off orders, appoint a goods inspection and acceptance committee which shall-
- (a) inspect the goods at the office of the procuring entity or, user, or at the site specified in the contract and any inspection at any other site shall be with a prior consent in writing of the procuring

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entity;

- (b) inspect and count the goods in order to ascertain whether they are correct and complete in accordance with the agreement;

Technical or scientific test

246. In case of a technical or scientific test or experiment, an expert or qualified person in respect of the goods may be invited for consultation, or the goods may be sent to that qualified person for test.

Goods found to be correct and complete

247.-(1) Where goods are found to be correct and complete, the goods shall be accepted, and the supplier shall be regarded as having effected delivery on the day the goods were brought to the place of delivery; and after the acceptance, the goods shall be handed over to the responsible officer within the procuring entity.

(2) Where the supplier delivers the correct goods but deficient in number, or free from deficiency in number but not altogether correct, if the contract does not provide otherwise, only the correct ones shall be inspected and accepted in accordance with sub-regulation (1), and it shall be promptly reported to the procuring entity who shall notify the supplier within three working days from the date of the finding,

Provided that this shall not deprive the procuring entity the right to impose a fine on the supplier for the incomplete and incorrect delivery.

Goods acceptance certificate

248. Where goods are accepted, a signed goods acceptance certificate shall be issued to the supplier and a copy of the certificate shall be kept by the procuring entity to support the processing of payment.

Inspection and acceptance of goods in set or unit

249. The inspection and acceptance of the goods which are in a set or unit, any missing component part of which would render the use incomplete, in which case the supplier shall not be considered to have delivered the goods

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shall be promptly reported to the procuring entity which in turn shall notify the supplier within three working days from the date of the finding.

Refusal to accept delivery

250.-(1) Where any member of the goods inspection and acceptance committee refuses to accept delivery by making a written dissenting opinion, the committee shall submit it to the accounting officer for consideration and decision.

(2) Where the accounting officer agrees with acceptance of delivery, the committee shall proceed in accordance with regulations 247(1) and 248.

Period of inspection and acceptance

251. The inspection and acceptance of goods shall be completed within the time specified in the contract.

Appointment of a works supervisor

252.-(1) Where the accounting officer considers necessary that any contracted work be managed by a supervisor, he shall appoint a public officer under the jurisdiction of the procuring entity or an officer of the department or unit responsible for the works or a consultant to be a supervisor.

(2) The supervisor appointed under sub-regulation (1) shall manage the works of inspection committee and shall prepare and submit to the accounting officer performance report on monthly basis or within the period prescribed by the accounting officer.

**PART IX
PROCEDURES FOR SELECTION AND EMPLOYMENT OF
CONSULTANTS**

(a) Methods of Procurement

Selection of a method of procurement

253. A procuring entity shall procure consultancy services using the methods prescribed under regulations 254, 255, 256 and 257, respectively.

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International
competitive
selection

254.-(1) In international competitive selection, a procuring entity shall invite consultants regardless of their nationality, by means of an expression of interest notice that shall be advertised nationally and internationally, to submit expression of interest for consultancy services.

(2) The international competitive selection shall be used if-

- (a) payment may be made in whole or in part in foreign currency;
- (b) it is desired to attract expression of interest from the widest range of consultants regardless of the estimated value of the services to be procured.

(3) Under the international competitive selection, the procuring entity shall advertise, in the Journal and Tender Portal, the request for expression of interest in the form of the specific procurement notice for any particular contract and in accordance with the First Schedule to these Regulations.

National
competitive
Selection

255.-(1) In national competitive selection, a procuring entity shall invite consultants to submit expression of interest for the required services regardless of their nationality, by means of an expression of interest notice advertised in the Journal and Tender Portal in accordance with the First Schedule to these Regulations in the United Republic only.

(2) The national competitive selection may be used if-

- (a) payment may be made wholly in Tanzanian shillings;
- (b) the services can be obtained locally at prices below the international market;
- (c) the estimated cost of the services does not exceed the threshold for national competitive selection specified in the Eleventh Schedule to these Regulations; or
- (d) the advantages of international competitive selection are clearly outweighed by the administrative or financial burden involved.

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Restricted
competitive
selection

256.-(1) A procuring entity may restrict the issue of request for proposal to a limited number of specified consultants if-

- (a) such consultants are pre-qualified pursuant to regulation 286;
- (b) the services required are within the competence of a limited number of specialised consultants; or
- (c) there is an urgent need for the services such that there would be insufficient time for a procuring entity to engage in open national or international tendering, and that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have not been caused by dilatory conduct on its part.

(2) The justification for restricting selection under sub-regulation (1) shall be prescribed in the record of selection proceedings made pursuant to regulation 15.

(3) Except where consultants are pre-qualified, a procuring entity using a restricted competitive selection shall seek proposals from a broad list of potential consultants to ensure competitive prices.

(4) In all respects other than advertisement and issue of the request for proposal, the procedures for competitive selection as set out in these Regulations shall apply.

Single source
selection

257.-(1) The use for single-source selection method shall be examined in the context of the overall interests of a procuring entity and the project, and a tender board's responsibility to ensure economy and efficiency and provide opportunity to all consultants to the extent possible.

(2) Single-source selection may be appropriate only if it presents a clear advantage over competition in which case single source selection may be justified-

- (a) for tasks that represent a natural continuation of previous work carried out by the firm; or
- (b) where a rapid selection is essential such as in an emergency operation; or

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(c) where only one firm is qualified or has experience of exceptional worth for the assignment.

(3) When continuity for downstream work is essential, the initial request for proposals shall outline this prospect and, if practical, the factors used for the selection of the consultant shall take into account the likelihood of continuity for downstream work.

(4) Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment and for such downstream assignments, the procuring entity shall request the initially selected consultant to prepare technical and financial proposals on the basis of terms of reference furnished by the procuring entity which shall then be negotiated.

(5) If the initial assignment is not awarded on a competitive basis or is awarded under tied financing or reserved selection or, if the downstream assignment is substantially larger in value, a competitive process acceptable to the tender board shall normally be followed, in which case, the consultant carrying out the initial work is not excluded from consideration if he expresses interest and the tender board shall consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

(b) Selection methods, procedures and conditions for application

Selection
methods and
procedures

258.-(1) The selection method, procedure and evaluation criteria to be adopted, for all complex assignments, shall be determined by the procuring entity in consultation with the relevant regulatory body prior to the invitation of consultants to submit proposals.

(2) The criteria referred to in sub regulation (1), shall be considered by the tender board which will verify their suitability and make possible comments concerning them, and be included in the request for proposals.

(3) The following principal selection methods shall be applied according to the characteristics of the services required:

- (a) selection based solely on technical quality;
- (b) selection based on technical quality with price consideration;
- (c) selection based on the compatibility of technical proposal and least cost consideration; and
- (d) selection based on quality and fixed budget.

(4) The adoption of any of the four principal selection methods shall depend on the complexity of the assignment, the impact of the assignment on the resulting end product and the probability that the proposals will lead to comparable outputs.

(5) The Authority shall issue guidelines on selection methods.

Selection based solely on technical quality

259.-(1) In the selection procedure based solely on technical quality, the firm which has submitted the best technically acceptable proposal shall be the first to be invited for negotiations in accordance with regulation 308.

(2) The envelope containing the financial proposal shall be opened in the firm's presence and its contents examined and where no agreement is reached, then the consultant whose technical proposal is ranked the second shall be invited for negotiations.

(3) The exercise may continue until an agreement is reached with one of the firms whose technical proposal is considered satisfactory and retained.

(4) The financial envelopes containing the proposals of firms not invited for negotiations will be returned unopened to the firms.

(5) Quality based selection is appropriate for the

following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts such as feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies;
- (c) assignments that can be carried out in substantially different ways, such as management advice and sector and policy studies in which the value of the services depends on the quality of the analysis; and
- (d) architectural services.

(6) Subject to sub-regulation (5) (d), novel and complex architectural services may be obtained through architectural competition in accordance with architectural procedures prescribed by the relevant professional regulatory body subject to the approval by the Authority.

(7) A firm is eligible to participate in architectural competition pursuant to sub-regulation (6) if it is registered or capable of being registered with the relevant professional body.

(8) In quality based selection, the request for proposals may request submission of a technical proposal only or request for submission of both technical and financial proposals at the same time, but in separate envelopes and the request for proposals shall not provide the estimated budget.

(9) If technical proposals alone were invited, after evaluating the technical proposals, the procuring entity shall ask the consultant with the highest ranked technical proposal

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to submit a detailed financial proposal so that the procuring entity and the consultant shall then negotiate the financial proposal and the contract.

(10) If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection based on combined technical quality and price consideration

260.-(1) The selection procedure based on the technical quality with price consideration shall start with the evaluation of technical proposals.

(2) The technical proposals considered satisfactory and classified by order of merit shall have the corresponding financial proposals opened.

(3) After the necessary correction of arithmetic errors are made, a score of one-hundred percent shall be given to the lowest financial proposal and the score given to each of the other financial proposals is proportionately reduced.

(4) The technical and financial proposals shall be weighted as specified in the request for proposal and the combined value of the two proposals shall be calculated for each firm.

(5) Negotiations shall be initiated with the firm which has the highest combined score and shall be conducted in accordance with regulation 308, until an agreement is reached with one of the firms whose technical proposals are considered satisfactory and retained.

Selection based on compatibility of technical proposals and least cost consideration

261.-(1) The selection based on compatibility of technical proposals and least cost consideration may be used in the selection of consultants for assignments of a standard or routine nature where well established practices and standards exist, and in which the contract amount is small.

(2) The procedure starts with the evaluation of the technical proposal and firms whose technical proposals are retained shall be those who scored equal or above the

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minimum specified threshold.

(3) At the stage of examination of financial proposals, only the envelopes containing the financial proposals of consultants who scored equal or above the minimum specified threshold shall be opened.

(4) The necessary arithmetic corrections will then be made for the purposes of comparison and the consultant whose financial offer is considered the lowest shall be invited for negotiations in accordance with regulation 308.

(5) Where an agreement is not reached, the consultant whose financial offer is ranked second lowest, shall in turn be invited to negotiate and so on until an agreement is reached with one of the best ranked consultants.

Selection
based on
quality and
fixed budget

262.-(1) The selection based on quality and fixed budget method may be used when the assignment is simple and can be precisely defined and when the budget is fixed.

(2) The request for proposals shall indicate the available budget and request the consultants to provide their technical and financial proposals in separate envelopes, within the budget.

(3) Terms of reference shall be prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks.

(4) Evaluation of all technical proposals shall be carried out first and the price envelopes of those scoring above the minimum threshold shall be opened in public.

(5) Proposals that exceed the indicated budget shall be rejected.

(6) The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract in accordance with regulation 308.

Selection
based on
consultants
qualification

263.-(1) The selection based on consultants qualification may be used for very simple assignments for which the need for preparing and evaluating competitive

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proposals is not justified.

(2) In selection based on consultants qualification, the procuring entity shall-

- (a) prepare the terms of reference,
- (b) request expressions of interest and information on the consultants' experience and competence relevant to the assignment,
- (c) establish a short list, and
- (d) select the firm with the most appropriate qualifications and references.

(3) The selected firm shall be requested to submit a combined technical and financial proposal and then be invited to negotiate the contract.

(c) Selection of particular types of consultants

Selection
of public
bodies,
agencies as
consultants

264. Consulting firms which are partially or totally controlled or sponsored by the government or public authorities may be eligible for public financed projects if:

- (a) their qualification and experience are suitable for the assignment in question;
- (b) their structure and legal status are such that they can enter into a legally binding agreement with the public authorities' project implementation agency; and
- (c) privileges as well as other advantages such as tax exemptions and other facilities and special payment provisions are evaluated and neutralized in the cost comparison to ensure fair competition.

Selection
of United
Nations
agencies as
consultants

265.-(1) United Nations agencies may be hired as consultants, where they are qualified to provide technical assistance and advice in their area of expertise.

(2) The United Nations agencies shall not receive any preferential treatment in a competitive selection process, except that a procuring entity may accept the privileges and immunities granted to United Nations agencies and their staff

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under existing international conventions and may agree with United Nations agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the tender board.

(3) Privileges as well as other advantages such as tax exemptions and other facilities and special payment provisions, shall be evaluated and neutralized in the cost comparison to ensure fair competition.

Selection
of Non-
governmental
organizations

266.-(1) Non-governmental organisations may be included in the short list if they express interest and provided that a procuring entity and a respective tender board are satisfied with their qualifications and eligibility to participate.

(2) For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely non-governmental organisations and if so, the quality and cost based selection procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of non-governmental organisations, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation.

(3) Privileges and other advantages such as tax exemptions and other facilities, and special payment provisions shall be evaluated and neutralized in the cost comparison to ensure fair competition.

Selection
of
procurement
agents

267.-(1) When a procuring entity lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ as its agent, a firm that specializes in handling procurement.

(2) Procurement agent shall be paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee.

(3) Procurement agents shall be selected using quality and cost based selection procedures with cost being given a weight of up to fifty percent.

(4) The standard contract form applicable for

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procurement agents, with payments based on a percentage of the total procurements and staff-month rates, shall be used.

Selection of inspection agents

268.-(1) A procuring entity may employ inspection agents to inspect and certify goods prior to shipment or arrival in Tanzania in which case inspection by such agents shall cover the quality and quantity of the goods concerned and reasonable prices.

(2) Inspection agents shall be selected using quality and cost based selection procedures giving cost a weight of up to fifty percent and using a contract format with payments based on a percentage of the value of goods inspected and certified.

Auditors

269.-(1) An auditor shall carry out auditing tasks under well defined terms of reference and professional standards.

(2) Auditors shall be selected according to quality and cost based selection, with cost as a substantial selection factor that is, forty to fifty points or by the “least - cost selection” outlined in regulation 261.

Selection of transaction advisor

270.-(1) A procuring entity may, where it is unlikely that all kinds of expertise, experience and human resources needed to develop and implement a Public Private Partnership project will be available in-house, employ a transaction advisor or manager.

(2) For the purpose of these Regulations, “transaction advisor or manager” means a group of professional consultants having expertise in technical, financial, and legal matters who work collectively as a team, and may be drawn from one or more firms.

(3) A transaction advisor or manager shall have the appropriate skills and experience to assist and advise the procuring entity on matters related to the project development and its implementation including the preparation and conclusion of the Public Private Partnership contract.

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(4) The transaction advisor or manager shall be selected and employed using the procedures for selection and employment of consultants pursuant to these Regulations.

Terms of reference for transaction advisor

271.-(1) A procuring entity shall prepare detailed terms of reference for the transaction advisor which clearly mention the scope of work and services required, and deliverables and their timeframes.

(2) The transaction advisor shall be required to have project planning, financial, legal and technical expertise and the terms of reference shall place emphasis of output, outcome and service standards rather than specifying the technical parameters of input.

Service delivery contracts

272.-(1) Projects in the social sector may involve hiring of large numbers of individuals or social workers who deliver services on a contractual basis.

(2) The job descriptions, minimum qualifications, terms of employment, selection procedures and the extent of tender board review of these procedures and documents shall be prescribed on a case by case basis or in accordance with the guidelines issued by the Authority.

(d) Basic steps for selection of consultants

Recruitment of consulting firm

273. A procuring entity may choose from a range of selection methods specified in these Regulations in order to provide a wide range of services, promote streamlining and harmonization, and reduce administrative complexities and transaction costs.

Selection process

274. The selection process shall comprise of-

- (a) preparation of the terms of reference;
- (b) preparation of cost estimate and the budget;
- (c) advertising the request for expression of interest or prequalification of the consultancy services;
- (d) preparation of the short list of consultants;

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- (e) determination of the selection procedures and criteria for selection;
- (f) preparation and issuance of the request for proposals;
- (g) inviting the consultants to submit proposals;
- (h) receipt of proposals;
- (i) evaluation of technical proposals;
- (j) evaluation of financial proposal;
- (k) final evaluation of quality and cost;
- (l) post qualification where necessary;
- (m) negotiations;
- (n) award of the contract to the selected consultant; and
- (o) signing the contract.

Terms of
reference

275.-(1) The procuring entity shall be responsible for preparing the terms of reference for the assignment with a view to ensuring compatibility between the scope of the services described in the terms of reference and the availability of budget.

- (2) The terms of reference shall contain-
 - (a) a precise statement of the objectives and goals sought;
 - (b) a clear description of the nature and scope of the services required, their context and the time interval in which they are provided;
 - (c) a description of the duties and responsibilities of the consultant;
 - (d) a description of the duties and responsibilities of the procuring entity;
 - (e) information on any counterpart staff and its role;
 - (f) information on training and the transfer of technology, where necessary;
 - (g) a summary of the data, a list of all available studies and information on the assignment, facilities and services which the procuring entity will provide to the consultant; and

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(h) a clear statement of the criteria to be used in the selection procedure.

(3) The terms of subcontract agreement between the coordinating consultant and the sub-consultant shall be part of the submission to the procuring entity.

Procuring
entity's
contributions

276.-(1) The contributions which the procuring entity is in a position to make to the consultant's assignment shall be defined in the terms of reference, indicated in the requests for proposals and finalized in the contract.

(2) The nature and type of the contributions shall be reviewed during negotiations and shall not be included in the cost of the services.

(3) Except for a budgetary allocation to cover the entire or part of the local expenditure, the contributions shall include-

- (a) office space with electricity, water, telephone, equipment, vehicles and maintenance;
- (b) housing;
- (c) support staff such as secretary, messenger, driver, administrative and technical service; and
- (d) information, documentation and all studies relating to the assignment.

(4) The value and type of the procuring entity's contributions shall be finally concluded during the negotiations.

Counterpart
staff

277.-(1) A qualified counterpart staff employed by the procuring entity or its executing agency may be involved in the assignment with a view to build in-house capacity.

(2) The number of counterparts shall be determined on an individual basis depending on the importance of the assignment, and the requirements of the executing agency or the procuring entity.

(3) The counterpart staff shall-

- (a) through a day-to-day contact with the consultant's experts, benefit from a transfer of

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skills and thus receive on-the-job training; and

- (b) liaise between the organs of the procuring entity and the consultant and assist the latter with data collection, providing it with all available information documentation and studies on the assignment.

(4) Prior to any final decision regarding the level of qualifications, number and responsibilities of each counterpart, discussions shall be held during the negotiations to determine the-

- (a) number and responsibilities of the counterpart staff co-operating with the consultant's team.
- (b) extent to which counterpart staff are released from their normal duties;
- (c) extent to which counterpart staff can fit into the consultants' proposed work schedule;
- (d) arrangements made to cover field and travel expenses of the counterpart staff; and
- (e) arrangements for replacement of unsuitable counterpart staff.

Association
between
consultants

278.-(1) A consultant may associate with each other to complement their respective areas of expertise, or for other reasons in which case such association may be for the long term independent of any particular assignment or for a specific assignment and may take the form of a joint venture or of a sub-consultancy.

(2) In the case of a joint venture, all members of the joint venture shall be jointly and severally liable for the entire assignment.

(3) A joint venture of firms may pre-qualify by combining the capabilities and past experience of each firm.

(4) A firm shall not associate with more than one partner in the same pre-qualification proceedings

(5) A firm which is individually pre-qualified may form a joint venture in order to submit a technical proposal.

(6) Firms which are pre-qualified as partners in a joint

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venture shall not submit individual technical proposals.

(7) Where the short list is finalized and request for proposals is issued, any association in the form of joint venture or sub-consultancy among short listed firms shall be permissible only with the prior approval of the tender board.

Cost estimate
and budget

279.-(1) The cost estimate shall be made on the basis of the cost of the consulting assignment on the assessment of the resources needed to carry out the assignment, staff time, logistical support, and physical inputs.

(2) The cost estimate and budget shall be based on the terms of reference, in which case the budget shall be as detailed and accurate as possible, and shall be broken down into foreign and local currency where applicable.

(3) The principal cost categories and characteristics on which the cost estimate may be based are the following:

- (a) the consultants' staff, time spent at headquarters and in the field;
- (b) other professional and support staff;
- (c) direct costs such as travel, transport and per diem;
- (d) the cost of physical inputs and materials such as equipment, vehicles and office supplies;
- (e) other expenditure such as offices, communications, services; and
- (f) costs for special services, if any.

(4) Where the project is financed by external sources which do not finance local taxes any taxes and customs duties component of the cost estimate shall be identified and handled by the procuring entity.

Advertisemen
t for request
of expression
of interest

280.-(1) The procuring entity shall include, in the general procurement notice, a list of expected consulting assignments which shall be updated as the procuring entity considers necessary for all outstanding procurement.

(2) The procurement management unit shall prepare the invitation for expression of interest and table before the

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tender board for comments and approval.

(3) The invitation for expression of interest shall be advertised by the procuring entity in the Journal and Tender Portal in accordance with the First Schedule to these Regulations.

(4) In the advertisement, the procuring entity shall request the applicants to submit adequate information for the procuring entity to make decision on the firm's suitability and the advertisement shall not be complex as to discourage consultants from expressing interest.

(5) A minimum period prescribed in the Twelfth Schedule to these Regulations shall apply for submission of expressions of interest.

(6) A consultant who wishes to provide the requested services may express his desire in writing to be short-listed to the procuring entity concerned.

(7) Notwithstanding sub-regulation (6), an expression of interest to participate in the provision of services shall not oblige the procuring entity to include the applicant in the short list.

(8) In evaluating the expression of interest, a procuring entity shall accord first consideration to firms that possess the relevant qualifications.

Preparation
of short list

281.-(1) The short-list shall be made up of consultants who, in the view of a procuring entity, possess the required capabilities and experience to provide the specific services.

(2) A new shortlist shall be prepared for every new request for proposals and shall comprise of five to ten firms at least three of which shall be national firms.

(3) Where there are no qualified firms from Tanzania and for the purposes of establishing the short list, the nationality of a firm shall be the country in which the firm is registered or incorporated

(4) A tender board may require the procurement management unit to expand or reduce a short list and where a tender board has approved a short list, a procurement

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management unit shall not add or delete names without an approval of the tender board.

(5) Prior to the issue of the request for proposal documents, the consultants shall be requested to confirm their desire to participate in the competition.

(6) Subject to sub-regulation (2), the procurement management unit shall, with the tender board's consent, replace firms that have communicated to the procuring entity in writing that they will not participate or firms which did not confirm their participation pursuant to sub-regulation (4), by other firms where available.

Provision of final shortlist

282. Firms that expressed interest, as well as any other firm that specifically so requests, shall be provided with the final short list of firms.

Criteria to be used where no expression of interest is provided

283. Where a procuring entity has not invited expression of interest, it may use of the following sources when drawing up the short list of consultants:

- (a) procuring entity's own experience of consulting firms and individual consultants;
- (b) soliciting interest directly from qualified firms based on its own knowledge; or
- (c) established standard list of consultants who have performed similar services in other procuring entities or donor funded assignments, where available.

Elements of shortlist

284.-(1) A short list may entirely comprise of national consultants if-

- (a) a sufficient number of qualified national firms is available for having a short list of firms with competitive costs;
 - (b) a competition that include foreign consultants is prima facie not justified; or
 - (c) foreign consultants have not expressed interest.
- (2) A short list which is not approved by the tender

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board shall not be used for the selection of a consultant for a public financed project.

Tender board
not to object
consultant

285. Notwithstanding the provisions of regulations 281 to 284, where an eligible consultant has satisfactorily carried out feasibility studies for a project, and is technically qualified to undertake detailed project or engineering design, preparation of tender documents or, supervision of implementation, a tender board shall not object the consultant if the consultant is appointed to carry out such subsequent functions.

Pre-
qualification

286.-(1) In the case of major and complex services, the short list shall be prepared by either inviting consultants renowned for their experience and skills or by means of an announcement to consultants to express their interest in the assignment.

(2) The announcement shall contain a brief outline of the assignment and only request consultants to submit a detailed statement of capability and experience relevant to the assignment in the format to be provided by the procuring entity in line with standard prequalification documents issued by the Authority.

(3) The criteria used in pre-qualification shall not be applied during the follow-up evaluation of the technical proposals.

(4) Pre-qualification shall be mandatory in all situations where a procuring entity intends to engage into restricted architectural competition in accordance with architectural competition procedures prescribed by the relevant regulatory board and subject to the approval of the Authority.

(5) The procuring entity shall evaluate the responses and information obtained and shall prepare a short list to be approved by the tender board, by including the best qualified firms.

(6) The minimum period prescribed in the Eighth

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Schedule to these Regulations shall apply for submission of pre qualification application.

Preparation
and issuance
of the request
for proposals

287.-(1) Before inviting proposals, a procurement management unit shall furnish to the tender board for its review, the short list and the proposed request for proposal and shall make modifications to the short list and the documents as the tender board shall reasonably direct.

(2) Any further modification shall require the tender board's prior approval before the request for proposal is issued to the short-listed consultants.

(3) The procuring entity shall invite proposals from five to ten qualified and experienced consultants, and shall, through a suitable selection procedure, choose the consultant most qualified for the assignment.

(4) Procuring entities shall use standard request for proposals documents issued by the Authority and shall list all the documents included in the request for proposals.

(5) The request for proposals shall contain-

- (a) a letter of invitation;
- (b) instructions to consultants, including a data sheet and evaluation criteria;
- (c) terms of reference;
- (d) proposed contract;
- (e) technical and financial proposal standard forms; and
- (f) anti bribery pledge.

(6) The procuring entity shall send the request for proposals to consultants on the short list.

(7) The procuring entity may use electronic system to request proposals if the Authority is satisfied with the adequacy of such system and the system shall be secured to avoid modifications to the request for proposals and shall not restrict the access of short listed consultants to the request for proposals.

Letter of
invitation

288. The letter of invitation shall state the intention of

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the procuring entity to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

Instruction to consultants

289.-(1) The instruction to consultants shall-

- (a) contain all necessary information to help consultants to prepare responsive proposals, and shall manifest the transparency in the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score;
- (b) indicate the expected input of key professional staff time and the consultants and shall be free to prepare their own estimates of staff time necessary to carry out the assignment;
- (c) specify the proposal validity period which shall not be less than sixty days and not exceeding one hundred and twenty days.

(2) The instructions to consultants shall include the following aspects of the assignment:

- (a) a brief description of the assignment;
- (b) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (c) details of the selection procedure to be followed, including:
 - (i) a listing of the technical evaluation criteria and weights given to each criterion;
 - (ii) the details of the financial evaluation;
 - (iii) the relative weights for quality and cost in the case of quality and cost based selection;
 - (iv) the minimum pass score for quality;
 - (v) the details on the public opening of financial proposals; and

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- (vi) available budget in the case of fixed budget selection.
- (d) an estimate of the level of key staff inputs (in staff-months)—required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
- (e) details and status of any external and internal financing;
- (f) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
- (g) the deadline for the submission of proposals;
- (h) currency in which the costs of services shall be expressed, compared, and paid;
- (i) reference to any written laws in Tanzania that may be particularly relevant to the proposed consultants' contract;
- (j) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the procuring entity judgement, such activities constitute a conflict of interest with the services provided under the assignment;
- (k) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (l) a request that the invited firm:
 - (i) acknowledges receipt of the request for proposal; and
 - (ii) informs the procuring entity whether or not it will be submitting a proposal;
- (m) the short list of consultants being invited to

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- submit proposals, and whether or not associations between short-listed consultants are acceptable pursuant to regulation 278 (4);
- (n) the anticipated date on which the selected consultant shall be expected to commence the assignment;
 - (o) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions for the performance security for the procurement contract to be provided by the consultants who enters into the contract;
 - (p) a statement indicating:
 - (i) whether or not the consultants' contract and personnel shall be tax-free; and
 - (ii) what the likely tax burden will be or where this information can be obtained, and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
 - (q) if not included in the terms of reference or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the procuring entity;
 - (r) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
 - (s) the procedure to handle clarifications about the information given in the request for proposals; and
 - (t) any conditions for subcontracting part of the assignment.

Contract

290.-(1) A procuring entity shall use the appropriate standard form of contract issued by the Authority with minimum and necessary alterations to address specific project issues.

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(2) The alterations in the standard contract shall be introduced through the special conditions of contract.

(3) Where the forms are not available for a specific service, a procuring entities shall use other contract forms acceptable to the Authority.

Role of the
Consultant

291.-(1) Where a consultant receives the pre-qualification or request for proposals document, the consultant shall study the documents carefully to decide if it can meet the technical, financial and contractual conditions, and if so, proceed to prepare its offer.

(2) The consultant shall critically review the documents to determine whether or not there is any ambiguity, omission or internal contradiction, or any feature of the terms of reference or other conditions which are unclear or appear discriminatory or restrictive.

(3) The consultant shall, where the consultant determines any ambiguity or omission, request the procuring entity, in writing and within the time period specified in the request for proposals documents, to clarify the ambiguity or contradiction.

(4) The criteria and methodology for selection of the successful consultant shall be outlined in the request for proposals documents, generally known as "Information to Consultants" and where the documents are not clear, clarification shall be sought from the procuring entity.

(5) The specific requests for proposals documents issued by the procuring entity shall govern each procurement and where any of the provisions in the documents are inconsistent with these Regulations, the consultant shall inform the procuring entity.

Curriculum
vitae of staff

292. It shall be essential to ensure accuracy in the curriculum vitae of key staff submitted with the proposal and such curriculum vitae shall be currently signed and dated by the consultant and the individual staff, and shall, where academic transcripts are required, be certified by a

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Commissioner for Oath.

Deviations from basic requirement

293. Where a consultant intends to propose deviations to a basic requirement, or propose an alternative solution, the consultant shall quote the price for the fully compliant proposal and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted.

No change of price or substance of proposal once opened

294. Where the proposals are received and opened, consultants will not be required or permitted to change the price or substance of their proposals.

Receipt and opening of proposals

295.-(1) The procuring entity shall allow enough time prior to submission deadline for the consultants to prepare their proposals depending on the assignment, but shall not be less than the time prescribed in the Twelfth Schedule of these Regulations depending on the nature of the assignment.

(2) During the period prescribed under sub-regulation (1), firms may request clarifications about the information provided in the request for proposals and the procuring entity shall provide the clarification in writing in accordance with regulation 13 and copy them to all firms on the short list who intend to submit proposals.

(3) No amendments to the technical or financial proposal shall be accepted after the deadline.

(4) The technical and financial proposals shall be submitted in a manner specified in the request for proposal to safeguard the integrity of the process,

(5) The technical proposals shall be opened in public by the tender opening *ad hoc* committee immediately after the closure of the time for submission of proposals..

(6) The proposals shall be consecutively numbered and the last proposal shall be marked with words "and last".

(7) The financial proposals shall remain sealed and shall be deposited with the secretary of the tender board until they are opened publicly.

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(8) Any proposal received after the closing time for submission of proposals shall be returned unopened.

Minutes

296.-(1) The secretary of the tender board shall prepare minutes of the opening ceremony giving all the details of the opening, such minutes shall be signed by chairman and the secretary of the opening ceremony.

(2) The signed minutes of the opening ceremony may be provided on request to consultants who submitted proposals.

Formulation
of evaluation
committee

297.-(1) An accounting officer shall form an evaluation committee of not less than three and not more than five members to evaluate the submitted technical proposals.

(2) In exceptional circumstances, the accounting officer may form an evaluation committee of more than five members depending on the value and complexity of the procurement if there are justifiable reasons to increase the number of members of the evaluation committee.

(3) The evaluation of the proposals shall comprise of the quality and the cost stages.

(4) Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any tender board and donor agency reviews and approval, are concluded.

(5) The evaluation shall be carried out in full conformity with the provisions of the request for proposals.

(6) The evaluation process shall commence after the opening of the proposals.

(7) After the technical proposals are evaluated, the procurement management unit shall furnish to the tender board, in sufficient time for its review, a technical evaluation report and copies of the proposals.

(8) Where the tender board determines that the technical evaluation is inconsistent with the provisions of the request for proposals, it shall promptly inform the procurement management unit and state the reason for its

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determination.

Approval of
tender board
where
evaluation
recommends
rejection

298.-(1) The procurement management unit shall request the tender board's approval if the evaluation report recommends rejection of all proposals.

(2) After receiving the tender board's approval to the technical evaluation, the procurement management unit shall proceed with opening of the financial envelopes and then the financial evaluation will be undertaken in accordance with the provisions of the request for proposals.

(3) The evaluation report shall be submitted to the procurement management unit to check if it is in accordance with the tender document.

(4) Where the procurement management unit is satisfied with the report it shall forward the same to the tender board for approval; and where not satisfied it shall return the evaluation report with reasons to the evaluation team for re evaluation.

(5) Where the procurement management unit is satisfied with the evaluation report, the procurement management unit shall prepare and submit to the tender board a summary of the evaluation and observation, if any, using prescribed format by the Authority.

Evaluation of
technical
proposals

299.-(1) The evaluation of technical proposals shall be carried out on the basis of the principal criteria to which merit points are accorded so that each proposal is scored out of a hundred and the firms shall be ranked by order of merit on the basis of the highest score.

(2) Subject to regulation 297 (1), a procuring entity shall evaluate each technical proposal taking into account several criteria which had previously been disclosed in the request for proposals.

(3) The evaluation committee shall use numerical ratings for each of the following criteria which may further be divided into sub criteria:

(a) experience of the consultant in the same field as

- that of the assignment and on similar projects;
- (b) professional reputation of the consultant and previous performance and experience;
- (c) knowledge of the project environment in the country and in the region and their implications for the project;
- (d) inclusion of local firms and experts in the assignment;
- (e) understanding of the terms of reference;
- (f) overall quality of the proposal, plan and methodology proposed;
- (g) qualification of experts and experience in the field of the assignment; and
- (h) ability to deal with national personnel and agencies, and language proficiency.

(4) The relative importance of the sub-criteria specified under sub-regulation (3) rated out of one hundred will vary with the type of services to be performed and as a guide, the relative merit points are provided in Table (a) of the Fourteenth Schedule to these Regulations.

(5) The Authority may issue guidelines on how to fix weights depending on different types of assignments.

(6) Where there is a participation of only local persons or firms, the weight given to participation of local firms shall be fixed to zero.

(7) The technical criteria for pre-qualification shall be limited to factors and in accordance to numerical ratings prescribed in Table (b) of the Fourteenth Schedule to these Regulations.

(8) The factors prescribed in Table (c) of the Fourteenth Schedule to these Regulations shall be indicated in the request for proposals and used in the evaluation of proposals to which other numerical ratings may be attributed to attain the score of one hundred points.

(9) The latest curriculum vitae of the proposed key personnel shall be signed by the holder and an authorized official of the consultant and shall be rated in the following

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three sub criteria:

- (a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;
- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) experience in the country, knowledge of the local language, culture, administrative system and government organization.

(10) The evaluation committee shall evaluate each proposal on the basis of criteria stipulated in the request for proposal.

(11) The numerical ratings set out in the request for proposals for each factor shall be attributed for each proposal received and tabulated on a summary weighted and summed up and such method shall provide consistent assessment of the various proposals received and that the proper weight is given to each proposal.

(12) At the end of the process, the evaluation committee shall prepare an evaluation report of the "technical quality" of the proposals which shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposal and all records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

(13) The evaluation committee shall submit the evaluation report on the technical proposals to the procurement management unit in accordance with Regulation 298 (3) and (4), which shall review, comment on the evaluation report and thereafter submit the report and its recommendations to the tender board.

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Notification of results of technical evaluation

300.-(1) After the evaluation of technical quality is completed, the procuring entity shall notify consultants whose proposals have not met the minimum qualifying mark or were considered non-responsive to the request for proposals and terms of reference, indicating that their financial proposals shall be returned unopened after completing the selection process.

(2) A procuring entity shall notify the consultants who have secured the minimum qualifying mark, and indicate the date and prescribed time for opening the financial proposals.

Date of opening of Financial Proposals

301.-(1) The date of opening of financial proposals shall not be sooner than two weeks after the notification date and the financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend.

(2) Notwithstanding provisions of sub-regulation (1), where all consultants are qualified to have their financial proposals opened in the case of quality and cost based selection or in the case of quality and least cost selection, the procuring entity may fix shorter period for opening of financial proposal subject to obtaining confirmation of the attendance of all successful firms at the set date for opening.

Procedure at the opening of financial proposals

302.-(1) The opening of financial proposals shall take place on the date, time and place set for opening by the procuring entity in the presence of firms representatives who attend.

(2) Before the opening of the financial proposals, the secretary of the tender board shall read out the results of the technical evaluation to the people attending the opening meeting.

(3) Envelopes containing financial proposals of the successful firms shall then be opened and the proposed prices shall be read aloud and recorded, and the secretary of the

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opening ceremony shall prepare the minutes of the public opening, including the information disclosed to those present at the opening.

(4) Subject to regulation 56, the secretary of the tender board that approved the issue of proposals shall convene and chair a meeting for the purpose of opening of the proposals that have been submitted.

(5) The signed minutes of the opening ceremony may be provided on request to consultants who submitted proposals.

Evaluation of
financial
proposals

303.-(1) An evaluation committee shall first review the financial proposals for consistency with the technical proposals and if there are any inconsistencies they shall make the necessary adjustment.

(2) An evaluation committee shall review the financial proposals and where there are any arithmetical errors, such errors shall be corrected and the procuring shall give prompt notice of any such correction to the consultants who submit the proposal.

(3) For the purpose of comparing proposals, the costs shall be converted to a common currency selected by the procuring entity as stated in the request for proposals.

(4) The evaluation committee shall make the conversion by using the selling (exchange) rates for those currencies quoted by an official source such as the Bank of Tanzania.

(5) The request for proposals shall specify the source of the exchange rate to be used, and the date of that exchange rate.

(6) Notwithstanding sub-regulation (5), the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposals.

(7) For the purpose of evaluation, "cost" includes other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

- (8) In a situation where margin of preference is included, the financial proposals shall be evaluated:
- (a) after the financial proposals of the successful firms have been opened and reviewed by the evaluation committee, the proposals which are responsive shall be classified into the following groups:
 - (i) Group A: financial proposals offered by national consultants as well as association between national consultants, eligible for the preference;
 - (ii) Group B: financial proposals submitted by associations between national and foreign consultants, eligible for the preference; and
 - (iii) Group C: financial proposals offered by foreign Consultants;
 - (b) for the purpose of evaluation and comparison of financial proposals:
 - (i) an amount equal to the specified margin of preference for group A shall be added to financial proposals received from consultants in Group C; and
 - (ii) an amount equal to the difference between the margin of preference for group A and that of Group B shall be added to financial proposals received from consultants in group B.

Combined
quality
and cost
evaluation

304.-(1) The proposal with the lowest cost shall be given a financial score of one hundred and other proposals given financial scores that are inversely proportional to their prices and in the alternative a directly proportional or other methodology may be used in allocating the marks for the cost.

(2) Subject to sub regulation (1) the methodology to be used shall be described in the request for proposals.

(3) The total score shall be obtained by weighting the quality and cost scores and adding them and the weight for the "cost" shall be chosen taking into account the complexity of the assignment and the relative importance of quality.

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(4) Notwithstanding sub-regulation (2), the weight for cost shall be in the range of ten to twenty points, but in no case shall exceed thirty points out of a total score of one hundred.

(5) The proposed weightings for quality and cost shall be specified in the request for proposals and the firm obtaining the highest total score shall be recommended for contract award and for negotiations.

Post
qualification
of consultants

305.-(1) Where appropriate, post-qualification may be undertaken to determine whether the consultant with the best evaluated proposal has the capability, legal capacity and resources to carry out the contract.

(2) The post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the first ranked consultant using non-discretionary criteria, as stated in the request for proposal.

(3) The criteria for post-qualification or due diligence shall be set out in the request for proposal and shall include-

- (a) legal requirements: to verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the consultant and the fact that it is not included in any “blacklist”;
- (b) technical requirements: to determine compliance of the consulting services offered with the requirements specified in the request for proposal including, where applicable verification and validation of the consultant’s stated competence and experience on similar contracts, and the competence and experience of the consultant’s key personnel to be assigned to the consulting services;
- (c) financial requirements: to verify, validate and ascertain the audited financial statements of the consultant and the financial proposal;
- (d) knowledge of local working conditions;
- (e) capabilities with respect to equipment and

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construction or manufacturing facilities;

- (f) current commitments;
- (g) litigation record; or
- (h) any other relevant criteria.

(4) Where the first ranked consultant does not meet the post qualification criteria-

- (a) the proposal shall be rejected; and
- (b) where applicable, post-qualification shall be conducted to the next ranked consultant.

Confidentiality

306. Information relating, to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the notice of intention to award of contract is communicated to the consultants.

Submission to the Tender Board

307.-(1) On completion of the combined quality and cost evaluation as well as post qualification of the first ranked consultant, the evaluation committee shall prepare a final evaluation report and submit to the procurement management unit.

(2) The procurement management unit shall after review, comment on the evaluation report and submit the report and its recommendations to the tender board together with all copies of the proposals attached to it.

(3) After submission of the evaluation report to the tender board and approval of the recommendations for award of the contract to the best evaluated consultant, the accounting officer shall notify the consultant.

Contract negotiations

308.-(1) Subject to any provisions of these Regulations relating to contract negotiations, after tender board has approved the award recommendations, the procuring entity shall promptly invite the selected consultant to negotiate, in order to finalise the terms of the contract based on the model contract on one hand and the consultant's

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proposal on the other hand.

(2) In the invitation, the consultant shall be informed of any special problems found in the review of the proposal which may be discussed during the negotiation.

(3) Negotiations shall include discussions on:

(a) the terms of reference;

(b) comments made by the consultant on the scope of services;

(c) the methodology;

(d) staffing;

(e) counterpart staff and training;

(f) procuring entity's inputs, and special conditions of the contract;

(g) consultant's proposed work programme; and

(h) clarifying details that were not apparent or could not be finalised at the time of evaluation.

(4) The discussions shall not substantially alter the original terms of reference or the terms of the contract, provided that the final terms of reference and the agreed methodology shall be incorporated in "Description of Services" which shall form part of the contract.

(5) The selected firm shall not be allowed to substitute key staff between the time of receipt of proposals and commencement of the services unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment and where that is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm.

(6) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

(7) Financial negotiations shall include clarification of the consultants' tax liability and how tax liability has been or would be reflected in the contract.

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(8) Proposed unit rates for staff-months and reimbursable shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

(9) If the negotiations fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and invite the next ranked firm for negotiations in which case the procuring entity shall consult with the tender board prior to taking this step.

(10) The consultant shall be informed of the reasons for termination of the negotiation and where negotiations are commenced with the next ranked firm, the procuring entity shall not reopen the earlier negotiations.

(11) Upon receipts of recommendations of the negotiation team the tender board may-

- (a) approve the recommendations;
- (b) request further negotiations on specific points;
- (c) reject the recommendations with reasons; or
- (d) cancel the negotiations in their entirety.

Approval of
award of
contract

309.-(1) The approval of any award of contract shall be subject to the provisions of these Regulations.

(2) Where a successful consultant fails to sign a written contract as required, or to provide any required security for the performance of the contract, the procuring entity shall, on the recommendation of the tender board, select the second ranked consultant, subject to the right of the procuring entity to reject all proposals.

(3) The approved consultant shall not be required, as a condition of award, to undertake responsibilities not stipulated in the request of proposal, or otherwise to modify the proposal as originally submitted.

(4) For the purpose of publishing recording and distributing the information concerning the award of the contract, procuring entities shall ensure that copies of award notices, suitably notated with the number of proposals received, the range of proposal and the estimates are

forwarded and posted to the Authority within fourteen days of sending an acceptance notice to the consultant.

(e) Selection of Individual Consultants

Selection of individual consultants

310.-(1) Individual consultants shall be employed on assignments for which-

- (a) teams of personnel are not required;
- (b) no additional outside professional support is required; and
- (c) the experience and qualifications of the individual are the paramount requirement.

(2) Individual consultants are selected on the basis of their qualifications for the assignment and may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the procuring entity.

(3) Individual consultants employed by a procuring entity shall meet all relevant qualifications and shall be fully capable of carrying out the assignment.

(4) Capability shall be judged on the basis of professional competence, experience and knowledge of the local conditions.

(5) The permanent staff or associates of a consulting firm may be available as individual consultants and in such cases, the provisions relating to conflict of interest prescribed in these Regulations shall apply to the parent firm.

(6) In the selection and use of individual consultants, consultancy services whose value is less than value prescribed in the Eleventh Schedule of these Regulations shall be reserved for individual national consultants.

Types of services

311. The types of services for which a procuring entity may require services of individual consultants are-

- (a) preparation of terms of reference;
- (b) opening and evaluation of tenders for works

- contracts and supplier and consultant's proposals;
- (c) preparation of the brief where architectural services are to be procured;
 - (d) revision and updating of feasibility studies;
 - (e) preliminary project or engineering design;
 - (f) technical assistance for the planning of development, economic or sectoral planning, organization and management;
 - (g) application of the recommendations formulated in a study;
 - (h) training;
 - (i) assistance of the procuring entity with project implementation, and in particular for the monitoring and supervision of project implementation, as well as for investigations and technical advice;
 - (j) preparation of project completion reports; and
 - (k) all other necessary assistance decided upon by the procuring entity.

Selection
process

312.-(1) The selection process for individual consultants shall comprise the following stages:

- (a) preparation of the terms of reference and contract format;
- (b) advertisement of the consultancy job;
- (c) preparation of the estimated budget;
- (d) preparation of the short list;
- (e) evaluation of qualification and experience;
- (f) negotiation of fees and contract terms;
- (g) signing of contract; and
- (h) supervision and evaluation of services.

(2) For short-term assignments of a few weeks to one or two months, the procuring entity may, after approval by the appropriate tender board, recruit a qualified individual consultant directly on the basis of information available to it.

(3) The procuring entity shall consider the

consultant's curriculum vitae and reference and if these are satisfactory and the latter is available, the fees and the contract terms may be negotiated.

(4) Subject to the provisions of sub-regulation (1), for longer term assignments, the procuring entity shall prepare a shortlist of three to seven consultants selected on the widest possible geographical base and including at least two national consultants using the procuring entity's own sources of information.

(5) The individual consultant may also be recruited through governmental or international academic organizations or consulting firms.

(6) Where the shortlist is established, the procuring entity shall, on the basis of the curriculum vitae and other relevant information available to it, evaluate the qualifications and experience of each consultant, particularly in the field of the assignment concerned and classify them by order of merit.

(7) The criteria to be used in the evaluation shall be those prescribed in Table (d) of the Fourteenth Schedule of these Regulations.

(8) A procuring entity shall contact the first individual consultant on the ranking and if he is available, fees and contract terms shall be negotiated.

(9) The negotiations, which shall begin with interviews will continue until one of the short listed individual consultants is definitely retained for the assignment.

(f) Types of contracts and their conditions for use

Lump sum (fixed price) contract

313.-(1) The fixed price contracts, otherwise referred to in this Part as "lump sum contracts" shall be used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined.

(2) The lump sum contracts may be used for simple

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planning and feasibility studies, environment studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

(3) Payments shall be linked to outputs (deliverables), such as reports, drawings, bill of quantities, bidding documents, and software programs.

Time based contract

314.-(1) Time based contracts shall be used when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess.

(2) The contracts under sub regulation (1) may be used for complex studies, supervision of construction, advisory services, and most training assignments and payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and, or agreed unit prices and the rates for staff include salary, social costs, overhead, fee or profit, and, where appropriate, special allowances.

(3) Such contracts shall include a maximum amount of total payments to be made to the consultants and the ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

(4) The client shall closely monitor and administer time based contracts to ensure that the assignment is progressing satisfactorily, and payments claimed by the consultants are appropriate.

Retainer and/or success fee contract

315.-(1) Retainer and success fee contracts may be used where consultants such as, banks or financial firms, are required for preparation of companies for sale or merger of firms, notably in privatization operations.

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(2) The remuneration of the consultant may include a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

Percentage contract

316.-(1) The percentage based contracts may be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the contract.

(2) The percentage based contract shall clearly define the total cost from which the percentage is to be calculated and the consultant or service provider shall be required to indicate his cost as a percentage of the total cost of the assignment.

(3) The use of such a contract is recommended only if it is based on a fixed target cost and covers precisely defined services.

Indefinite delivery contract (Price agreement)

317.-(1) The indefinite delivery contracts-

(a) shall be used where a procuring entity needs to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance.

(b) may be used to retain "advisors" for implementation of complex projects expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more.

(2) The procuring entity and the firm shall agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

Running contracts

318.-(1) A running contract shall be used for contracts in which continuity of expert service is desirable, such as financial auditing, procurement agency contracts and inspection agency.

(2) The procuring entity and the firm shall agree on the unit rates to be paid for the experts, and payments shall

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be made on the basis of the time actually used.

(3) The use of running contracts shall be subject to approval of the Authority.

(g) Implementation and management of consultant contracts

Management
of consultant
contracts

319.-(1) In the case of contract for consultant services, a procuring entity shall monitor the performance of the consultant against the terms of reference stated in the contract, by means of daily, weekly or monthly reports from the procuring entity's supervisor responsible for the services.

(2) Where the performance of the consultant-

(a) is satisfactory, the procuring entity shall authorise payments by measurement and certification, at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, if so stated in the contract;

(b) does not meet the requirements stated in the contract, the procuring entity shall draw the consultant attention to any short-comings, and may refuse to authorize further payments until these are remedied.

(3) Where an agreement cannot be reached with the consultant so as to remedy the situation, the procuring entity shall notify the consultant formally that he is in breach of the terms of the contract, and may invoke the procedure for disputes further to the provisions of that contract.

(4) In the event the consultant fails to provide services at the required standard, to remedy faults, the procuring entity may-

(a) withhold payment of any moneys retained; or

(b) call any performance security, if such has been furnished by the consultant.

(5) The funds which are committed under any contingency included in the total contract value may be used:

(a) to cover variations in cost according to any

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formula stated in the contract; or

(b) for additional services that are considered to be necessary by the procuring entity.

(6) When the service has been provided to the satisfaction of the procuring entity, and after any period provided in the contract has elapsed, the procuring entity shall promptly authorise final payment to be made to the consultant on his application, and release the consultant from any performance guarantee provided the consultant has made good all the defects identified.

Evaluation of consultant's performance

320.-(1) A procuring entity shall evaluate and record the performance of consultants on services financed by the Government or any public body.

(2) The procedures of the procuring entity shall be designed to ensure performance evaluation is handled objectively and confidentially.

(3) A procuring entity shall consider the performance of consultants on public financed projects and studies.

Professional liability

321.-(1) The consultant shall carry out the assignment with due diligence, and in accordance with prevailing standards of the profession.

(2) The liability of the consultant to the procuring entity shall be governed by the applicable law and, where parties to the contract wish to limit liability, the parties shall ensure-

(a) there is limitation in case of the consultant's gross negligence or wilful misconduct;

(b) the consultant's liability to the procuring entity is not limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and

(c) any limitation is dealt with the consultant's liability towards the client only and not with the

consultant’s liability towards third parties.

Liquidated damages

322.-(1) A consultant who fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, shall be liable for damages for the delay.

(2) The consultant shall pay to the procuring entity the liquidated damages in an amount equal to one-tenth of one percent of the cost of unperformed portion for every day of delay, and in no case shall the sum of liquidated damages exceed ten percent of the performance security.

(3) Where the sum of liquidated damages exceeds ten percent of the performance security, the contract shall automatically be terminated, without prejudice to other courses of action and remedies open to it.

(4) Upon termination of the contract, the procuring entity may take over the contract or award the same to a qualified consultant through negotiation, and in addition to the liquidated damages, the previous consultant’s performance security shall also be forfeited.

(5) Where the delay in the completion of the services exceeds ten percent of the specified contract time plus any time extension duly granted to the consultant, the procuring entity shall terminate the contract and then forfeit the consultant’s performance security and take over the execution of the contract or award the same to a qualified consultant through negotiation.

PART X

PROCEDURES FOR DISPOSAL OF PUBLIC ASSETS BY TENDER

(a) Conditions for Participation in Disposal of Public Assets by Tender

Qualification of asset buyer

323.-(1) For purposes of qualifying to participate in disposal proceedings, an asset buyer shall-

- (a) have sufficient financial resources to perform the disposal contract;

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- (b) have legal capacity to enter into a disposal contract;
- (c) not have been convicted of any criminal offence or found to have made false statements or misrepresentations as to his qualification to enter into a disposal contract within a period of five years preceding the commencement of the disposal proceeding, or has not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings;
- (d) not be insolvent, in receivership, bankruptcy or being wound up, his affairs are not being administered by a court or a judicial officer, his business activities have not been suspended and is not the subject of legal proceedings for any of the reasons prescribed in this regulation.

(2) A procuring entity may require assets buyers participating in disposal proceedings to provide appropriate documentary evidence or other information as the procuring entity considers necessary.

(3) Any requirement established pursuant to this regulation shall be prescribed in the solicitation documents.

(4) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of asset buyers other than those provided for in this regulation.

(5) The procuring entity shall evaluate the qualifications of asset buyers in accordance with the qualification criteria and procedures prescribed in the solicitation documents.

(6) Subject to regulation 324 the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of asset buyers that discriminates against or among asset buyers on the basis of nationality, or that is not objectively justifiable.

Participation
by an asset
buyer

324.-(1) An asset buyer shall be permitted to participate in disposal proceedings without regard to

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nationality, except in cases in which a procuring entity decides, on grounds specified in these Regulations or according to provisions of law, to limit participation in disposal proceedings on the basis of nationality.

(2) A procuring entity that limits participation on the basis of nationality pursuant to sub-regulation (1) shall include in the record of the disposal proceedings a statement of the grounds and circumstances on which it relied.

(3) A procuring entity shall, when first soliciting the participation of buyers in the disposal proceedings, declare to them that they may participate in the disposal proceedings as appropriate regardless of nationality.

(4) The declaration under sub-regulation (3) shall not be subsequently altered.

(5) Where a disposing entity decides to limit participation pursuant to sub-regulation (1), it shall communicate its decision to the relevant parties.

(b) Disposal Process

Approval for disposal of public assets by tender
Cap. 348

325. (1) Any disposal by tender by a procuring entity shall be authorized by the Paymaster General or competent authority.

(2) The procedure for obtaining approval for disposal of public assets by tender shall be in accordance with the Public Finance Act and Regulations made under it.

Disposal plan

326.-(1) Assets to be disposed of shall be grouped in lots in a manner which attracts maximum possible competition.

(2) Where an asset is to be disposed of by tender, a procuring entity shall maximize the number of assets to be disposed of at a time in order to reduce transaction costs.

(3) Procuring entities may group assets for purposes of common disposal.

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Environmental issues

327. A disposing entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before disposing them by tender and procuring new replacements.

(c) Methods of Disposal and their Conditions for Use

Methods of disposal

328.-(1) A procuring entity that intends to commence a competitive disposal by tender process shall provide all eligible prospective asset buyers with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required assets to be disposed of.

(2) A procuring entity may use restricted or direct disposal by tender where-

- (a) the market is limited and few buyers who are willing to pay the reserve price are identified;
- (b) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual.

Competitive tendering for disposal of assets by tender

329. All disposals of public assets shall be conducted through competitive tendering except for disposals under regulation 328(2).

International competitive tendering

330. In international competitive tendering a procuring entity shall invite asset buyers, by means of a tender notice that shall be advertised nationally and internationally to submit tenders for the purchase of public assets.

National competitive tendering

331.-(1) In national competitive tendering, a procuring entity shall invite assets buyers regardless of their nationality, by means of a tender notice advertised only in

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the United Republic, to submit priced tenders for purchase of public assets.

(2) The national competitive tendering may be used in cases where-

- (a) payment may be made wholly in Tanzanian shillings;
- (b) the estimated value of assets does not exceed the threshold for national competitive tendering prescribed in the Fifteenth Schedule to these Regulations.

(d) Tendering Proceedings

Invitation to disposal by tender and advertising

332.-(1) A procuring entity which intends to commence competitive tendering proceedings shall prepare a tender notice inviting asset buyers to submit priced offers for buying assets to be disposed of and advertise it in the Journal and Tender Portal in accordance with the First Schedule to these Regulations.

(2) The procurement management unit shall table to the tender board, the invitation and the disposal by tender documents, for comment and approval.

(3) Invitations which are issued without prior approval by the tender board shall not be considered as sufficient and adequate to satisfy a tender board's requirements, and consequently the procuring entity will be requested to issue new invitations to tender.

(4) A tender notice shall be published in sufficient time, to enable prospective buyers to obtain disposal by tender documents, prepare and submit their responses before the deadline for receipt of tenders.

(5) A procuring entity shall offer a reasonable opportunity to potential buyers of public assets, to inspect an asset before the date or deadline for tendering.

(6) The time specified for the opening of the tenders shall be the same as the deadline for receipt of tenders or immediately thereafter, and shall be repeated in the

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solicitation document, together with the place for tender opening.

Contents of invitation to disposal by tender

333. The invitation of tenders for disposal of public assets shall contain the following information:

- (a) the name and address of the procuring entity, the description of the asset to be disposed of, the location of the asset and the arrangements for a potential asset buyer to inspect the asset, including a statement that the asset is sold on “as is, where is” basis;
- (b) the means or conditions of obtaining the solicitation documents and the place from which they may be obtained;
- (c) the price, if any, charged by the procuring entity for the solicitation documents;
- (d) the currency and means of payment for the solicitation documents;
- (e) the language or languages in which the solicitation documents are available;
- (f) the place for the submission of tenders;
- (g) the deadline for the submission of tenders as well as the place, hour and date for opening tenders.

Contents of solicitation documents

334. The solicitation documents shall contain the following instructions to asset buyers:

- (a) the criteria and procedures relating to the evaluation of the qualifications of asset buyers and demonstration of qualification;
- (b) the requirements as to documentary evidence or other information that must be submitted by asset buyers to demonstrate their qualifications;
- (c) the description of the assets, their locations and conditions for sale, responsibilities for the risk and cost for dismantling and removing the asset;

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- (d) the terms and conditions of the disposal contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
- (e) if asset buyers are permitted to submit tenders for only a portion of the assets to be disposed of, a description of the portion or portions for which tenders may be submitted;
- (f) the currency or currencies in which the tender price is to be formulated and expressed;
- (g) the language in which tenders are to be prepared;
- (h) if an asset buyer may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
- (i) the manner, place and deadline for the submission of tenders;
- (j) the period of time during which tenders shall be in effect;
- (k) the place, date and time for the opening of tenders
- (l) the procedures for opening of tender and criteria for examining and evaluating tenders;
- (m) the currency that will be used for the purpose of evaluating and comparing tenders;
- (n) the means by which asset buyers may seek clarification of the solicitation documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of asset buyers;
- (o) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by asset buyers submitting tenders, and any such requirements for any security for the

performance of the procurement contract to be provided by the asset buyers that enters into the disposal contract;

- (p) references to the Act, the Regulations and other written laws and regulations directly pertinent to the disposal proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under section 95 of the Act or give rise to liability on the part of the procuring entity;
- (q) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from asset buyers in connection with the disposal proceedings, without the intervention of an intermediary;
- (r) notice of the right provided under section 95 of the Act to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the disposal proceedings;
- (s) where the procuring entity reserves the right to reject all tenders pursuant to regulation 16 a statement to that effect;
- (t) any other requirements established by the procuring entity in conformity with the Act and these Regulations relating to the preparation and submission of tenders and to other aspects of the disposal proceedings.

Examination,
evaluation and
comparison of
tenders

335.-(1) An accounting officer shall form a tender evaluation committee comprising of not less than three and not more than five members.

(2) In exceptional circumstances, the accounting officer may form an evaluation committee of more than five members depending on the value and complexity of the

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procurement if there are justifiable reasons to increase the number of members of the evaluation committee.

(3) The tender evaluation committee shall evaluate on a common basis opened tenders in order to determine the cost or price to the disposing entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs or prices.

(4) The tender evaluation shall be consistent with the terms and conditions set forth in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the solicitation documents.

(5) Tenders shall be comparable among themselves in order to determine the highest evaluated price for disposal of asset by tender.

(6) In determining the highest evaluated tender for disposal of asset the preferred evaluation method shall be the evaluation based on price only unless other factors, such as end-user or export restrictions, or a need to attach conditions to a sale are taken into consideration, and stated clearly in the solicitation documents.

(7) Where the highest-priced tender has been submitted by more than one tenderer, a procuring entity shall invite the tenderers who submitted identically priced tenders to submit a revised tender.

(8) No tenderer, other than those who submitted the identical highest priced tender, shall be permitted to submit a revised tender or participate in the retendering procedure in any way.

(9) A revised tender shall only contain a revised price and a tenderer shall not be permitted to change the terms and conditions, technical details, documentation or any other aspects of their original tender, in any way.

(10) A revised tender shall be written and sealed and submitted in the same way as the original tender.

(11) A tenderer shall be given a reasonable period of time prior to the deadline for submission of their revised tender.

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(12) Where evaluation is based on price only and it is reasonable to conduct and conclude the evaluation immediately in the presence of a tenderer at a public tender opening, a disposing entity may, if the tenderer agrees, conduct the re-tendering procedure immediately.

(13) Where the re-tendering procedure is conducted immediately, a tenderer shall be given access to a private location in which to discuss and prepare the revised tender and the tenderer shall be provided with all reasonable assistance, such as writing and sealing materials calculators and access to a telephone.

(14) The tender opening procedure for the revised tender shall be the same as that for the original tender.

(15) Evaluation shall be conducted in the same manner as the original evaluation, except that the price contained in the revised tender shall replace the original price.

(16) Where identical highest priced tenders are received during a retendering process, further re-tendering shall be held in accordance with this regulation.

(17) Where it is subsequently discovered that an error was made in the original evaluation, including, an arithmetic error or application of an exchange rate, and that as a result tenderers had not submitted identical highest priced tenders, the re-tendering procedure shall be declared null and void and the revised tenders shall not be considered.

(18) Where re-tendering fails, the whole process shall be cancelled and retendered.

(19) Where the evaluation is based on price only, a contract shall be awarded to the tenderer with the highest price.

(20) Where written tenders are received, the valuation committee shall-

- (a) correct any arithmetic errors;
- (b) convert the tenders to a common currency; and
- (c) compare the tender price with the value of an asset or reserve price, where appropriate.

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(21) Contract award shall be recommended to the best evaluated price, which meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.

(22) In evaluating and comparing tenders, a disposing entity may grant a margin of preference for the benefit of Tanzanian asset buyers provided that the margin of preference shall be calculated in accordance with Regulations 33 and reflected in the record of the procurement proceedings.

(23) Where tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to the same currency, and according to the rates specified in the solicitation documents, for the purpose of evaluating and comparing tenders.

(24) The rates of exchange to be used in such valuation shall be the selling rates published by the Bank of Tanzania and applicable to similar transactions:

- (a) on a date selected in advance and specified in the tender documents provided that such date should not be earlier than fifteen days prior to the date specified for the opening of tenders nor later than the original date prescribed in the tender documents for expiry of the period of tender validity; or
- (b) on the date of decision to award the contract or on the original date prescribed in the solicitation documents for the expiry of the period of tender validity, whichever is earlier.

(25) A detailed report on the evaluation and comparison of tenders, setting forth the specific reasons which the determination of the highest evaluated price tender is based, shall be prepared by the evaluation committee.

(26) The evaluation report shall be submitted to the procurement management unit to check if it is in accordance with the tender document and if the procurement management unit is satisfied with the report shall forward the

same to the tender board for approval; and where not satisfied it shall return the evaluation report with reasons to the evaluation team for re evaluation.

Negotiations with the highest evaluated tenderer

336.-(1) Negotiations shall only be held with the highest evaluated tenderer for disposal of assets.

(2) Negotiations shall not be conducted purely for the purpose of increasing prices.

(3) Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee's recommendations of the highest evaluated tenderer and the need to hold negotiations.

(4) Procurement management unit shall recommend membership of a negotiation team based on appropriate seniority and experience depending on the value and complexity of the procurement and the membership shall be approved by the accounting officer who shall also name the chairman from amongst the members.

(5) The number of members of the negotiation team shall depend on the value and complexity of the disposal requirement, but shall in all cases be a minimum of three and maximum of five, and may include members of the original evaluation committee or different officers.

(6) The negotiation team shall include members with relevant mix of skills and experience, including:

- (a) knowledge of end-user requirements;
- (b) negotiation skills;
- (c) procurement and contracting skills;
- (d) financial management skills; or
- (e) technical skills relevant to the subject of the disposal.

(7) The chairman of the negotiation team shall be responsible for:

- (a) ensuring all arrangements for negotiation meetings are made;
- (b) chairing all negotiations;

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- (c) ensuring the negotiations are conducted in accordance with all legal requirements;
- (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
- (e) ensuring all members have a common understanding of the process of negotiations and objectives to be achieved;
- (f) ensuring members understand their own role in the negotiations and the standard approach of the team;
- (g) managing communications between the negotiation team and the tenderer or any other body;
- (h) ensuring that the negotiation team has access to necessary information; and
- (i) preparing the final report on the negotiation or ensuring that it is prepared.

(8) The negotiation team shall prepare a negotiations plan which shall specify the issues to be negotiated as specified in the evaluation report and the objectives to be achieved and whenever possible, quantify the objectives and set maximum and minimum negotiating parameters.

(9) The appropriate tender board shall approve the negotiations plan prior to any negotiations taking place.

(10) Prior to confirming any agreement reached, the procurement management unit shall seek approval of the tender board.

(11) The negotiation team shall produce minutes of the meeting and shall obtain the tenderer's written agreement that it is a true and accurate record of the negotiations held and submit the minutes to the procurement management unit.

(12) The procurement management unit shall submit the recommendations of the negotiation team to the tender board to:

- (a) proceed with contract award to the recommended tenderer, incorporating the agreements reached

during negotiations;

(b) revise the negotiation objectives and hold further negotiations, or

(c) terminate the negotiation and reject the tenderer.

(13) Where the negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend inviting the next ranked tenderer for negotiations.

(14) The results of any approved negotiations shall be specified in a letter of tender acceptance and incorporated into the contract document.

(15) Where negotiations are commenced with the next ranked tenderer the procuring entity shall not reopen earlier negotiations; and the original tenderer shall be informed in writing of the reasons for termination of the negotiations.

Acceptance of tender and entry into force of disposal contract

337.-(1) The tender which is ascertained to be the successful tender shall be accepted and the notice of acceptance of the tender shall be given promptly to the asset buyer submitting the tender after all necessary approvals have been obtained.

(2) The solicitation documents may require the asset buyer whose tender has been accepted to sign a written disposal contract conforming to the tender and in such cases, the procuring entity and the asset buyer shall sign the disposal contract within twenty eight calendar days after the notice of acceptance has been dispatched to the asset buyer.

(3) The disposal contract made in accordance with 'the terms and conditions' of the accepted tender shall enter into force when the notice referred to in sub- regulation (1) has been dispatched to the asset buyer that submitted the tender.

(4) The notice is considered dispatched when it is properly addressed or otherwise directed and transmitted to the asset buyer, or conveyed to an appropriate authority for transmission to the asset buyer, by a mode authorized by regulation 12.

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(5) Where the asset buyer whose tender is accepted fails to sign a written disposal contract, if required to do so, or fails to provide any required security for the performance of the contract, the procuring entity shall, on the prior written approval of the tender board, select a successful tender from among the remaining tenders that are in force, subject to the right of the procuring entity, to reject all remaining tenders.

(6) Upon the entry into force of the disposal contract and, if required, the provision by the asset buyer of a performance security in respect of the contract, notice of the disposal contract shall be given to unsuccessful asset buyers, specifying the name and address of the asset buyer that has entered into the contract and the contract price.

Process to be
confidential

338.-(1) The information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of a contract shall not be disclosed to asset buyers or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

(2) Any effort by a tenderer to influence the procuring entity's or approving authority with a view to processing of tenders or award decisions may result in the rejection of his tender.

Record of
disposal
proceedings

339.-(1) A procuring entity shall maintain a record of its disposal proceedings and contract management pursuant to regulation 15 to these Regulations.

(2) Where a contract is on-going or is challenged, the records shall be kept for one additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(3) The following records of a disposal proceeding shall be open for inspection by the Authority:

(a) records of a disposal process;

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- (b) records relating to contracts management; and
- (c) records of investigations of complaints or any other matter related to the Act or these Regulations.
- (4) The records of disposal of a public asset shall contain the following documents, where appropriate:
 - (a) a request to initiate disposal proceedings, including a report of a board;
 - (b) a copy of an invitation notice;
 - (c) copies of solicitation documents, their amendments or clarifications and any additional information ;
 - (d) a report of inspection of the assets by potential tenderers;
 - (e) a record of the tender openings;
 - (f) a copy of all tenders evaluated, clarifications requested and responses received;
 - (g) the evaluation report;
 - (h) minutes of meetings on the disposal, including negotiation proceedings;
 - (i) a copy of a letter of tender acceptance to a successful tenderer, if any;
 - (j) the contract, if any;
 - (k) all documents related to contracts management, including records of receipts of payment and handing over certificates;
 - (l) a copy of the update to the procuring entity asset register;
 - (m) all correspondence between a disposing entity and a tenderer or a third party disposal agent; and
 - (n) a copy of all submissions to the tender board and all decisions related to the disposal, including, the choice of disposal method, approval of solicitation documents, approval of an evaluation report, approval of negotiations, contract award decision, approval of contract

- documents and any decision to suspend or cancel disposal proceedings;
- (o) the write-off approval from the Paymaster General or competent authority.

PART XI

PROCEDURES FOR CONDUCTING ELECTRONIC PROCUREMENT

Interpretation

340. For the purposes of this Part-

- “auditor” means the Controller and Auditor General of Tanzania or his representative or any external, internal and information technology auditors recognized by national and international professional bodies or Government and assigned for the purpose of auditing e-PPs;
- “centralized registration system” means the single place for all e-PP users to register and provide credentials for verification for their authenticity to conduct different activities by utilizing tools or features provided by the e-PPs;
- “Certification Authority” means a trusted organization (or server) that maintains and issues digital certificates;
- “dashboard” means an interactive user interface in the e-PPs portal that organizes and presents information and links to the different relevant functions into a unified display in a way that is easy to access, track and transact;
- “Data Centre” means is a facility used to host the e-PPs and associated service tools and components, including network systems, backup facilities, environmental control tools, security systems etc;
- “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram;

- “Date and Time” means date and time of e-PPs Data Centre Time Stamping Server hosted by the Authority for the purpose of carrying out e-procurement using e-PPs portal;
- “day” means calendar day unless otherwise specified as working day;
- “Digital Signature” means an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and parameters such that the identity of the signer and the integrity of the data can be verified;
- “e-advertisement” means advertisement through e-PPs portal;
- “e-auction” means an online, real-time dynamic auction between a procuring entity and a number of suppliers or buyers who compete against each other to win the contract by submitting successively lower priced bids in case of reverse auction or submitting successively higher bids in case of forward auction, during a scheduled time period;
- “e-Contract Management System” means the processes involved between the issuance of a work order and completion of the work handled electronically with the tools available on the e-PPs portal;
- “electronic communication” means any communication that the parties make by means of data messages;
- “electronic document” means information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically;
- “e-signature” means any distinctive mark, characteristic and/or sound in electronic form, representing the

identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document;

“electronic tendering” means the use of e-PPs portal to facilitate the complete tendering processes, which include advertising, submissions, evaluations and award of contract for supply of goods or service.

“originator of an electronic communication” means a party by whom, or on whose behalf, the electronic communication has been derived or generated prior to storage, but it does not include a party acting as an intermediary with respect to that electronic communication;

“electronic” means any clerical, digital, magnetic, optical, electromagnetic, internet, mobile, wireless or other form of technology that entails capabilities similar to these technologies;

“e-Payment System” means electronic payment methods available and the processing of transactions and their application within e-PPs users and payment service provider of the e-PPs;

“e-PPs portal” means a single web portal, from where and through which procuring entities perform all or some of their e-procurement related functions which include publishing of annual procurement plans, invitation of tenders, request for quotation, tender proposals submission, tender opening, evaluation, auction, contract award notices, contract management, e-payments, procurement management information functions, and any other functions required by the Act and these regulations;

“e-PPs” means electronic Public Procurement system – a system developed, hosted and operated by the

Authority or its agent, to enable procuring entity carry out e-procurement;

“e-procurement” means the use of information and communication technology in conducting procurement functions;

“e-submission” means submitting tender documents through the e-PPs to participate in a tender and legally binds the tenderer with the particular tender as authentic tender participant;

“Procurement Management Information System (PMIS)” means a web-based system for managing public procurement information and through which procuring entities can submit online to the Authority all reports and information in accordance with the Act, Regulations and the Authority’s Guidelines;

“server” or “computer server” means a physical computer dedicated to running one or more such services to serve the needs of users of the other computers on the network;

“signature” means a distinctive mark or characteristic indicating identity;

“user ID” means a code used by a user to identify himself when he logs into a system and starts a login session and is used by the system to uniquely identify the user;

“web URL” (web Uniform Resource Locator) means the unique address used for accessing a web file or system on the Internet;

“workflow management system” means a system of overseeing the process of passing information, documents and tasks from one employee or computer within a business to another.

Objectives
and usage

341.-(1) The objectives of the e-PPs is to enhance the efficiency and ensure transparency in public procurement through the implementation of a comprehensive e-PPs

solution to be used by some or all public bodies in the country for carrying out e-procurement.

(2) The use of the e-PPs shall only be for lawful purposes that do not infringe the rights of or restrict or inhibit the use of the system by any third party, and such restriction or inhibition includes but not limited to conduct which is intended to mislead or is defamatory or which may harass, cause distress or inconvenience to any person and the transmission of obscene or offensive content or interruption of the normal flow of content within the e-PPs.

(3) The e-PPs shall be hosted in e-PPs Data Centre at the Authority and its web portal shall be accessible for use through web URL specified by the Authority.

(4) All stakeholders including the general public, tenderers, procuring entities, payment service providers, development partners, media, e-PPs administrators and auditors may get access to e-PPs and information thereof in accordance with specified terms and conditions of use, disclaimer and privacy policy, and upon successful registration to the system.

Scope and application

342.-(1) The e-PPs shall be implemented by all procuring entities in full or partially in parallel with the conventional manual procedures.

(2) All stakeholders of public procurement shall, subject to sub-regulation (1), have appropriate access to relevant features of the e-PPs as determined by the Authority and assigned to them upon successful registration.

Major Modules of e-PPs

343.-(1) The e-PPs shall consist of several modules that may be interlinked sub-systems, which shall be used individually or in combination, in order to accomplish functions relating to the following e-procurement related processes-

- (a) Centralized Registration System;
- (b) Workflow Management System;
- (c) E-Tendering and e-Purchasing;

- (d) e-Auction;
- (e) e-Contract Management System;
- (f) e-Payment System;
- (g) Procurement Management Information System (PMIS);
- (h) Dispute resolution;
- (i) System and Security Administration;
- (j) Handling Errors and Exceptions; and
- (k) Application and User Help.

(2) The Authority has the right to add, update or remove other modules, sub-systems and features in the e-PPs or make integration with other system demanded by the prevailing laws, Government directives or special needs of procurement community.

Access to e-PPs features

344.-(1) All the e-PPs users shall be required to register to be able to access system features of the e-PPs.

(2) To access the e-PPs, users shall comply with security requirements and any other technical and operational guidelines to be issued by the Authority.

(3) User of e-PPs shall use digital signatures when transacting with the system; and where such signatures are not available, acceptable form of e-signature may be used as determined by the Authority.

(4) Appropriate digital signature shall be the one issued by Certification Authority, while appropriate e-signatures shall be issued by recognised competent authority for the authentication of electronic documents.

(5) Users shall be responsible for maintaining the confidentiality of all particulars associated with their accounts and shall be fully responsible for all activities pertaining to use of their account particulars in the e-PPs.

(6) All applicable costs for acquiring appropriate signatures required for use in the e-PPs shall be borne by the users and the Authority shall bear no responsibility for misuse, loss or theft of those signatures.

Registration
of users of e-
PPs

345.-(1) A prospective users shall register in the e-PPs under an appropriate user category in order to have appropriate access points and to get access to working dashboards with authorized features of the e-PPs.

(2) The user categories acceptable by the system are procuring entities, prospective tenderers, systems administrators, auditors, development partners, banks and financial institutions, civil society organisations and any group as approved by the Authority.

(3) The registration shall be done through the online centralised registration system of the e-PPs and may be followed by validation of credentials through due-diligence by the Authority.

(4) A prospective users applying to use e-PPs shall be required to provide all required information include accepting the terms and conditions of e-PPs use; and confirmation of awareness of disclaimer and privacy policy of the e-PPs.

(5) If any misinformation is identified or any document submitted is found false and the user does not correct that information, the user account shall be cancelled or suspended and appropriate action shall be taken in accordance with applicable laws.

(6) The Authority shall prepare validation procedures for verification of user credentials which may require furnishing of original hard copy credentials in case where reliable verification process cannot be completed online.

(7) Any registration may be cancelled at anytime due to violation of any terms and conditions of e-PPs.

(8) Users registration for e-PPs shall be completed after the validation of credentials is completed, appropriate registration fees paid, and users confirmed by the Authority.

(9) Users may cancel their registration provided that they have no pending obligations to any party while using e-PPs.

(10) Upon successful registration in any category,

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the user account shall be assigned a secured dashboard with features that enable the user to perform his roles in e-PPs.

(11) The procedures for using the dashboards under each category of users shall be in accordance with guidelines to be issued by the Authority from time to time.

Tender preparation

346.-(1) Tenderers shall prepare their tender documents required to be uploaded within the time specified in the instructions to tenderers after signing of the same by an authorized representative of the tenderer.

(2) Tenderers shall submit their tender responses before the closing date and time, after which the e-PPs shall automatically reject any late submission.

(3) All documents kept in the tenderer's system space shall remain in the system unless the allocated size exceeds the assigned limit.

e-advertisement for e-tendering and e-auction

347.-(1) Procuring entities shall prepare invitation for tenders using online template available from their secured dashboards.

(2) The invitation for tenders shall be published in the e-PPs portal in accordance with these Regulations, by proper authority from the procuring entity.

(3) The prepared invitation will contain detailed description of the goods, works or services, time-schedule and any other conditions and where applicable, the tendering documents shall be made available on the procurement opportunities section of the e-PPs portal and shall be available to all interested users.

(4) The date of tender notice published in the e-PPs portal shall be treated as the start date of tender preparation.

Uploading tender document for e-tendering

348.-(1) Tenderers shall submit their tenders online before the deadline specified in the invitation for tenders after signing of the same with the e-signature or digital signature, whichever is applicable, by their authorized representative.

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(2) Before final submission, the tenderer may upload documents, fill-in required online forms, modify and verify the documents and complete other activities part by part and any attempt to submit incomplete tender shall not be allowed by the e-PPs.

Clarification
and pre-tender
meeting

349.-(1) Where it is specified in the tender notice, the e-PPs shall provide features for online pre-tender meetings on the specified date and time.

(2) A request for clarifications by tenderers and responses to queries shall be posted online before or during pre-tender meeting, or within the time prescribed in the tendering documents.

Amendment
to tender
documents

350.-(1) To the extent permissible under the Act and these Regulations, procuring entities may amend the tender documents at any time prior to the deadline for receipt of tenders.

(2) Procuring entities shall issue and publish an addendum in the relevant section of the e-PPs accessible to all prospective tenderers who received the tender document; and short messages or email will be used to alert tenderers of all such changes.

e-submission

351.-(1) A tender submitted electronically shall be considered to be true and legal version, duly authorized and duly executed by the tenderer and intended to have binding legal effect.

(2) The tender shall bear e-signature or digital signatures for identity and authentication purposes and the identity of the tenderer may be verified with a follow-up due diligence process.

(3) A tender through the e-PPs shall be received in full prior to the closing time and the tenderers shall receive an acknowledgement of receipt of tender or amendment through the system.

(4) A tenderer to ensure the integrity, completeness

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and authenticity of their submission; and in case of electronic records entered online and files containing the tender being unreadable for any reason, the tender submitted shall not be considered.

Online tender opening

352.-(1) The procuring entities receiving the tenders shall use the appropriate dashboard on the e-PPs perform all tender opening functions in e-PPs portal as prescribed in guidelines issued by the Authority.

(2) Tenderers may physically be present at the tender opening meeting, although option shall be made available in e-PPs portal for those who wish to participate online during the session, where the committee will post the tender opening records in the appropriate section of the e-PPs.

(3) Online tender opening schedule and specific web URL for the tenderers to participate shall be specified in the invitation to tender issued by the procuring entity.

Formation of evaluation committees

353.-(1) The procuring entities receiving the tenders shall create a tender evaluation committee on e-PPs portal and its members shall perform all functions of the Committee as prescribed in the Act and these Regulations.

(2) Procuring entities shall ensure that members of the committee are conversant with the online tools to enable them effectively and efficiently accomplish the evaluation process.

Use of e-PPs by evaluation committee

354.-(1) Access to the dashboard by the evaluation committee shall be only for the specified period of time as defined by procuring entities in e-PPs or its extension.

(2) The committee members shall fill and sign the online covenant forms individually before evaluation and joint certification after evaluation as provided online by the system and in accordance with the Act and these Regulations.

(3) Online evaluation of tenders shall follow the predefined workflow set-up by the procuring entity to

evaluate the specific tender.

(4) A procuring entity may only use e-PPs automatically to generate results of the evaluation, based on criteria specified by the procuring entity, and if condition of tender dictates, some aspects of the evaluation may be accomplished offline and the results shall be entered into the system to proceed with generation of final evaluation report.

(5) The committee shall not alter any data provided by the tenderer and the agreed final report that determines the successful tenderer as computed by ePPs.

Approval,
notification of
award and
contract
signing

355.-(1) Final evaluation report shall be routed in e-PPs through system workflow to the appropriate approving authority stipulated in the Act and these Regulations and the approval shall be granted online using appropriate digital signature or e-signature.

(2) A procuring entity shall issue award notification to a successful evaluated tenderer online through tenderer's dashboard and email or short messages alerts and the tenderers shall be required to acknowledge receipt through e-PPs.

(3) Contract negotiation may be conducted online or offline, if applicable to a specific procurement type or category in accordance with the requirements of the Act, and the negotiation results shall be entered into the e-PPs.

(4) The contract between procuring entity and the successful tenderer may be signed online using digital signatures or, offline in compliance with the Act and these Regulations.

(5) The e-PPs shall publish the contract award information on e-PPs portal in the appropriate public section in accordance with these Regulations.

Application of
e- auction

356.-(1) E-reverse auction shall be used in the procurement of standard goods for which specifications can be determined with precision, where price or quantity is the only determinant and where there exist significant numbers

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of potential tenderers.

(2) E-forward auction shall be applied in the disposal by tender of goods whose specifications can be described precisely and whose salvage value have been established.

(3) E-reverse and e-forward auction methods shall not be applied where a considerable evaluation process is required as may be in case with e-tendering.

(4) The Authority shall issue guidelines on the procedures to be followed and other applicable conditions for conducting e-auctions.

System
preparation
for e-auction

357.-(1) The auction shall be applied in the procurement or disposal of goods where-

- (a) the auction scope and the evaluation criteria for selection and award of a contract is clearly established and advertised;
- (b) the value of items to be procured or disposed of is high enough to make it commercially viable for a competitive supplier or buyer base, but not so high as to materially reduce competition;
- (c) the procuring entity verifies that all operational conditions are met for starting the auction, including connecting all participants to ePPs and ensuring that conditions required for safeguarding anonymity are in place; and
- (d) each auction is carefully monitored for market manipulation.

(2) Where elements of collusion, predatory pricing or any other matter that may affect principle of value for money in the process, the auction may be cancelled after obtaining system approval from the Authority.

Bidding
instructions

358. The requirements for participating in e-auction shall include:

- (a) all conditions such as the event and timing of the auction, rules for participation, valid bid increments for e-reverse auction or decrement

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for the case of e-forward auction; how to bid and whether the auction is divided into successive phases;

- (b) the information which will be made available to bidders in the course of the e-auction and, where appropriate, when it will be made available to them;
- (c) any other relevant information concerning the e-auction process.

Advertising in e-auction

359.-(1) A procuring entity shall post notification of an e- auction on the appropriate section of the e-PPs portal.

(2) The notification shall include all the specification, terms and conditions for the proposed contract; and a sample contract shall be made available online with the notification.

(3) The notification period shall be measured from the date of publication on the e-PPs portal.

Operation of e-auction

360.-(1) The procuring entity shall run the auction according to information specified in the invitation to the e-auction and the e-PPs shall collect electronically and without human intervention, anonymous bids which shall be automatically ranked by the system.

(2) The e-PPs shall automatically and instantaneously inform bidders of new ranking(s) as they occur, together with price in such a way that bidders are able to ascertain their ranking at any moment.

(3) Under no circumstances may the identities of the bidders be disclosed or identified by any party during any phase of the auction.

(4) All invalid bids submitted shall be rejected with a message explaining reasons for rejection.

(5) Procuring entities shall not provide any additional information or clarification related to the auction that may distort competition; and where it is necessary to provide information or clarification, such information shall

be through appropriate section of e-PPs accessible to all bidders.

(6) The procuring entity shall close the auction in accordance with the option it has specified and the closure shall be-

- (a) at the time and date as previously published; or
- (b) when a previously advertised time period has elapsed during which no new valid bids have been received.

(7) The e-auction shall not be closed before the deadline has elapsed, in which case the e-PPs shall immediately inform bidders about auction closure including any decision to extend the specified deadline.

Correspondence, amendments, and clarifications

361.-(1) All pre-auction clarifications and amendments of the bidding documents, as well as any pre-auction meetings shall be posted simultaneously onto the appropriate section of e-PPs portal, and whenever possible these will also be emailed to potential tenderers that have previously shown an interest.

(2) Modifications to any of the procedures, operations, specifications or conditions by any operator shall be tracked and recorded for audit.

(3) A bidding document shall not be available to any part in advance of the advertising of the opportunity.

(4) Procuring entities shall track receipt by bidders when distributing pre-auction amendments and clarifications online.

(5) Where procuring entities stage online pre-auction meeting and clarifications, including online conferencing and chat facilities, such facilities shall not function once an e-auction begins.

Access to e-auction process

362.-(1) Access shall be open, equal and unrestricted to all eligible tenderers who must have registered as tenderers in accordance with these Regulations.

(2) Where the suppliers or buyers are to be pre-

qualified before the auction, the pre-qualification process shall be conducted online in the system or offline in accordance with the Act, these Regulations and Guidelines issued by the Authority.

(3) Auction shall not be used if pre-qualification has reduced the number of tenderers to a level that materially affects competition, and under no circumstances shall there be less than three independent tenderers.

(4) Where pre-qualification is conducted, an invitation through e-PPs and other communication means such as emails and short messages shall be issued to admissible tenderers simultaneously, informing them of the e-auction and date and time of the auction in accordance with these Regulations.

Contract
award under
e-auction

363.-(1) An e-auction award shall be based solely on ranking of prices; such that the contract is awarded at the lowest price to the corresponding qualified tenderer in case of purchase or highest price in the case of disposal.

(2) Contract awards from e-auctions shall immediately be published online in the appropriate section of e-PPs, together with the name of successful tenderer and the awarded price.

(3) There shall not be any negotiation during or after the e-action process is closed.

Contract
progress
monitoring
and control

364.-(1) The procuring entities shall nominate individuals for managing contracts, who have the required knowledge, skills, and abilities to effectively carry out their responsibilities by using the dashboard provided in the e-PPs.

(2) The Authority shall prepare procedures on how contract shall be monitored and controlled online and all procuring entities shall enter all contract information, during and after the implementation of the contract into e-PPs for the purpose of records and reporting or assessing and determining any deviations from the contract terms and

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conditions.

(3) The e-PPs shall provide a tracking mechanism for all contract agreements.

(4) The designated officials should check contract status; contracted parties, contract period, goods, works or services covered and contract points to make any decision during contract agreement administration.

(5) If any contract needs to be amended the e-PPs shall bring up auto alerts for required actions. The designated official shall record appropriate reason before any such extension.

Certification and payment processing

365.-(1) The procuring entity shall use standard forms generated from the e-PPs for issuing different types of certifications such as acceptance certificates, quality certificates, and other relevant documents.

(2) The procuring entity shall verify receipt of goods, performance of services or execution of works in accordance with the contract prior to authorizing payment of invoices online.

(3) Contract management shall be fully based on the workflow process configured for the specific procuring entity.

Dispute resolution

366.-(1) Dispute resolution in case such as information theft, misuse, backing, spamming, disclosure, misrepresentation shall be handled through the provisions made in the Act, and any other existing law, and the complaint shall be initiated online and handled using procedures to be prescribed by the Authority.

(2) The Authority shall configure a workflow in the e-PPs to facilitate all communications relating to disputes for expedient and transparent resolution of any such matter arising out of the e-procurement carried out over the system.

Fees

367. The Authority shall charge a fee from its e-PPs users for the use of e-PPs and its different services, which

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include registration fee, annual fee and any other fee relating to transaction made in e-PPs.

Payment
arrangements

368.-(1) The e-PPs shall have features for e-payment using bank cards and the procedures for making such payment will be provided by the Authority through the system user manual, and should be in harmony with existing financial laws and regulations.

(2) Other conventional offline non-cash means of payment will also be accepted, provided that details of completed transaction are entered into the system with all necessary supporting documents as required by the e-PPs.

(3) Banks and other financial institutions registered in e-PPs under conditions specified in these Regulations, may also enter into arrangement with procuring entities or tenderers for the purpose of facilitating remittance across parties of monies in terms of charges, fees or contract prizes involved in the public procurement carried out over e-PPs, in accordance with the workflow to be determined by the Authority and configured by the procuring entity.

PART XII PROCEDURES FOR CONDUCTING PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIP

Procurement
of solicited
PPP
G.N. No. 165
of 2011

369.-(1) Subject to the provisions of the Public Private Partnership Regulations, the contracting authority shall carry out a feasibility study before undertaking the procurement of solicited PPP project.

(2) The contracting authority shall not proceed with the procurement phase of solicited PPP or private sector participation project if the feasibility study indicates that the proposed project will not deliver value for money or improve the quality of the public service.

Advertisement
of request for
qualification

370.-(1) The contracting authority shall, after approval of the project by the Minister, prepare and submit

to the Authority for advertisement in the Journal and Website a request for qualification in the form of the specific procurement notice.

(2) The contracting authority shall advertise the same notice in at least one newspaper of wide circulation in the United Republic of Tanzania and may put the advert in any international newspaper, known technical magazines or trade publications as may be directed by the tender board.

(3) The international notification of the request for qualification shall be done at the same time as the advertisement in the local newspapers, and shall be given in sufficient time to enable prospective tenderers to obtain request for qualification documents, prepare and submit their responses.

(4) The notification of the request for qualification shall contain the following:

- (a) a brief description of the intention of the contracting authority to undertake the project;
- (b) a high level definition of the project;
- (c) identification of the specific location where interested parties may obtain a copy of the request for qualification, the dates and times during which the request for qualification will be available, including any costs for obtaining a copy; and
- (d) the date, time and place for submissions of the request for qualification to the contracting authority.

Selection
process of a
private partner

371.-(1) The selection of a private party shall be in accordance with the competitive bidding procedures specified under these Regulations and shall be based on the “best value” to the project for the duration of the partnership as opposed to the lowest bidder.

(2) Factors that contribute “value” to a project shall include, but not limited to: project design, project delivery schedule, use of innovation, access to expertise, project

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financing and user fee schedule (if applicable) over the duration of the partnership.

(3) The contracting authority shall require a potential private party to furnish key information including but not limited to qualifications and experience, legal capacity, financial capability, references, risk transference in the sense that it is capable of assuming responsibility to project related risks, litigation and controversy, if any, in order to perform an in-depth review of each potential partner.

Evaluation of proposals

372.-(1) Proposals must be evaluated solely on the criteria specified in the solicitation document, such evaluations may be conducted using any rating method or combination of methods, so long as they are specified in the solicitation document.

(2) The contracting authority shall determine any strengths, deficiencies, weaknesses, and concerns supporting the evaluation of each proposal.

(3) The criteria for evaluation of proposals shall be specified in the solicitation document and shall include, but not be limited to expertise, legal capacity, financial capability, acceptance of risk transfer, demonstrated experience in delivery of similar projects, demonstrated experience in working with similar public agencies, capacity to deliver the required quantity and quality of project or services, proposed infrastructure and end of term treatment, proposed timelines for the project and additional resources and capacity.

(4) In evaluating the funding sources proposed by the potential private partner, the contracting authority shall look at each proposal and its overall value for the duration of the PPP including where applicable, the involvement of the public agency in proposed treatment of any profits resulting from the project, any revenue-sharing proposals with the public agency, and setting, controlling and collection of user fee schedules (especially for toll roads).

Conduct of
due diligence

373.-(1) The contracting authority shall conduct due diligence on the private partner that is recommended to be awarded the contract by:

- (a) verifying experience of the private partner to ensure that he possesses the qualifications and expertise necessary to meet the contracting authority's objectives;
- (b) contacting a list of references provided by the private partner indicating other public agencies and projects similar to that being proposed;
- (c) ensuring that the person listed as the reference contact actually worked directly with the partner in question and determining the capacity in which he worked;
- (d) ensuring that any litigation or controversy associated with the private party and its individual team members does not affect the ability to execute the contract;
- (e) confirming the qualifications and experience that the private partner possesses through verification of certificates of technical knowledge, education, and professional experience, including years in the specific business sector, experience with a project of similar size, nature, and complexity, as well as experience with public bodies;
- (f) reviewing of a list of the proposed partner's projects completed and under construction and extent of prior project experience by the proposed partner;
- (g) verifying the potential private party's financial capability and where the contracting authority lacks the expertise to determine financial capability, an independent financial review may be performed and certified by a competent authority prior to final private party selection;

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- (h) confirming the available working capital proposed for the PPP as well as the bonding capability of the proposed partners through the provided bank and surety references.
- (2) The references referred under sub regulation (1)(b) shall provide:
 - (a) information regarding interaction of persons listed in the references with the private partner and its staff; and
 - (b) insight on issues they encountered, the resolution process and the responsiveness of the private partner to any agency concerns.
- (3) The list of references shall relate to projects and public agencies which are similar to the proposed project and contracting authority, respectively.
- (4) The contracting authority shall prepare a due diligence report for the project in accordance with the guidelines issued by the Authority.

Procurement
of
unsolicited
PPP
G.N. No.
165 of 2011
Cap 103

374.-(1) An unsolicited PPP shall be managed in the following stages:

- (a) the first stage which comprise of an approval as a potential PPP project, in which case, the regulations made under the Public Private Partnership Act shall be complied with; and
- (b) the second stage of competitive bidding shall comply with these Regulations.
- (2) The contracting authority shall not conduct a procurement process for unsolicited project proposal which-
 - (a) requires or would require the Government guarantee for cash flow;
 - (b) provides for exclusivity clause;
 - (c) requires the government to finance the project at initial stages; or
 - (d) in any way, interferes with competitive tendering.

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Invitation of
counter
proposals

375.-(1) Where the contracting authority accepts a PPP proposal it shall follow the competitive bidding procedures provided in these Regulations to solicit counter proposals, the original project proponent, who initially made the representation, may be invited to participate.

(2) The contracting authority shall make available to any interested tenderer the proposal and contract principles of the original project proponent.

(3) Interested tenderers who submit counter proposals may be given an opportunity to improve the proposal of the original project proponent.

(4) Where the contracting authority finds one of the counter proposals more attractive than that of the original project proponent, the original project proponent shall be given an opportunity to make his proposal competitive with that of the selected counter proposal within a period of thirty days from the date he is given the opportunity.

(5) The original proponent shall be awarded the project if he matches the better price.

(6) Where the original project proponent fails to make his proposal competitive with that of the selected counter proposal within a period stated in sub regulation (4), the contracting authority may execute the PPP agreement with the tenderer submitting a more attractive counter proposal.

Obligations,
liabilities and
confidentiality

376. (1) Upon receipt of unsolicited proposal, the contracting authority shall neither make representations of any kind, nor accept any obligations or liabilities, through corresponding with the original project proponent with regard to the proposal.

(2) The proprietary information of the original project proponent contained in the proposal shall remain confidential and shall not be disclosed to any interested tenderer.

(3) The contracting authority may disclose to any

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interested tenderer information of the original project proponent which is already in the public domain or which the contracting authority is by law required to disclose.

(4) Subject to sub regulation (2) of this regulation, the contracting authority shall not be responsible for any intellectual property rights accruing to the proposal of the original project proponent.

Issue of PPP request for proposals

377.-(1) Where the contracting authority issues a request for proposals for the PPP contemplated by the original proponent, or a similar PPP, the original proponent shall neither be obliged to submit a bid nor obliged to submit a bid consistent with his original proposal.

(2) The original proponent, its employees and agents shall not disclose or make public any information relating to the unsolicited proposal without the consent of the contracting authority.

(3) The consent shall be granted or declined within thirty days of being requested, failing of which, shall be considered to have been granted.

Contents of Unsolicited PPP Proposal

378. Unsolicited PPP proposals shall contain all the necessary minimum information prescribed in the Sixteenth Schedule to these Regulations.

Negotiation, agreement and award. G.N. No. 165 of 2011

379.-(1) Where a contracting authority selects a private partner, the contracting authority shall comply with the procedures under the Public Private Partnership Regulations in negotiating with the private party, drafting, approving, vetting and signing of the agreement.

(2) The mechanisms for monitoring implementation of the project, reporting, dispute resolution, processes for remedying deficiencies, provisions for handling default by either party, and finally handing-back requirements if the project is terminated prematurely shall be as specified in the Public Private Partnership Regulations.

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Revocation of
GN No. 97 of
2005 and
GN No. 98 of
2005

380.- The Public Procurement (Goods, Works, Non-consultancy Services and Disposal of Public Assets by Tender) Regulations, 2005 and the Public Procurement (Selection and Employment of Consultants) Regulations, 2005 are hereby revoked.

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FIRST SCHEDULE

ADVERTISEMENT OF TENDERS AND DISCLOSURE OF TENDER
AWARD INFORMATION

(Made under regulations 8 (a), 19, 32, 120, 150, 181, 254, 255, 280, 332)

Method of procurement	Mode of Advertisement
PREQUALIFICATION OR EXPRESSION OF INTEREST	
International competitive tendering/Selection	Journal and Tender Portal; Procuring entity website and /or Notice Board; and At least one local news paper and one international news paper
National competitive tendering/selection	Journal and Tender Portal; Procuring entity website and/or Notice Board; One local news paper
TENDERING	
International competitive tendering	Journal and Tender Portal; Procuring entity website and/or Notice Board; and At least one local news paper and one international news paper
National competitive tendering	Journal and Tender Portal; Procuring entity website and /or Notice Board; One local news paper
TENDER AWARD DISCLOSURE INFORMATION	
All tenders irrespective of the method used	Journal and Tender Portal; Procuring entity website and /or Notice Board

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SECOND SCHEDULE

FEEES FOR SERVICES RENDERED BY THE AUTHORITY

(Made under regulations 21 and 41(2))

Fees for advertising in the Tanzania Procurement Journal and Tender Portal		
1.	Annual Procurement Plan	Fees in Tshs.
1.1.	Procurement Volume up to Tshs one hundred million	500,000
1.2	Procurement Volume above Tshs one hundred million up to one billion	750,000
1.3	Procurement Volume above Tshs one billion	1,000,000
2.	Advertising of Tenders	500,000
3.	Posting Tender Disclosure Information	
3.1	Minor Value Procurement	50,000
3.2	Quotations	100,000
3.3	Single Source	500,000
3.3	Restricted Tendering/Selection	500,000
3.4	Open Tendering/Selection	500,000
3.5	Short list of Prequalified tenderers/Consultants	500,000
3.8	Shortlist of Suppliers for Framework Contracts	1,000

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THIRD SCHEDULE

(Made under regulation 78 (2))

Anti-Bribery Policy/Code of Conduct and a Compliance Program
MEMORANDUM

Government of the United Republic of Tanzania
Procedures for tendering for public sector contracts

The following procedures will apply to the letting of contracts for the public sector in addition to the standard legal and projects. These procedures are administrative requirements; they will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of the United Republic of Tanzania and any of the competing tenders.

- (1) Each tenderer must Submit a statement, as part of the tender documents, with the following text.

"This company places importance on competitive tendering taking place on a basis that is free fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relatives or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub-contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and compliance Program are attached"

(Alternatively: This company has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers')."

- (2) (a) This statement must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and,

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where relevant, of its subsidiary in the United Republic of Tanzania. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

- (b) Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners, the tenderer may cover the subcontractors and consortium partners in its own statement, provided the tenderer assumes full responsibility.
- (3)
- (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - (b) Each tenderer will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
 - (c) The successful tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
 - (d) Within six months of the completion of the performance of the contract, the successful tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.
 - (e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
- i) Cancellation of the contract,
 - ii) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages), unsuccessful tenderer would present their claims under international arbitration,
 - iii) Forfeiture of the tender security, and
 - iv) Debarment by the Government of the United Republic of Tanzania from tendering for further public contracts for a period of ten years and as the Government may deem appropriate.

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- (6) Tenderers shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their - general or project - specific - Compliance Program.

- (7) The Government of the United Republic of Tanzania has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by tenderers for this contract, and to which in turn all tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a tenderer may be disclosed to another tenderer or to the public).

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FOURTH SCHEDULE
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(Made under regulation 135(3))

Authorized Agency Procurement limits for petroleum products

Method of procurement	Maximum per contract (Tshs.)
Single source	No limit but must be justified
National and international shopping on quotations basis from three different sources	10,000,000,000.00
Restricted tendering	No limit

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FIFTH SCHEDULE

(Made under regulation 132 and 134)

FEE FOR SERVICES RENDERED BY THE AGENCY

Description of paying party	Fee in Tshs.	
	Up to the limit of minor value procurement	Above minor value procurement limit
Procuring entity (Third Party procurement)	3,500,000.00	10% of contract value or 10,000,000.00 per contract whichever is lower
Authority and Appeals Authority	Not applicable	10% of contact value or 10,000,000.00 per contract whichever is lower
Suppliers, services providers and contractors	2% of each call-off order value	
Suppliers of petroleum products	0.1% of each call-off order value	

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SIXTH SCHEDULE

(Made under regulation 66 (2))

**AUTHORISED PROCUREMENT LIMITS FOR ACCOUNTING OFFICERS
FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES**

**CATEGORY A –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING 10
BILLION PER ANNUM**

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs.75,000,000/-	Tshs 750,000,000

**CATEGORY B –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING 5 TO 10
BILLION PER ANNUM**

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs. 50,000,000/-	Tshs 500,000,000

**CATEGORY C –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING 1 TO 5
BILLION PER ANNUM**

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs. 30,000,000/-	Tshs 300,000,000

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CATEGORY D –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING Tshs. 500
MILLION TO 1 BILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs. 10,000,000/-	Tshs 100,000,000

CATEGORY E –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME FROM Tshs. 200 TO 500
MILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs.5,000,000/-	Tshs 75,000,000

CATEGORY F –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME LESS THAN Tshs. 200
MILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Micro procurement, Minor Value Procurement or Shopping/Competitive quotations	Tshs.2,500,000/-	Tshs 50,000,000

Notes: (1) For shopping, quotations shall be obtained from at least three suppliers.

(2) Processing time for all procurement shall be within the shortest possible time and procurement approval shall be sought from at least two members of the tender board

(3) Limits for Heads of Department shall be determined by the Accounting and Chief Executive Officers under the powers given to them to delegate procurement functions in accordance with these Regulations.

(4) The Maximum Authorised Procurement Limits per Annum as indicated in the 3rd column of this Schedule is inclusive of all the procurements (works, goods and non- consultancy services) within a procuring entity in a financial year.

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SEVENTH SCHEDULE

(Made under regulations 151, 165 and 166)

METHODS OF SELECTION AND LIMIT OF APPLICATION
PER CONTRACT
FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

Method of tendering	Goods	Works	Non Consultancy Services	Disposal of Public Assets
International competitive tendering	No limit	No limit	No limit	No limit
National competitive tendering	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000	Up to Tshs 1,000,000,000	Up to Tshs 5,000,000,000
Restricted tendering	No limit but must be justified	No limit but must be justified	No limit but must be justified	No limit but must be justified
Competitive quotations (Shopping)	Up to Tshs 120,000,000	Up to Tshs 200,000,000	Up to Tshs 100,000,000	Not applicable
Single source procurement	No limit, but must be justified.	No limit, but must be justified.	No limit, but must be justified.	Not applicable
Minor value procurement	Up to 10,000,000	Up to 20,000,000	Up to 10,000,000	Not applicable
Micro value procurement	5,000,000	Not applicable	Not applicable	Not applicable

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GN. No. 446 (contd.)

EIGHTH SCHEDULE

(Made under regulations 68(3), 120, 163, 187 and 286(6))

**MINIMUM PROCUREMENT PROCESSING TIME FOR TENDERERS FOR
GOODS, WORKS AND NON-CONSULTANCY SERVICES**

Time given under this Schedule is intended to give bidders adequate time to prepare their bids and shall not be reduced by PEs under any circumstances, except where a tender has been rejected provided that:-

- (i) during retendering there are no major changes which necessitate preparation of new tenders; and*
- (ii) the same tenderers are invited,*
in which case the minimum processing time may be reduced by half.

**Minimum Time for Preparation and Submission of Prequalification
Documents
and Tenders for Tenderers**

Serial Number	Method of procurement	Period (calendar days)
PREQUALIFICATION STAGE		
1	International competitive tendering	30
2	National competitive tendering	21
TENDERING STAGE		
3.	National competitive tendering	21
4.	International competitive tendering	30
5.	Restricted national competitive tendering	21
6.	National shopping	4
7.	International shopping	8
8.	Where large works are involved	90

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NINETH SCHEDULE

(Made under regulations 3, 27, 34, 37, 38, 39 and 40)

PREFERENCE SCHEME FOR LOCAL SUPPLIERS, CONTRACTORS AND SERVICE PROVIDERS

A: Margin of Preference in favour of local contractors or service providers, or association between local and foreign contractors or service providers under national and international competitive tendering.

(a)	Margin of Preference under National and International competitive tendering for local contractors or service providers.	Margin of preference shall be 10%
(b)	Margin of Preference under National and International competitive tendering or selection for association of local and foreign contractors or service providers.	
Input of foreign contractors or service providers. in the association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference shall be 6%
	25 -49%	Margin of preference shall be 8%
	0 -24%	Margin of preference shall be 10%

The Authority shall in consultation with various industry stakeholders prepare guidelines to determine the level of input of foreign contractors or service providers in the association, and as part of the registration for eligibility to the preference scheme shall determine the margin of preference which shall be granted to a particular association between local and foreign contractors or service providers.

B: Margin of Preference for goods mined or manufactured in Tanzania shall be 15%.

C: Exclusive Preference to local suppliers, contractors or service providers shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Works	10,000,000,000
Goods	2,000,000,000
Non-Consultant Services	2,000,000,000

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D: Regional Preference to local suppliers, contractors or service providers shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Works	1,000,000,000
Consultancy Services	200,000,000
Goods	200,000,000
Non-Consultant Services	200,000,000

Notes:

The exclusive preference is applicable for local suppliers, contractors or service providers and Association of local and foreign suppliers, contractors or service providers in which the contribution of the local suppliers, contractors or service providers to the association is more than 75%

TENTH SCHEDULE

(Made under regulation 66 (2))

AUTHORISED PROCUREMENT LIMITS FOR ACCOUNTING OFFICERS FOR
CONSULTANCY SERVICES

CATEGORY A –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING
10 BILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs.75,000,000/-	Tshs 750,000,000

CATEGORY B –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME EXCEEDING
5 TO 10 BILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs. 50,000,000/-	Tshs 500,000,000

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CATEGORY C –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME FROM
1 TO 5 BILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs. 30,000,000/-	Tshs 300,000,000

CATEGORY D –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME FROM
Tshs. 500 MILLION TO 1 BILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs. 10,000,000/-	Tshs 100,000,000

CATEGORY E –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME FROM
Tshs. 200 TO 500 MILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs.5,000,000/-	Tshs 75,000,000

CATEGORY F –
ENTITIES WITH ANNUAL PROCUREMENT VOLUME LESS THAN
Tshs. 200 MILLION PER ANNUM

Method of procurement	Maximum per Single Contract	Maximum per Annum
Consultant Qualification or Individual Consultant	Tshs.2,500,000/-	Tshs 50,000,000

- Notes:** (1) *The selected firm or individual shall be drawn from a shortlist of at least three firms or individuals.*
- (2) *The processing time shall be within the shortest possible time and procurement approval shall be sought from at least two Tender Board members through a circular resolution.*
- (3) *Limits for Heads of Department shall be determined by the Accounting and Chief Executive Officers under the powers given to them to delegate procurement functions in accordance with these Regulations*

Public Procurement

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- (4) *The Maximum Authorised Procurement Limits per Annum as indicated in the 3rd column of this Schedule is inclusive of all the procurements (works, goods, non-consultant and consultancy services) within a procuring entity in a financial year.*

ELEVETH SCHEDULE

(Made under regulations 255 and 310)

METHODS OF SELECTION AND LIMIT OF APPLICATION PER CONTRACT
FOR CONSULTANCY SERVICES

Method of Procurement	Limits
International Competitive Selection	No Limit
National Competitive Selection	Up to Tshs 1,500,000,000
Restricted Competitive Selection	No limit but must be justified
Consultant Qualifications	Tshs. 200,000,000
Single-Source Selection	No limit but must be justified.
Individual Selection	Up to 150,000,000/-
Minor Value Procurement	Up to Tshs 10,000,000

TWELVETH SCHEDULE

(Made under regulations 68, 280 and 295)

STANDARD PROCUREMENT PROCESSING TIME FOR CONSULTANCY
SERVICES

Times under categories 1 and 2 are intended to give bidders adequate time to prepare their bids and shall not be reduced by PEs under any circumstances, except where a tender has been rejected provided that:-

- (i) during retendering there are no major changes which necessitate preparation of new proposals; and*
- (ii) the same tenderers are invited,*

in which case the minimum processing time may be reduced by half.

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S/No	Activity	Time (Calendar days)	
		National Competitive Selection	International Competitive Selection
1	(i) Inviting for expression of interest up to submission of the same by consultants; or	14	30
	(ii) Invitation of Application for prequalification up to the submission of the same by Consultants	30	45
2	Preparation and submission of proposals by the consultants	30	45

THIRTEENTH SCHEDULE

(Made under regulations 3, 27, 39 and 40)

NATIONAL AND EXCLUSIVE PREFERENCE FOR LOCAL CONSULTANTS

(a) Margin of Preference for National and International competitive

A: Margin of Preference in favour of local consultants, or association between local and foreign consultants under national and international competitive selection.

(a)	Margin of Preference under National and International Competitive Selection for local consultants.	Margin of preference shall be 10%
(b)	Margin of Preference under National and International Competitive Selection for association of local and foreign consultants.	
Input of foreign consultants in the association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference shall be 6%
	25 -49%	Margin of preference shall be 8%
	0 -24%	Margin of preference shall be 10%

The Authority shall in consultation with various industry stakeholders prepare guidelines to determine the level of input of foreign consultants in the association, and as part of the registration for eligibility to the preference scheme shall determine the margin of preference which shall be granted to a particular association between local and foreign consultants

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B: Exclusive Preference to local consultants shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Firms	3,000,000,000
Individual Consultant	50,000,000

C: Regional Preference to local consultants shall be applicable to tenders whose values do not exceed Tsl

Notes:

The exclusive preference is applicable for local consultants and Association of local and foreign consultants in which the contribution of the national firm, local suppliers, contractors or service providers to the association is more than 75%

FOURTEENTH SCHEDULE

(Made under regulations 299 and 312)

GUIDELINES FOR FIXING WEIGHTS FOR EVALUATING
TECHNICAL PROPOSAL

(a)General

S/No	Criteria	Weights
1	Firm's general experience, reputation and experience in previous similar assignments	5% to 15%
2	Understanding of the terms of reference, methodology and the overall quality of the proposal	20% to 40%
3	Qualification of key personnel	30% to 60%
4	Local firms participation	5% to 15%
5	Participation by national experts	5% to 10%
6	Knowledge of the country	5% to 10%

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Pre-qualification

S/No	Criteria	Weights
1	Overall experience in the field of the assignment and in comparable assignments	20% to 50%
2	Professional reputation of the firm and its experience in previous assignments	20% to 40%
3	Knowledge of project environment in Tanzania and of the regional countries and their implications for the project	10% to 20%
4	Inclusion of local firms and experts in the assignment	10% to 20%

(b) Request for Proposal (or Evaluation of Proposal)

S/No	Criteria	Weights
1	Understanding of terms of reference	10% to 20%
2	Overall quality of the offer, quality of the work and methodology	20% to 30%
3	Qualifications of experts and experience in the field of the assignment	40% to 60%
4	Inclusion of local experts	5% to 15%

(c) Individual Consultants

S/No	Criteria	Weights
1	General Qualifications and Suitability of the task to be performed	30% to 60%
2	Experience in the specific assignment described in the terms of reference	30% to 50%
3	Language proficiency	5% to 15%
4	Knowledge of the country	0% to 10%

FIFTEENTH SCHEDULE

(Made under Regulation.331)

METHODS OF SELECTION AND LIMIT OF APPLICATION
FOR DISPOSAL BY TENDERING

Method of Disposal	Limits
International Competitive Tendering	No Limit
National Competitive Tendering	Up to 3,000,000,000

Public Procurement

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SIXTEENTH SCHEDULE

(Made under regulation 378)

MINIMUM ESSENTIAL INFORMATION FOR UNSOLICITED PPP PROPOSAL

S/N	Key Items	Description
1	Particulars of the proponent	(a) Name, address and full contact details of the person or entity submitting the proposal, or in the case of a consortium, the lead member. (b) Brief particulars of the proponent’s relevant background and experience. (c) Names and particulars of existing or proposed partners, brief particulars of their background and experience, and an indication of the respective roles they will play in the project.
2	The project concept	A clear outline of the project concept: the product, service or facility, accompanied by a sketch, picture, map or drawing and particulars, where relevant, of: (a) location and site; (b) type and standard; (c) unique characteristics, if any; (d) proposed size and extent.
3	Environmental matters	An outline of the known or expected impact that the project would or could have on its environment, and the steps that will be taken to minimize and mitigate such impact.
4	Social Matters	An outline of the known or expected social impact that the project would or could have, such as: (a) local skills development; (b) subcontracting and procurement to local firms/SMEs; (c) Jobs to be created in the development phase; (d) Jobs to be created in the operations phase; (e) Socio-economic impact on local community(ies)
5	Commercial rationale	Explain the commercial rationale of the project such as the following: (a) Indicate whether any survey or analysis has been conducted that supports the need and desirability for the project concept. (b) Summarize intended target markets. Identify competition. Explain how proposed product will differentiate itself.

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		<ul style="list-style-type: none"> (c) Explain proposed pricing policy. (d) Identify interrelationships with other existing/planned amenities, facilities in the [<i>protected area</i>].
6	Operations and management	<ul style="list-style-type: none"> (a) Provide an organizational diagram showing proposed relationships between owner(s), operators, and financiers. (b) Provide a brief summary of proposed executive management. (c) Explain who will market and distribute the product, and how. (d) Indicate functions that will be handled in-house, and those that will be sub-contracted, or out-sourced.
7	Financial viability	<ul style="list-style-type: none"> (a) Indicate the expected capital outlay in facilities, plant equipment and start-up costs. (b) Explain the financing plan. How much capital will need to be raised, where it will come from (equity, debt, grants) and the expected terms (interest rate, repayment period, security) of any proposed loans. Indicate if any lenders, sponsors and/or donors have been approached in respect of the project. (c) Provide an indicative and simplified cash flow forecast for the project's first five years, along the following lines: <ul style="list-style-type: none"> (i) Cash inflows for the last 5 years: Owners' capital, Loans received, Grants received, Cash from sales and other operating revenue. Cash from other sources. (ii) Cash outflows for the last 5 years: Project costs and startup expenses. Salaries, wages & staff costs. All other operating costs and Expenses Loan repayments, Replacement of equipment and vehicles. (iii) Net cash flow for the last 5 years: before PPP fees & tax.

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SEVENTEENTH SCHEDULE

(Made under Regulation 128)

TYPES OF WORKS OR CONTRACTS

S/N	Key Items	Description
(1)	Lump sum contracts:	These are contracts for a fixed amount for the works as specified and tendered for. Such contracts may or may not be accompanied by a priced schedule but when such schedules are provided; their purpose is to assist in the evaluation of progress payments and for the pricing of variations as provided in the general conditions of contract. With a lump sum contract, the works shall not except in respect of variations be measured for the purpose of payment.
(2)	Schedule of rates contracts:	A schedule of rates contract is a contract for which tenderers submit rates for the estimated quantities as set out in a bill of quantities which forms part of the tendering documents and from which the lump sum price is derived from the aggregation of sums tendered based on these quantities and rates. Payment under a schedule of rates contract is determined by measurement of the actual quantities completed and at the rates as tendered.
(3)	Contracts with special features:	Contracts with special features including cost reimbursement type in which the contractor is paid the actual cost of the work plus a fee. This fee may be a fixed sum, a percentage of the costs or a fluctuating fee. Where cost reimbursement contracts are used, the contract is to be arranged whenever possible on the basis of "cost plus fixed fee" rather than "cost plus percentage".
(4)	Performance based contracts:	Contracts in which all aspects of acquisition are structured around the purpose of work to be performed, and include, to the maximum extent practicable, describing requirements in terms of results required rather than the methods of performance of the work, and the measurable performance standard. This type of contract places on the contractor the responsibility to perform most of the quality control functions traditionally performed by the

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		<p>procuring entity, and contains measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of requirements, and positive and negative incentives. The pricing for such contracts, depending on contract length and circumstance in each case, shall be in form of:</p> <ul style="list-style-type: none">(a) Firm prices during the project's duration, where the procuring entity shall negotiate firm prices, unless the inflation contingencies being considered suggest that a fixed price with variation of price would offer better value for money; or(b) Fixed price with variation of price during the project's duration, where the procuring entity will normally seek a fixed price with variation of price, although this does not rule out a firm price if this is agreed between both parties and the inflation contingencies are realistic; or(c) Target cost incentive arrangements whenever risks of a particular procurement are perceived to be too great to offer either of the contracts in subparagraph (a) or (b), in which case the procuring entity shall look to risks and rewards equitably, and such arrangements shall normally be bound by a maximum price and will be considered, in addition to such other sharing arrangements as:<ul style="list-style-type: none">(i) undertakings by the service provider to reduce costs in accordance with the efficiency plan, the savings being shared in the agreed manner between the service provider and the procuring entity;(ii) payments to the service provider related to measurable improved performance.
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EIGHTEENTH SCHEDULE

(Made under regulation 32(1))

REGISTRATION OF SUPPLIERS, CONTRACTORS, CONSULTANTS AND
SERVICE PROVIDERS TO BE ELIGIBLE TO PARTICIPATE IN THE
PREFERENCE SCHEME

PART I
REGISTRATION FORM

COMPANY PARTICULARS		
1.	Company Name	
2.	Company Registration Number	
3.	Company Share holding structure	
4.	Category (Supplier, contractor, Consultant, Service Provider)	
5.	VAT Number	
6.	TIN Number	
7.	Telephone Number	
8.	Fax Number	
9.	E-mail	
10.	Website	
11.	Postal Address	
12.	Location	
13.	City	
14.	Region	
15.	Type of Business (indicate your specialization)	
16.	Number of full time employees	
CONTACT PERSON DETAILS		
17.	Name of the Contact Person	
18.	Position	
19.	Telephone Number	
20.	E-mail	
BUSINESS EXPERIENCE		

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21.	List tenders that you have participated in (give tender particulars and name of the procuring entity)	
22.	List contracts with their values (including LPOs) you had won	
23.	Other relevant information as per registration for preference scheme	

PART II
LIST OF ATTACHMENTS

The following attachments are essential for appraisal, and you are required to ensure that they are all attached, failure of which your application may be rejected:

1. Copy of Certificate of incorporation/registration;
2. TIN Certificate;
3. VAT Registration certificate;
4. Valid Tax Compliance/ Exemption Certificate;
5. Original Bank Statement/ Bank reference of not more than three months from the date of application;
6. Copy of certificate of registration with relevant bodies;
7. Business/ Company profile;
8. Evidence of having paid the non-refundable fee for the Application Form (which is Tshs. 5,000/=);
9. Copies of Annual Return forms, where applicable.

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NINETEENTH SCHEDULE

(Made under regulation 41(2))

TENDER SECURING DECLARATION FORM

1. Bid-Securing Declaration

Date: *[insert date (as day, month and year)]*

Bid No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[insert complete name of Procuring Entity]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Bid Securing Declaration]*

Name: *[insert complete name of person signing the Bid Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

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Dated on _____ day of _____, _____ *[insert date of signing]*

Corporate Seal (where appropriate)

2. Bid Security (Bank Guarantee)

*[If required, the **Bank/Bidder** shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets .]*

[insert bank's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of Employer]*

Date: *[insert date]*

BID GUARANTEE No.: *[insert number]*

We have been informed that *[insert name of the Bidder; if a joint venture, list complete legal names of partners]* (hereinafter called "the Bidder") has submitted to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]* under Invitation for Bids No. *[insert IFB number]* ("the IFB").

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the IFB; or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Form,

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if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This Guarantee shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of the Performance Security issued to you by the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful, or (ii) twenty-eight days after the expiration of the Bidder's Bid.

Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

[signature(s) of authorized representative(s)]

3. Form of Bid Security (Bid Bond)

[If required, the Surety/Bidder shall fill in this Bid Bond Form in accordance with the instructions indicated in brackets.]

BOND NO. *[insert Bond number]*

BY THIS BOND *[insert name of Bidder; if joint venture, insert complete legal names of partners]* as Principal (hereinafter called "the Principal"), and *[insert name, legal title, and address of Surety]*, **authorized to transact business in** *[insert name of country of Employer]*, as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[insert name of Employer]* as Obligee (hereinafter called "the Employer") in the sum of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* *[insert amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the *[number]* day of *[month]*, *[year]*, for the construction of *[insert name of Contract]* (hereinafter called the "Bid").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

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- (1) withdraws its Bid during the period of bid validity specified in the Form of Bid;
or
- (2) refuses to accept the correction of its Bid Price, pursuant to ITB Sub-Clause 27.2; or
- (3) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity;
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the Employer up to the above amount upon receipt of the Employer's first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation shall remain in full force and affect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this *[insert number]* day of *[month]*, *[year]*

Principal: _____ Surety: _____

Corporate Seal (where appropriate)

[insert signature(s) of authorized representative(s)]

[insert signature(s) of authorized representative(s)]

[insert printed name and title]

[insert printed name and title]

4. Performance Bank Guarantee [Unconditional]

[The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security.]

[insert bank's name, and address of issuing branch or office]

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Beneficiary:*[insert name and address of Employer]*

Date:*[insert date]*

PERFORMANCE GUARANTEE No.:*[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures] ([insert amount in words])*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Taking-Over Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the *[insert number day of [insert month], [insert year]*, whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s) of an authorized representative(s) of the Bank]

5. Performance Bond

*[The **Surety/successful Bidder** providing the Bond shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security]*

By this Bond, *[insert name and address of Contractor]* as Principal (hereinafter called "the Contractor") and *[insert name, legal title, and address of surety, bonding company, or insurance company]* as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[insert name and address of Employer]* as Obligee (hereinafter called "the Employer") in the amount of *[insert amount of Bond] [insert amount of Bond in words]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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Whereas the Contractor has entered into a Contract with the Employer dated the *[insert number]* day of *[insert month]*, *[insert year]* for *[insert name of Contract]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or
- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by

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the signature of its legal representative, this *[insert day]* day of *[insert month]*, *[insert year]*.

Signed by *[insert signature(s) of authorized representative(s)]*
on behalf of *[name of Contractor]* in the capacity of *[insert title(s)]*

In the presence of *[insert name and signature of witness]*
Date *[insert date]*

Signed by *[insert signature(s) of authorized representative(s) of Surety]*
on behalf of *[name of Surety]* in the capacity of *[insert title(s)]*

In the presence of *[insert name and signature of witness]*
Date *[insert date]*

6. Bank Guarantee for Advance Payment

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ *[Name and Address of Employer]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated _____ with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[amount in figures]* (_____) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Contractor, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (_____) *[amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number _____ at _____ *[name and address of Bank]*.

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GN. No. 446 (contd.)

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the ___ day of _____, 2___, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,
Signature and seal:
Name of Bank/Financial Institution:
Address:
Date:

Dar es Salaam,
December, 2013

SAADA MKUYA SALUM,
Acting Minister for Finance