

CHAPTER 410

THE PUBLIC PROCUREMENT ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 410

THE PUBLIC PROCUREMENT ACT

An Act to regulate public procurement in the Government of the United Republic and for related matters.

[1st July, 2001]

[G.N. No. 129 of 2001]

Act No. 3 of 2001

PART I

PRELIMINARY PROVISIONS (ss 1-4)

[PCh410s1]1. Short title

This Act may be cited as the Public Procurement Act.

[PCh410s2]2. Application

(1) This Act shall apply to all procurement undertaken by a procuring entity except where it is provided otherwise in this Act.

(2) This Act, shall not apply—

(a) to any parastatal organization except where a parastatal organization receives Government subsidy or subvention and is specified in the Regulations as being a Government Department for the purposes of this Act;

(b) to the procurement involving military equipment and supplies for the Defence Forces of the United Republic;

(c) procurement involving the equipment and supplies of arms and ammunition by Tanzania Intelligence and Security Service, the Police Force or the Prisons Department.

[PCh410s3]3. Interpretation

(1) In this Act, unless the context requires otherwise—

"accounting officer" means a Government officer appointed in accordance with the provisions of Public Finance Act * to hold a vote and account for all monies expended from that vote;

"approving Authority" means an accounting officer, a Ministry tender board, a regional tender board, a district tender Board, a local government tender board, a parastatal tender board or the central tender board when approving procurement that is undertaken by a procuring entity;

"Board" means the central tender board established under section 5;

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

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

"consultant" means a company, corporation, organisation, partnership or individual person engaged in or able to be engaged in the business of providing services in architecture, economics, engineering, surveying or any field of professional activity, and who is, according to the context, a potential party or the party to a contract with the procuring entity;

"contractor" means a company, corporation, organisation, partnership or individual person engaged in civil, electrical or mechanical engineering or in construction or building work

of any kind including repairs and renovation, and who is, according to the context, a potential party or the part to a procurement contract with the procuring entity;

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of public officer in the procurement process or contract execution;

"Department" in relation to a Ministry of Government or other public authority or public body, includes any division or unit by whatever name known of that ministry, authority or other body;

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government and includes collusive practices among tenderers (prior to or after submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;

"goods" means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible assets and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;

"Government" means the Government of the United Republic of Tanzania;

"limit of authority" means the maximum value of any single contract that may be approved by an approving authority, or entered into by procuring entity without the prior approval of an approving authority as set out in the regulations;

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

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

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

"parastatal organisation" means—

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

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

(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 *;

"person" includes any association of persons whether incorporated or not;

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

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

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

"procurement agent" means a person specialised in procurement who acts for another called the principal in dealing with third parties in matters relating to procurement;

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

"procurement expert" or "specialist" means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement;

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

"procuring entity" means ministry, Government department, agency, parastatal organisation, a regional or a local authority as the case may be;

"public body or public authority" means—

- (a) the Government;
- (b) any ministry, department or agency of government;
- (c) any body corporate or statutory body or authority established for the purposes of the Government;
- (d) any company registered under the Companies Act *, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in the position to influence the policy of the company;
- (e) any local government authority;
- (f) any parastatal organisation;

"public officer or officer" means—

(a) any person holding or acting in an office of emolument in the services of the Government;

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

(c) an employee of any body corporate such as is referred to in the definition of public body or public authority;

(d) any person conducting negotiations, for or in relation to a public contract, or a prospective public contract on behalf of a public body or public authority; or

(e) a person who is a consultant to a public body or public authority;

"secretary" means the Executive Secretary of the Central Tender Board appointed under section 10 and includes a secretary of the appropriate tender board;

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

"successful tender" means the tender selected by the procuring entity as—

(a) offering the lowest evaluated cost, in case the method of procurement used was competitive tendering; or

(b) being the most responsive to the needs of the procuring entity and to the advantage of the Government, in case the method of procurement used was competitive

quotations, single source procurement, competitive selection or where goods or services of minor value were procured;

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

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

"terms of reference" means the statement issued by the procuring entity giving the definition of the objectives, goals and scope of the services, including where applicable the means to be used;

"works" means—

(a) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;

(b) any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing;

(c) services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations:

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

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

(a) in the case of a public officer, that person is the public officer's husband, wife or relative, or a husband or wife of the relative of the public officer;

(b) that person is in partnership with the public officer; or

(c) in the case of a body corporate, the public officer is a controller of the body corporate or the public officer and the persons who are his associates together are controllers of it.

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

[PCh410s4]4. International obligation

To the extent that this Act conflicts with an obligation of the United Republic under or arising out of—

(a) any treaty or other form of agreement to which the United Republic is a party with one or more other states or political subdivisions of such states; or

(b) any grant agreement entered into by the United Republic with an inter-governmental or international financing institution in which the United Republic is the beneficiary,

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

PART II

CENTRAL TENDER BOARD AND OTHER PROCUREMENT AUTHORITIES (ss 5-18)

[PCh410s5]5. Establishment

(1) There is hereby established within the Ministry responsible for finance the Central Tender Board.

(2) The Board shall—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and be sued;
- (c) for and in connection with the purposes of this Act, be capable for holding, purchasing and otherwise acquiring and disposing of movable or immovable property.

[PCh410s6]6. Composition, appointment and procedures of the Central Tender Board

The composition of the Central Tender Board, the method of appointment of members and the procedures to be followed by the Board shall be set out in the First Schedule to this Act.

[PCh410s7]7. Functions of the Central Tender Board

(1) The Board shall, on behalf of the Government–

(a) oversee and monitor the conduct of procurement by ministries and departments of Government, regions, districts and parastatal organizations;

(b) in relation to local government authorities–

(i) study the conduct of procurement by local authorities with a view of insuring the full compliance by them with their established procurement system;

(ii) advise local government authorities on all matters regarding procurement and the efficient operation of their established procurement system and make such recommendations as it deems fit;

(c) advise the Government on all matters regarding procurement and the efficient operation of the Government's procurement system and make recommendation as it deems fit;

(d) in co-operation with such local or international organizations or institutions, supervise the management and training of a cadre of procurement specialist staff within the civil service;

(e) approve the issue of tender or the use of alternative method of procurement as may be prescribed in the regulations;

(f) receive tender and hold tender openings in public, review tender evaluations and recommendations made by procuring entities, and where appropriate, authorize awards of contract;

(g) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the Board, in all cases where the value of goods, works or services being procured by ministries, departments of Government, regions, district and parastatal organizations exceed the limit of authority of such ministry or department of Government tender board, a regional tender board, district tender board or otherwise as the Minister may direct;

(h) review and approve sales by tender being made by ministries and departments of Government or regions or districts or parastatal organizations where the estimated value of the goods or any other forms of property that are being sold, exceeds the limit of the authority of a ministry or department of Government or region or district or parastatal tender board, as the case may be, or otherwise as the Minister may direct.

[PCh410s8]8. Review of complaints or disputes

The Board shall review complaints or disputes and make decisions in accordance with subsection (6) of section 69 of this Act.

[PCh410s9]9. Central Tender Board Secretariat

(1) There shall be a Secretariat of the Board which shall assist the Board in its daily discharge of its functions.

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

(3) The Secretariat shall advise and assist ministries and departments of Government on tendering matters.

(4) The composition of the Secretariat, and the appointment of members and the procedure to be followed by the Secretariat shall be prescribed in the Regulations made by the Minister.

[PCh410s10]10. Executive Secretary of the Board

(1) There shall be an Executive Secretary of the Board who shall perform the functions conferred on him by this Act and such other functions as may be conferred on him by the Board.

(2) The Executive Secretary shall be appointed by the President on such terms and conditions as the President determines.

(3) The Executive Secretary shall be appointed from among the registered professional persons who possess qualifications in either engineering, architecture, law, materials management, quantity surveying, business administration, economic development planning or in related fields and who have had substantial experience or training in such fields including proven record of procurement experience.

(4) The Executive Secretary shall attend all meetings of the Board but shall not vote on any matter under discussion.

(5) The Executive Secretary shall be responsible for the administration of the day to day affairs of the Board.

[PCh410s11]11. Ministry and independent department tender boards

(1) There shall be in each Ministry or independent department of Government, a tender board for procurement of goods, services and works.

(2) The composition of a tender board in each ministry or independent department of the Government and the method of appointment of members, and the procedures to be followed by such tender board, shall be as prescribed in the Second Schedule to this Act.

(3) A ministry or independent department tender board shall—

(a) approve the issue of tenders or the use of alternative method of procurement as prescribed in the regulations, receive tenders and hold tender openings in public, review tender evaluations and recommendations made by a department of that ministry or independent department, and, where appropriate, authorize awards contract;

(b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the ministry or independent department tender board, in all cases where the value of goods, works or services being procured by such ministry or independent departments exceed the limit of authority of the Accounting Officer and is within the authority of that ministry or independent department tender board.

(4) The Accounting Officer of each ministry or department of Government shall undertake the procurement in accordance with the limits of the authority set out in the Regulations.

(5) An Accounting Officer may delegate to a Head of Department within the same ministry or department, his authority to procure up to a limit not exceeding that which is specified in the Regulations and such delegation shall be made in writing and for a period not exceeding the period the Accounting Officer shall himself serve in that position.

[PCh410s12]12. Regional tender boards

(1) There shall be in each region, a regional tender board for the procurement of goods, works and services in respect of regional heads of expenditure falling under Accounting Officers designated as such under the Public Finance Act *.

(2) The composition of a regional tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be prescribed in the Third Schedule to this Act.

(3) A regional tender board shall—

(a) approve the issue of tenders or the use of alternative methods of procurement as prescribed in the regulations, receive tenders and hold tender openings in public, review tender evaluations and recommendations made by procuring entities and, where appropriate, authorize awards of contract;

(b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the region tender board, in all cases where the value of goods, works or services being procured by the departments of Government within that region exceed the limit of authority of the respective Accounting Officer and is within the authority of that regional tender board.

(4) The Accounting Officer of each regional administration of the Government shall undertake the procurement in accordance with the limits of authority prescribed in the Regulations.

(5) An Accounting Officer of a regional administration may delegate to a head of a regional department of a ministry or department of Government within the same region his authority to procure up to a limit not exceeding that specified in the Regulations and such delegation shall be made in writing and for a period not exceeding the period the Accounting Officer shall himself serve in that position.

[PCh410s13]13. District tender boards

(1) There shall be, in each district, a district tender board for the procurement of goods, works and services in respect of district heads of expenditure falling under Accounting Officers designated as such in the Public Finance Act *.

(2) The composition of a district tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be as prescribed in the Fourth Schedule to this Act.

(3) A district tender board shall—

(a) approve the issue of tenders or the use of alternative methods of procurement as prescribed in the regulations, receive tenders and hold tender openings in public, review tender evaluations and recommendations made by procuring entities and, where appropriate, authorize awards of contract;

(b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the district tender board, in all cases where the value of goods, works or services being procured by the departments of Government of that district, exceed the limit of the Accounting Officer and is within the authority of that district tender board.

(4) An Accounting Officer of a District administration may delegate a Head of Department within the same District his authority to procure up to a limit not exceeding that specified in the Regulations and such delegation shall be made in writing and for a period not exceeding the period that the Accounting Officer shall himself serve in that position.

[PCh410s14]14. Local government authority tender board

(1) There shall be, in each council, a local government authority tender board for the procurement of goods, works and services in respect of council heads of expenditure falling under Accounting Officers designated as such in the Local Government (Finances) Act *.

(2) The composition of a local government authority tender board and the method of appointment of the members, and the procedures to be followed by such a tender board, shall be

as prescribed in Regulations made pursuant to the provisions of section 65 of the Local Government Finances Act *.

(3) A local government authority tender board shall—

(a) approve the issue of tenders or the use of alternative method of procurement as prescribed in the Regulations, receive tenders and hold tender openings in public, review tender evaluations and recommendations made on that behalf and where appropriate, authorize award of contract;

(b) applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts has previously been approved by the local government authority tender board, in all cases where the value of goods, works or services being procured by departments of that local government authority, exceed the limit of the Accounting Officer and is within the authority of that local government authority tender board.

[PCh410s15]15. Parastatal tender boards

(1) There shall be in every governing body of a parastatal organization a parastatal tender board.

(2) Where the organisational structure of a particular parastatal body is too small to be able to constitute a tender board in accordance with this section, the Minister shall prescribe the procedures to be followed by such a parastatal organization.

(3) The composition of a parastatal tender board and the method of appointment of members and the procedure to be followed by such a tender board, shall be prescribed in the Fifth Schedule to this Act.

(4) A parastatal tender board shall—

(a) approve the issue of tenders or the use of alternative method of procurement as prescribed in the Regulations, receive tenders and hold tender openings in public, review tender evaluation and recommendations made on that behalf and where appropriate authorize awards of contract;

(b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the parastatal tender board, in all cases where the value of goods, works or services being procured within that parastatal, exceed the limit of the Chief Executive Officer and is within the authority of that parastatal tender board.

[PCh410s16]16. Award of contracts

(1) Notwithstanding any other enactment, no public body shall—

(a) advertise, invite, solicit or call for tenders or proposals in respect of a contract unless authorised by the appropriate tender board;

(b) award any contract unless the award has been approved by the appropriate tender board.

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

(3) Where any tender submitted in response to a call of tenders made by a tender board exceeds the prescribed limit of the tender board, the matter together with all the tender documents shall be referred to the appropriate next tender board for approval.

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

[PCh410s17]17. Powers of tender boards

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

(a) call for such information and documents as they may require from any public body;

(b) commission any studies relevant to the determination of award of contracts;

(c) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere; and

(d) do all such acts and things as they may consider incidental or conducive to the attainment of their objects.

(2) Tender boards may—

(a) require the chairman, accounting officer or chief executive officer of a public body—

(i) to furnish any information or produce any records or other documents relating to a contract;

(ii) to answer all relevant questions;

(b) examine such records or other documents and take copies or extracts therefrom.

(3) Any person to whom a request is made under subsection (2) who—

(a) fails to comply with the request; or

(b) refuses to answer or wilfully gives any false or misleading answer to any question lawfully put by a tender board,

commits an offence.

(4) Any person convicted of an offence against this section is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine or imprisonment.

[PCh410s18]18. Tender boards and procuring entities to strive to achieve standards of equity

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

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

PART III

PROCUREMENT (ss 19-30)

[PCh410s19]19. Duties of procuring entities

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

(a) in respect of a head of expenditure, the Accounting Officer designated as such for that head of expenditure under the Public Finance Act *; and

(b) in respect of a head of expenditure the Accounting Officer designated as such for that head of expenditure under the Local Government Finances Act; and

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

(2) The auditor of every public body shall, in his annual report, state whether or not section 19(1) of this Act has been complied with.

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

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

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

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

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

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

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

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

[PCh410s21]21. Pre-qualification proceedings

A procuring entity may engage in pre-qualification proceedings with a view to identify suppliers, contractors or consultants either prior to inviting tenders for the procurement of goods,

works or services, or after taking part in any other procurement proceedings and the provisions of subsection (4) of section 20 of this Act shall apply to pre-qualification proceedings.

[PCh410s22]22. National preferences

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

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

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

(a) for individual companies–

(i) they are incorporated or registered in the United Republic of Tanzania;

(ii) at least fifty percent of the authorised capital of the company is owned either by the Government or by citizens of Tanzania;

(iii) the majority of the members of the board of directors are citizens of Tanzania;

(iv) not less than fifty percent of the key personnel are citizens of Tanzania;

(v) company is held by citizens of Tanzania;

(vi) they do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign contractors or consultants provided that the domestic company is qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the domestic company and fees and expenses paid to the domestic company;

(vii) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic company will accrue or be paid to persons not citizens of Tanzania or to companies which would not be eligible under this section;

(b) for joint ventures of local companies–

(i) individual member companies are incorporated or registered in the United Republic of Tanzania;

(ii) at least fifty percent of the ownership of the individual companies are held by citizens of Tanzania;

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

(iv) do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, provided that the domestic partner or partners are qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the partners and fees and expenses paid to the partners;

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

(c) for partners or individual persons trading as contractors or consultants—

(i) the majority of capital shares are held by citizens of Tanzania;

(ii) not less than fifty percent of the key personnel are citizens of Tanzania;

(iii) the partner or individual persons are citizens of Tanzania;

(iv) the partners or individual persons shall not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, partners or individual persons.

(4) For contracts for works to be awarded on the basis of international competitive tendering, procuring entities may grant a maximum margin of preference of ten percent to domestic contractors subject to subsection (3) of this section.

(5) The procuring entity may, where the consultancy services are to be awarded on the basis of competitive selection, establish a shortlist comprising entirely of consultants who are citizen of Tanzania if–

- (a) the assignment is below the threshold defined in the Regulations;
- (b) a sufficient number of qualified firms (at least three) is available at competitive cost; and
- (c) competition including foreign consultants is prima facie not justified.

(6) Notwithstanding the foregoing subsections, where foreign firms have expressed interest to participate, they shall not be excluded from consideration.

(7) In the case where competition is open to non-national consultants, the technical evaluation may take into account the extent of participation of Tanzania consultants among the key in the performance of services up to ten percent of the technical score.

(8) In the case contracts for goods and related services to be awarded on the basis of international competitive tendering, procuring entities may grant a maximum margin or preference of fifteen percent to domestically manufactured goods and related services.

[PCh410s23]23. Exclusive preference to local persons or firms

(1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement of works goods or services that has a value not exceeding a threshold specified in the Regulations shall be reserved exclusively for local persons or firms and shall be set aside unless the procuring entity determines that there is not a reasonable expectation of obtaining

offers from three or more responsible local persons or firms that are competitive in terms of market prices, quality and delivery.

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

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

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

(5) The procuring entity shall set-aside any procurement over a specified value for local persons or firms' participation where there is a reasonable expectation that–

(a) offers will be obtained from at least three responsible local persons or firms offering services, goods or executing works; and

(b) award will be made at fair market prices.

[PCh410s24]24. Procurement from Government Stores Department

(1) Where financial resources are exclusively provided by a Tanzanian public body, a procuring entity shall procure from the Government Stores any item included in the approved

current Stores Catalogue unless such items are not available or are available at higher prices than current market prices.

(2) Where items are not available or are available at government stores at higher prices than current market prices, a certificate of non-availability from government stores shall be obtained.

(3) The Government Stores Department shall periodically publish in the Gazette and in the local newspapers of wide circulation the names and quantities of items available on the Stores Catalogue.

[PCh410s25]25. Standards

Requirements and terminology which discriminate unfairly against participation by suppliers, contractor or consultants shall not be included in pre-qualification and tender documents.

[PCh410s26]26. Language

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

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

[PCh410s27]27. Tender securities

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

[PCh410s28]28. Rejection of all tenders or all proposals

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

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

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

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

(a) making revision to the conditions of contract, design and specifications, scope of the contract, or a combination of these before inviting new tenders; or

(b) revising the request for proposals (including the short list) and the budget.

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

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

[PCh410s29]29. Acceptance of tender and entry into force of a procurement contract

(1) Subject to the provisions of section 28, the tender or proposal that has been ascertained to be the successful tender or proposal pursuant to section 44(a) and 55(6) of this Act shall be accepted.

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

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

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

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

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

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

(8) The tender board shall publish in the Gazette 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.

[PCh410s30]30. Records, information and notices

(1) Each procuring entity and each approving authority shall maintain a record of procurement proceedings in which each is involved, including decisions taken and the reasons for it and such record shall be kept for a period of not less than five years from the date of completion of the contract and be made available within a reasonable time during that period to

the Minister and the Controller and Auditor-General or any other officer authorised by accounting authority.

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

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

PART IV

METHODS OF PROCUREMENT (ss 31-56)

[PCh410s31]31. Selection of methods of procurement

(1) Except as provided for in sections 32, 33 and 34 of this Act, a procuring entity engaging in the procurement of goods, works or services shall apply competitive tendering, using the methods prescribed in the Regulations depending on the type and value of the procurement and in any case, the successful tender shall be the tender offering the lowest evaluated cost.

(2) In circumstances where—

(a) suppliers, contractors or consultants have already been pre-qualified pursuant to section 21; or

(b) there is an urgent need for the goods, works, or services such that it would be impracticable to engage in open national or international tendering on competitive selection,

the procuring entity may either restrict the issue of tenders in accordance with the procedures set out in the Regulations or engage in procurement as provided for in sections 32 and 33 provided that—

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

(ii) the procuring entity shall include in the records required under section 30 of this Act a statement of the grounds for its decision and the circumstances on which it relied to justify the restriction.

[PCh410s32]32. Competitive quotations

A procuring entity may engage in procurement by means of a receipt of competitive priced quotations for goods, works or services from at least three different suppliers or contractors provided that the estimated value of the procurement contract is less than the amount set forth in the Regulations as being the maximum allowed for such procurement and the successful quotation shall be that offering the lowest evaluated cost.

[PCh410s33]33. Single source procurement

(1) A procuring entity may engage in single procurement and contract directly with a supplier, contractor or consultant for goods, works or services in accordance with the conditions prescribed in the Regulations.

(2) The procuring entity shall include in the record required under section 30 a statement of the grounds for its decision and the circumstances on which it relied to justify the restriction to procurement from a single source.

[PCh410s34]34. Procurement of minor value

Goods, works and services of minor value as may be determined by the Minister in the Regulations may be procured directly by a procuring entity without seeking competition in accordance with the procedure prescribed in the Regulations.

[PCh410s35]35. Use of a procurement agent

A procuring entity may appoint a procurement agent on competitive basis to carry out procurement proceedings on its behalf, as long as—

(a) all the procurement proceedings are undertaken in accordance with the provisions of this Act; and

(b) a procuring entity authorises a procurement agent to place any contract on its behalf where the value of the goods, works or services procured does not exceed the limit of authority of that entity and that any procurement that exceeds the limit of authority shall be reviewed and approved by the appropriate approving authority before any contract is placed;

(c) the procurement agent has been procured in accordance with the provisions of this Act.

[PCh410s36]36. Competitive tendering for goods or works

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

[PCh410s37]37. Invitation to tender and advertising

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

(2) The approved tender notice shall be advertised by the procuring entity at least twice in one or more newspapers of national circulation and in the case of international tendering, a similar notice may be published in appropriate foreign or International publications or professional or trade journals which are likely to be seen by the greatest number of potential suppliers or contractors.

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

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

[PCh410s38]38. Issue of tender documents

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

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

[PCh410s39]39. Contents of tender document

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

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

[PCh410s40]40. Validity of tender and tender security

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

[PCh410s41]41. Evaluation criteria

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

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

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

[PCh410s42]42. Receipt of tenders and tender opening

(1) The tender board that approved the issue of the tender documents shall receive tenders in a locked tender box.

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

(3) All tenders submitted before the deadline time and date for submission shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender proceedings and the tender opening shall take place at, or immediately after, the deadline time and date given in the tender documents for the receipt of

tenders and the names of all those present at the tender opening and the organisations they represent shall be recorded by the Secretary of the respective tender board.

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

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

[PCh410s43]43. Evaluation and comparison of tenders

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

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

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

(4) The procuring entity shall prepare a detailed report on the evaluation and comparison of tenders, setting out the specific reasons on which its recommendations for the award of each contract are based.

[PCh410s44]44. Approval of award of contract

The tender board shall review the evaluation and recommendation made by the procuring entity and may either—

(a) approve the recommendation and, if the value is within its limit of authority, authorize the procuring entity to accept the tender and award a contract in the form specified in the tender documents; or

(b) refuse to approve the recommendation but authorize the procuring entity to an alternative tender and award a contract; or

(c) refuse to authorize acceptance of any of the tenders and refer the evaluation back to the procuring entity with an instruction to re-evaluate the tenders or a recommendation for re-tendering or other action.

[PCh410s45]45. Selection of consultants

A procuring entity may, when selecting consultants use any one of the following principal selection methods—

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

[PCh410s46]46. Competitive selection of consultants

(1) A procuring entity wishing to commence competitive selection proceedings shall prepare a notice inviting consultants to submit expressions of interest for providing the services required, and such a notice shall be submitted, in good time before the planned issue of the request for proposal to the Secretary of the tender board whose limit of authority is appropriate to the estimated value of the services required.

(2) The notice for invitation of consultants shall be published in the Gazette, and it shall contain—

- (a) the name and address of the procuring entity;
- (b) a brief description of the services to be procured; and
- (c) the deadline and place of the submission of the expressions of interests.

(3) Except for reasons of economy and efficiency and where the procuring entity considers undesirable to publish such notice, the notice made under subsection (1) shall also be

published in a language customarily used in international trade, in a newspaper of wide national or international circulation.

(4) The selection process shall include the following steps–

- (a) preparation of the terms of reference;
- (b) preparation of cost estimate and the budget;
- (c) advertising;
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the request for proposals;
- (f) receipt of proposals;
- (g) evaluation of technical proposals in particular consideration of quality;
- (h) evaluation of financial proposals;
- (i) final evaluation of quality and cost; and
- (j) negotiations and award of the contract to the selected consultant firm.

[PCh410s47]47. Request for proposals

(1) The request for proposals shall include–

- (a) a letter of invitation;
- (b) information to consultants;

- (c) the terms of reference;
- (d) the proposed contract.

(2) The procuring entities shall ensure that they use one of the standard request for proposal issued by the Central Tender Board, and they list all documents included in the request for proposals.

[PCh410s48]48. Letter of invitation

The letter of invitation shall state the intention of 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, the names of consultants invited to submit proposals and shall ask the consultants to confirm that they will submit proposals.

[PCh410s49]49. Information to consultants

The information to consultants shall contain all necessary information that would help consultants prepare responsive proposal, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation criteria and factors and their respective weights and the minimum passing quality score and shall specify the proposal validity period.

[PCh410s50]50. Contract

(1) Procuring entities shall use the appropriate standard form of contract appended to the Regulations with minimum changes acceptable to the respective tender board, as necessary to address specific project issues, and any such changes shall be introduced only through contract

data sheets, or through special conditions of contract and not by introducing changes in the wording of the general conditions of contract included in the standard form.

(2) Notwithstanding the provisions of subsection (1), where the standard form of contract are not appropriate, procuring entities shall use their contract forms acceptable to the Central Tender Board.

[PCh410s51]51. Receipt of proposals

(1) The procuring entity shall allow enough time for the consultants to prepare their proposals and the time allowed shall depend on the assignment, and normally shall not be less than thirty days.

(2) The procuring entity shall provide the same information to all consultants who have been invited to submit proposals.

(3) The technical and financial proposals shall be submitted at the same time, and in order to safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate envelopes.

(4) The technical proposals shall be opened immediately by the appropriate tender board after the closing time for submission of proposals and the financial proposals shall remain sealed and shall be deposited with the Secretary of the appropriate tender board until they are opened publicly.

(5) Any proposal received by the Secretary of the appropriate tender board after the closing time for submission of proposals shall be returned to the consultant unopened.

[PCh410s52]52. Setting threshold

(1) The procuring entity shall establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of those criteria as set forth in the request for proposals, and the procuring entity shall then compare the prices of the proposals that have attained a rating at or above the threshold.

(2) The successful proposals shall be—

- (a) the proposal with the lowest price; or
- (b) the proposal with the best combined evaluation in terms of the criteria other than price referred to in subsection (1) of this section and the price.

[PCh410s53]53. Evaluation of proposals and consideration of quality and cost

(1) The evaluation of the proposals shall be carried out in two stages as follows—

- (a) evaluation of quality; and
- (b) evaluation of cost.

(2) Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any tender board review and approval, is concluded.

(3) The financial proposals shall be opened after the completion of technical evaluation and the evaluation shall be carried out in full conformity with the provisions of the request for proposals.

[PCh410s54]54. Evaluation of quality

(1) The procuring entity shall evaluate each technical proposal using an evaluation committee of three or more specialists in the sector, taking into account several criteria, namely–

- (a) the consultant's relevant experience for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualification of the key staff proposed;
- (d) transfer of knowledge; and
- (e) the extent of participation by nationals among key staff in the performance of the assignment.

(2) The procedure of the evaluation of the technical proposals shall be as set out in the Regulations.

(3) The procuring entity shall, prepare an evaluation report of the quality of the proposals which report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals and all records relating to the evaluation such as individual mark sheets shall be retained until completion of the project and its audit.

(4) The evaluation report on the technical proposals shall be approved by the appropriate tender board.

[PCh410s55]55. Combined quality and cost evaluation

(1) After the evaluation of quality is completed and approved by the appropriate tender board, the procuring entity shall notify the consultants whose proposals did not meet 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) The procuring entity shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the financial proposals.

(3) The opening of financial proposals shall be made at least fourteen days from the notification date and such proposals shall be opened publicly in the presence of consultants or representatives of the consultants.

(4) The name of the consultant, the quality scores, and the proposed prices shall be read aloud and recorded by the Secretary when the financial proposals are opened.

(5) The prices used in the financial evaluation shall be those proposed by the consultants and which directly concern their services, and the total score shall be obtained by weighting the quality and cost scores after being added together.

(6) The firm obtaining the highest total score shall be invited for negotiations.

[PCh410s56]56. Negotiations and award of contract

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

(2) Where the negotiation under subsection (1) fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and after consultation with the appropriate tender board, invite the next ranked firm for negotiations.

(3) After negotiations are successfully completed, the procuring entity shall within seven days notify other firms on the short list that they were unsuccessfully.

PART V

AUTHORISATION OF CONTRACTS (ss 57-59)

[PCh410s57]57. Limits of authority

(1) A procuring entity shall not enter into a procurement contract unless—

(a) the value of any single such contract does not exceed the relevant limit of authority for that procuring entity, as prescribed in the Regulations; or

(b) the procurement has been reviewed and award of the procurement contract has been endorsed by an approving authority whose limit of authority, as prescribed in the Regulations, is appropriate to the value of the contract.

(2) Upon determination that the value of the goods, works or services being procured would exceed its limit of authority, a procuring entity or an approving authority shall refer the procurement to the approving authority with the appropriate higher limit of authority.

(3) A procuring entity shall not divide its procurement for the purpose of avoiding review and approval by the approving authority whose limit of authority would be appropriate for total requirement.

[PCh410s58]58. Alteration and amendments

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

(a) to the benefit of the Government or is not disadvantageous to the Government;
and

(b) is endorsed by the approving authority that reviewed and approved the original procurement.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable upon conviction to imprisonment for a term of five years or for a fine of shillings five million or to both.

[PCh410s59]59. Additions to contract value

Any additions to the value of a procurement contract—

(a) shall be reviewed and agreed by the approving authority that endorsed the original contract provided such increased value does not exceed its authority limit; and

(b) all contract amendments resulting in the revised contract value exceeding the approving authority limit shall be reviewed and approved by the next higher approving authority.

PART VI

PROHIBITION (ss 60-64)

[PCh410s60]60. Fraud and corruption

(1) Procuring and approving entities as well as tenderers, suppliers, contractors and consultants under public financed contracts shall proceed in a transparent and accountability manner during the procurement and execution of such contracts.

(2) Where a procuring entity or an approving authority is, after appropriate investigations, satisfied that any person or firm, to which it is proposed that a tender be awarded, has engaged in corrupt or fraudulent practices in competing for the contract in question, the entity or authority may–

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

(b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.

(3) The procuring entity or an approving authority may, after determination by a court of law or following a special audit by the Controller and Auditor-General, that corrupt or fraudulent

practices were engaged in by any person or firm during the procurement, award of contract or the execution of that contract—

(a) cancel the portion of the funds allocated to a contract for goods, works or services;

(b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.

(4) Any member of the procuring entity or approving authority who engages in corrupt or fraudulent practices during the procurement proceedings or the execution of the public financed contract shall be dealt with in accordance with section 64 of this Act.

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

[PCh410s61]61. Conducts influencing public officers

(1) No person, whether such person has made an offer or not shall, with intent to gaining any advantage or concession for himself or any other person—

(a) offer any member or an associate of a member of a tender board or its committee or any employee or an associate of an employee of a tender board or its committee or any consultant or an associate of any consultant or a person or an associate of any person providing services, a gift of money or other valuable thing; or

(b) approach any member or any associate of a member of a tender board or its committee or any of its officer or an associate of any officer with respect to any matter that is before that tender board or committee or that is expected to come before a tender board or a committee.

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

(3) Procurement shall not be made from a public officer or associate of a public officer acting in a private capacity, either alone or as a partner in a partnership or as an officer of a company.

(4) A procuring entity shall not include in any tender document any condition or specification such as to favour any one supplier, contractor or consultant.

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

procurement proceedings in which that supplier, contractor or consultant is involved or liable to become involved.

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

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

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

[PCh410s62]62. Disclosure of payment made by way of commission

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

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

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

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

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

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

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

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

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

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

[PCh410s63]63. Conduct of directors, servants or agents

(1) Any conduct engaged in or on behalf of a body corporate—

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

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

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(2) Conduct engaged in or on behalf of a person other than a body corporate—

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

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

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

[PCh410s64]64. Institution of criminal proceedings

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

PART VII

DISPUTE SETTLEMENT (ss 65-74)

[PCh410s65]65. Establishment of the Appeals Authority

There is hereby established in the Ministry of Finance, the Public Procurement Appeals Authority.

[PCh410s66]66. Composition and appointment of a Public Procurement Appeals Authority

(1) The Public Appeals Authority shall, consist of the following members–

(a) a Chairman who shall be a Judge of the High Court of Tanzania, and who shall be appointed by the President of the United Republic;

(b) four other members appointed by the Minister with professional knowledge and experience in public procurement, finance, commerce, business administration or law from among institutions having no direct vested interest in public procurement.

(2) The Chairman and the members of the Public Procurement Appeals Authority shall be appointed for a period of three years and shall not be eligible for reappointment until a further period of three years has elapsed.

(3) The provisions of the Sixth Schedule to this Act shall have effect as to the procedure to be followed by the Authority and other matters relating to it.

[PCh410s67]67. Functions of the Public Procurement Appeals Authority

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

[PCh410s68]68. Right to review

(1) Subject to subsection (2) of this section, any supplier, contractor or consultant who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity or an approving authority by this Act, may seek a review in accordance with sections 71 and 72 of this Act, provided that the application for a review is received by the procuring entity or approving authority within twenty-eight days of the supplier, contractor or consultant becoming aware of the circumstances giving rise to the complaint or when the supplier, contractor or consultant should have become aware of those circumstances.

(2) The review referred to in subsection (1) of this section shall not apply to—

(a) the selection of a method of procurement or in the case of services the choice of a selection procedure;

(b) the limitation of procurement proceedings on the basis of nationality in accordance with section 22 of this Act or in accordance with the prescribed Regulations;

(c) a decision by the procuring entity to reject all tenders pursuant to section 28 of this Act;

(d) failure to cite this Act, Regulations made under this Act or any other law relating to the procurement proceedings;

(e) in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals proceedings.

[PCh410s69]69. Settlement of complaints or disputes by procuring entities and approving authorities

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

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

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

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

(a) state the reasons for the decision; and

(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

(5) Where the head of the procuring entity or of the approving authority does not issue a decision within the time specified in subsection (4), the supplier, contractor or consultant submitting the complaint or dispute or the procuring entity shall be entitled immediately thereafter to institute proceedings under section 70, 71, or 74 and upon such institution of such proceedings, the competence of the head of the procuring entity or of the approving authority to entertain the complaint or dispute shall cease.

(6) The decision of the procuring entity or approving authority shall be final unless the supplier, contractor or consultant applies for administrative review by the Central Tender Board pursuant to section 8 of this Act except for complaints or disputes made against the Central

Tender Board which shall be submitted to the Public Procurement Appeals Authority in accordance with section 71.

[PCh410s70]70. Administrative review

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

(2) The decision of the Central Tender Board shall be final unless an action is commenced under section 71 of this Act.

[PCh410s71]71. Review by the public Procurement Appeals Authority

(1) Complaints or disputes not amicably settled by the Central Tender Board and disputes against the Central Tender Board shall be referred to the Public Procurement Appeals Authority.

(2) A supplier, contractor or consultant entitled under section 68 to seek review may submit a complaint or dispute to the Public Procurement Appeals Authority—

(a) if the complaint or dispute cannot be submitted or entertained under section 69 or 70 because of entry into force of the procurement contract and provided that the complaint or dispute is submitted within twenty days from the date when the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that supplier, contractor or consultant should have become aware of those circumstances;

(b) if the head of the procuring entity does not entertain the complaint or dispute because the procurement contract has entered into force, provided that the complaint or dispute is submitted within twenty days after the delivery of the decision not to entertain the complaint or dispute;

(c) pursuant to subsection 69 (5) provided that the complaint or dispute is submitted within twenty days after the expiry of the period referred to in subsection (4) of section 69; or

(d) if the supplier, contractor or consultant claims to be adversely effected by a decision of the head of the procuring entity or of the approving authority under section 70 provided that the complaint or dispute is submitted within twenty days after the delivery of the decision.

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

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

- (a) declare the legal rules or principles that govern the subject-matter;
- (b) prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procuring entity that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;

(d) annul in whole or in part an unlawful act or decision of the procuring entity or approving authority other than any act or decision bringing the procurement contract into force;

(e) revise an unlawful decision by the procuring entity or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;

(f) require the payment of compensation for any reasonable costs incurred by the supplier, contractor or consultant submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the procuring entity or approving authority; or

(g) order that the procurement proceedings be terminated.

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

(6) The decision of the Public Procurement Appeals Authority shall be final unless an action is commenced under section 74 of this Act.

[PCh410s72]72. Certain rules applicable to review proceedings under sections 69, 70, and 71

(1) After the submission of a complaint or dispute under sections 69, 70, or 71, the head of the procuring entity or of the approving authority or the Public Procurement Appeals Authority, as the case may be, shall notify all suppliers, contractors or consultants participating in the procurement proceedings to which the complaint or dispute relates, of the submission of the complaint or dispute and of its substance.

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

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

- (a) be contrary to law;
- (b) impede law enforcement;
- (c) not be in the public interest;
- (d) prejudice legitimate commercial interest of parties; or
- (e) inhibit fair competition.

[PCh410s73]73. Suspension of procurement proceedings

(1) The timely submission of a complaint or dispute under sections 69, 70 and 71 shall suspend the procurement proceedings for a period of seven days, provided the complaint or

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

(2) Where the procuring contract enters into force, the submission of a complaint or dispute under section 70 shall suspend the performance of the procurement contract for a period of seven days provided the complaint or dispute meets the requirement set forth in subsection (1).

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

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

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

[PCh410s74]74. Judicial review

The Court of competent jurisdiction shall have jurisdiction over actions pursuant to section 68 and petitions for judicial review of decisions made by bodies or failure of those bodies to make a decision within the prescribed time-limit, pursuant to sections 69, 71, and 73.

PART VIII

MISCELLANEOUS PROVISIONS (ss 75-76)

[PCh410s75]75. Regulations

(1) The Minister may make regulations for the better carrying out of the provisions of this Act, and such Regulations shall include yearly review of the limits of authority for each procuring entity and approving entity.

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

[PCh410s76]76. Disapplication of other laws

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

FIRST SCHEDULE

COMPOSITION, APPOINTMENT AND PROCEDURES OF THE CENTRAL TENDER BOARD

(Section 6)

1. Interpretation

In this Schedule—

(a) "Appointing Authority" means:

(i) In the case of the Chairman of the Central Tender Board, the President of the United Republic of Tanzania; and

(ii) in the case of Members of the Central Tender Board, the Minister for the time being responsible for finance;

(b) "the Board" means the Central Tender Board.

2. Composition and appointment of the Central Tender Board

The Central Tender Board shall consist of the following members—

(a) a Chairman, who shall be a Permanent Secretary or a person of similar standing and who shall be appointed by the President;

(b) three members who are Permanent Secretaries of ministries of Government who shall be appointed by the Minister;

(c) three professional members, being experts or specialists in procurement and finance, who shall be appointed by the Minister.

3. Tenure of office

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

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

(3) The Appointing Authority may determine the appointment of the Chairman and members of the Board at any time.

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

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

(6) A member of the Board who is a Permanent Secretary may at the discretion of the appointing authority, continue to serve as a member for the remaining period of his appointment after his retirement from Government service.

4. Alternate members

A member of the Board who is a Permanent Secretary may delegate his position to another Permanent Secretary or to a deputy Permanent Secretary but not to a Government officer of a post below the deputy Permanent Secretary for any partial or full period of the assignment.

5. Attendance by non-members

The Board may invite Government officers of ministries or departments whose procurement is under consideration or any other person with a legitimate interest in the procurement being reviewed to attend its meetings for the purpose of assisting the Board, but such persons shall have no vote.

6. Meetings

(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the Board shall meet at such times and such places being not less than once in a month as the Chairman may determine.

(2) The Chairman, or in his absence or inability to act, the Secretary, shall convene a special meeting of the Board upon receipt of a request in writing signed by no fewer than three members of the Board, save that such requests shall not be made without justifiable cause.

7. Quorum

(1) One half of the members of the Board shall form a quorum for a meeting of the Board.

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

(3) At any meeting of the Board, a decision of the majority of the members present shall be recorded as a decision of the Board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting.

8. Minutes

Minutes of each meeting of the Board shall be recorded by the Secretary in a proper form and shall be confirmed by the Board and signed by the Chairman and the Secretary at the next following ordinary meeting of the Board and filed at the offices of the Central Tender Board.

9. Notification of decisions

Notification of decisions made by the Board and all other communications sent on its behalf shall be signed by the Secretary or by an officer of the Secretariat of the Board who has been authorised in writing by the Secretary to act on his behalf and the Secretary shall communicate the decisions, including any refusal and the grounds for the refusal, to the Accounting Officer or Chief Executive Officer within seven days from the date of the meeting when such a decision was made.

10. Regulation of proceedings

The Board shall have power to regulate its own proceedings.

11. Subcommittees

The Board may establish subcommittees and appoint as members, of such subcommittees, persons who are or are not, members of the Board for the purposes of advising the Board on any specific matter.

12. Fees and allowances

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

SECOND SCHEDULE

COMPOSITION, APPOINTMENT AND PROCEDURES OF MINISTRY TENDER BOARDS

(Section 11)

1. Interpretation

In this Schedule, "the board" means the ministry tender board.

2. Composition and appointment

(1) A ministry tender board shall consist of–

- (a) the Accounting Officer who shall be the chairman;
- (b) the Chief Accountant of that ministry;
- (c) the heads of not more than four key departments;
- (d) Director of procurement or a procurement specialist of that Ministry;

(e) a Government officer who holds a post not lower than a Director or the equivalent, from another ministry who shall be appointed, by the Minister responsible for finance.

(2) The Secretary, shall be a Government Officer of that in ministry who is a specialist in procurement and shall be appointed by the Permanent Secretary.

3. Attendance by non-members

The board may invite Government Officers of that ministry or of another ministry to attend its meetings for the purpose of assisting the board, but such person shall have no vote.

4. Meetings

Meetings of the board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the board shall meet at such times and places, being not less than once in a month as, the Chairman may determine.

5. Quorum

(1) One half of the members of the board shall form a quorum for a meeting of the board.

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

(3) At any meeting of the board, a decision of the majority of the members present and voting shall be recorded as a decision of the board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.

6. Minutes

Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and the Secretary at the next following meeting of the board.

7. Notification of decisions

Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the Permanent Secretary of that Ministry.

8. Regulation of proceedings

The board shall conduct its proceedings in accordance with the prescribed Regulations.

9. Subcommittees

A ministry tender board may establish subcommittees and appoint as members, of such subcommittees, persons who are, or are not, members of the ministry tender board for the purposes of advising the board on any specific matter.

10. Fees and allowances

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

THIRD SCHEDULE

COMPOSITION, APPOINTMENT AND PROCEDURES OF REGIONAL TENDER BOARDS

(Section 12)

1. Interpretation

In this Schedule, "the board" means the regional tender board.

2. Composition and appointment

(1) A regional tender board shall consist of the following members—

- (a) the Regional Administrative Secretary, who shall be the Chairman;
- (b) the Regional Accounting Officer of that region;
- (c) the education officer in the Regional Secretariat;
- (d) the engineer whose speciality is under consideration in the tender board;
- (e) the health specialist in the Regional Secretariat;
- (f) the trade officer in the Regional Secretariat;
- (g) a procurement specialist from the line ministry;

(h) agricultural officer in the Regional Secretariat.

(2) The Secretary, shall be a Government Officer who is a specialist in procurement and shall be appointed by the Regional Administrative Secretary.

3. Attendance by non-members

The board may invite any person, whose presence is in its opinion desirable, to attend and participate in the deliberations of the meetings but such persons shall have no vote.

4. Meetings

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

5. Quorum

(1) One half of the members of the board shall form a quorum for a meeting of the board.

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

(3) At any meeting of the board, a decision of the majority of the members present shall be recorded as a decision of the board, save that a member who dissents from that decision shall

be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.

6. Minutes

Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and Secretary at the next following meeting of the board.

7. Notification of decisions

Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the Regional Administrative Secretary.

8. Regulation of proceedings

The board shall conduct its proceedings in accordance with the prescribed Regulations.

9. Fees and allowances

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

FOURTH SCHEDULE

COMPOSITION, APPOINTMENT AND PROCEDURES OF DISTRICT TENDER BOARDS

(Section 13)

1. Interpretation

In this Schedule "the board" means the district tender board.

2. Composition and appointment of a District Tender Board

(1) A district tender board shall consist of a Chairman, who shall be the District Administrative Secretary of that district, and the following members—

- (a) the Regional Accounting Officer of that region;
- (b) a Government officer who is a specialist in that area of the ministry's activities for which the goods, works or services are being procured, who shall be appointed by the District Administrative Secretary;
- (c) a procurement specialist of the line ministry;
- (d) a Government officer appointed by the Regional Administrative Secretary.

(2) The Secretary, shall be a Government Officer who is a specialist in procurement and shall be appointed by the Regional Administrative Secretary.

3. Attendance by non-members

The board may invite Government officers to attend its meetings for the purpose of assisting the board, but such persons shall have no vote.

4. Meetings

Meetings of the board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be

sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting.

5. Quorum

(1) Three members of the board shall constitute a quorum for a meeting of the board.

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

(3) At any meeting of the board, a decision of the majority of the members present shall be recorded as a decision of the board, save that a member who dissents from that decision shall be entitled to have his/her dissenting decision and the reasons for it to be recorded in the minutes of that meeting.

6. Minutes

Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and Secretary at the next following meeting of the board.

7. Notification of Decisions

Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the District Administrative Secretary.

8. Regulation of proceedings

The board shall conduct its proceedings in accordance with the prescribed Regulations.

9. Fees and allowances

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

FIFTH SCHEDULE

COMPOSITION, APPOINTMENT AND PROCEDURES OF PARASTATAL TENDER
BOARDS

(Section 15)

1. Interpretation

In this Schedule, "the board" means the parastatal tender board.

2. Composition and appointment

(1) The tender board for a parastatal organisation shall consist of eight members appointed by the Chief Executive Director:

Provided that—

(a) five of the members shall be heads of departments from the departments of the parastatal organisation of which one shall be head of the procurement or purchasing department; and

(b) two shall be from outside the parastatal organisation.

(2) The Chief Executive Director of a parastatal organisation shall be the Chairman of the board.

(3) The head of the department responsible for procurement or purchasing and supply in a parastatal organisation shall be the Secretary to tender board.

3. Proceedings of parastatal tender committee

(1) Except as provided for in the Regulations, a parastatal tender board shall determine its own procedure.

(2) A parastatal tender board shall meet at such times and places being not less than once in a month as the Chairman may determine.

(3) A parastatal tender board may establish subcommittees which shall consist of persons who are, or are not, members of the board for the purpose of advising the board on any specific matter.

(4) A parastatal tender board shall cause minutes of the proceedings of every meeting to be kept and such minutes shall be transmitted to the Central Tender Board as soon as practicable after the meeting at which they were confirmed.

(5) A parastatal tender board may invite any person, whose presence is in its opinion, desirable to attend and to participate in the deliberations of the meeting of the board but such a person shall have no vote.

(6) The Secretary of the parastatal tender board shall communicate all decisions to heads of departments or organizations, including any refusal and the grounds for the refusal within seven days of the decision.

(7) At any meeting of the parastatal tender board, one half of the members shall constitute a quorum.

SIXTH SCHEDULE

COMPOSITION AND PROCEDURES OF THE PUBLIC PROCUREMENT APPEALS AUTHORITY

(Section 66)

1. Interpretation

In this Schedule—

(a) "Appointing Authority" means—

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

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

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

2. Secretary of the Authority

The Secretary shall be an officer who is an expert in procurement and shall be appointed by the Minister.

3. Period of appointment

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

(2) The Appointing Authority may determine the appointment of the Chairman and members of the Authority at any time.

4. Meetings

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

(2) The Chairman, or in his absence or inability to act, the Secretary, shall convene a special meeting of the Authority upon receipt of a request in writing signed by no fewer than three members of the Authority save that such requests shall not be made without justifiable cause.

5. Quorum

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

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

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

6. Minutes

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

7. Notification of decisions

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

8. Regulation of proceedings

Subject to the provisions of this Act, the Authority shall have power to regulate its own proceedings.

9. Fees and allowances

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