

Tanzania

Public Procurement Act

## Procurement of Goods and Works Regulations, 2001

### Government Notice 138 of 2001

Legislation as at 31 July 2002

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# Tanzania

## Public Procurement Act

# Procurement of Goods and Works Regulations, 2001

## Government Notice 138 of 2001

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Section 75; G.N. No. 138 of 2001*

### Part I – Preliminary provisions (regs 1-3)

#### 1. Short title

These Regulations may be cited as the Procurement of Goods and Works Regulations.

#### 2. Application

- (1) Subject to subregulation (6), these Regulations shall apply to all procurement of goods, works and related services undertaken by a public authority procuring entity and to the specified parastatal organisations except where it is provided otherwise by the Act.
- (2) These Regulations shall not apply to procurement of the services of consultants.

#### 3. Interpretation

- (1) In these Regulations, unless the context requires otherwise—

"**accounting officer**" means a Government officer appointed in accordance with the provisions of the Public Finance Act<sup>1</sup>;

"**Act**" means the Public Procurement Act;

"**appeals authority**" means the accounting officer, chief executive officer, tender board or the public procurement appeals authority or the court of competent jurisdiction when dealing with complaints and disputes and the resolution of procurement disputes;

"**approving authority**" means an accounting officer, a ministry tender board, a regional tender board, a parastatal tender board, a district tender board or the Central Tender Board when approving procurement that is being undertaken by a procuring entity;

"**board**" means the Central Tender Board established under section 5 of the Act or the ministry tender board established under section 11 of the Act, or the regional tender board established under section 12 of the Act or district tender board established under section 13 of the Act or



local government authority tender board established under section 14 of the Act or parastatal organisation tender board established under section 15 of the Act;

"**certified procurement management unit**" means a procurement unit which has been certified by the Central Tender Board under Regulation 32(11);

"**communication**" means certificates, notices, orders and instructions issued;

"**companies or firms**" means companies or firms constituted under civil or commercial law, including corporations, whether public or otherwise, co-operative societies and other legal persons and partnerships governed by public or private law;

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

"**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;

"**contract**" means the contract or agreement made between a procuring entity and a supplier or contractor as a result of procurement proceedings, for the sale or supply of goods or for the execution of works;

"**contractor**" means a company, corporation, organisation, partnership or individual person engaged in or able to be engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovations, and who is according to the context, a potential party or the party to a procurement contract with the procuring entity;

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

"**day**" means calendar day;

"**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 public authority and includes collusive practices among tenderers prior to or after tender submission and designed to establish tender prices at artificial non-competitive levels and to deprive the public authority 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;

"**Government Gazette**" means the official periodic bulletin published by the Government Printer with the authority of the Government of the United Republic of Tanzania;

"**Government Stores**" means the government Stores operated by the Ministry responsible for works or the Maji Central Stores operated by the Ministry responsible for water, or the Medical Stores operated by the Ministry responsible for health or Veterinary Stores operated by the Ministry responsible for livestock or the Government Printer;

"**independent departments of Government**" means the speaker's office of the national assembly, judicial commission, civil service commission, local government service commission, teachers' service commission, permanent commission of enquiry, police force, prisons service commission, judiciary and exchequer and audit department;

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

"**lowest evaluated cost tender**" means a tender which is determined to be the most economic after consideration of all relevant factors and the calculation of any weighting 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 or works of a minor nature as specified in Third Schedule to these Regulations or as determined each year by the Minister;

"**parastatal organisation**" means–

- (i) any body corporate established by or under any law other than the Companies Act<sup>2</sup>; or
- (ii) any corporation registered under the Companies Act, in which not less than fifty percent of the share capital is owned by the Government or by another parastatal organisation or in the case of a company which is limited by guarantee, where the Government has undertaken to meet fifty percent or more of the liabilities of that company; or
- (iii) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act<sup>3</sup>, a City Council, Municipal Council or District Council established under the Local Government (District Authorities) Act<sup>4</sup> or the Local Government (Urban Authorities) Act<sup>5</sup>;

"**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 or contractors 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 or works 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 or works including description of requirements, selection and invitation of tenderers and preparation and award of contracts;

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

2

[Cap. 212](#)

3

[Cap. 245](#)

4

[Cap. 287](#)

5

[Cap. 288](#)

**"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 or contractor 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;

**"procurement management unit"** means a unit constituted under regulation [32\(9\)](#);

**"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–

- (i) the Government;
- (ii) any ministry, department or agency of Government;
- (iii) any body corporate or statutory body or authority established for the purposes of the Government;
- (iv) any company registered under the Companies Act <sup>6</sup>, 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;
- (v) any local government authority;
- (vi) any parastatal organization;

**"public officer or officer"** means–

- (i) any person holding or acting in an office of emolument in the services of the Government;
- (ii) a person holding or acting in the office of Minister in the Government;
- (iii) an employee of any body corporate such as is referred to in the definition of public body or public authority;
- (iv) any person conducting negotiations, for or in relation to a public contract, or a prospective public contract on behalf of a public body or public authority; or
- (v) a person who is a consultant to a public body or public authority;

**"tender"** means, depending on context, either–

- (i) a request drawn by a procuring entity for offers or quotations to be made by suppliers or contractors; or
- (ii) offer, quotation or technical proposal made by a supplier or contractor in response to a request by a procuring entity;

**"tenderer"** means any natural or legal person or group of such persons submitting a tender, with a view to concluding a contract;

**"tender documents or solicitation documents"** means the documents prepared by a procuring entity, on the basis of which tenders are solicited from tenderers;

**"tender period"** means the period between the date of the first publication of the invitation to tender or the date of the mailing of the invitation to tender and the closing date for the submission of tenders;

**"tender price"** means the sum stated by the tenderer in his tender for carrying out the contract;

**"tender validity period"** means the period of time subsequent to the closing date for submission of tenders for which the tender price and the conditions of the tender are not subject to any change by the tenderer;

**"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 provisions of drivers, operators or technicians;

**"specified parastatal organization"** means a parastatal organization specified in the First Schedule to these Regulations;

**"successful tender"** means the tender selected by the procuring entity after an invitation to tender procedure 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 and 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;

**"works"** means:

- (a) All work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or air field;
  - (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 transport of people or goods, drilling, mapping, photography or seismic investigations but 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 service covered by the contract.
- (2) For the purposes of these Regulations and the tender or solicitation documents, the terms "bid and "tender" and their derivatives (bidder/tenderer, bid/tendered, bidding/tendering) are synonymous and shall be treated as such.
  - (3) For the purposes of these Regulations, 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.
  - (4) In this regulation, "relative" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent and reference to a husband or wife and a reputed husband or wife, and for the

purposes of this subregulation, 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.

## Part II – General provisions (regs 4-31)

### 4. Procurement policy

- (1) The public procurement policies are based on the need to make the best possible use of public funds, whilst conducting all procurement with honesty and fairness.
- (2) All public officers and members of tender boards who are undertaking or approving procurement shall be guided by the following basic considerations of the public procurement policy:
  - (a) The need for economy and efficiency in the use of public funds and in the implementation of projects including the provision of related goods and services;
  - (b) the best interests of a public authority, in giving all eligible suppliers and contractors equal opportunities to compete in providing goods or executing works;
  - (c) encouragement of national manufacturing, contracting and service industries;
  - (d) the importance of integrity, accountability, fairness and transparency in the procurement process.
- (3) These aims are best realised through competitive tendering, open to all eligible suppliers or contractors, which are properly and visibly administered in accordance with Part VIII of these Regulations.
- (4) Suitable allowances may be made for preferences for domestically manufactured goods or for Tanzanian contractors for works under the conditions prescribed in Regulations 109 to 112.
- (5) Where tendering is clearly not the most economic and efficient method of procurement, other methods of procurement may be used, as described in Part VI of these Regulations.

### 5. Economy and efficiency

Public officers and members of tender boards when undertaking or approving procurement shall choose appropriate procedures and cause the procurement to be carried out diligently and efficiently, so that the prices paid represent the best value that can reasonably be obtained for the funds applied, provided that:

- (a) The goods or works procured are of satisfactory quality;
- (b) the goods or works are appropriate to the public authority requirements and, where necessary, goods are compatible with any similar goods already supplied for public authority's use or for a particular project;
- (c) the goods are delivered or the works are completed in a timely fashion in accordance with the public authority's priorities.

### 6. Eligible suppliers and contractors

- (1) Any supplier or contractor who qualifies for consideration further to Regulations 10 and 15 of these Regulations shall be eligible to take part in procurement proceedings, regardless of their nationality except where this is limited further to Regulations 26 and or by other provisions of Tanzanian Law.
- (2) A procuring entity shall foster the development of the domestic manufacturing and contracting industries wherever this is practicable through encouraging participation in procurement proceedings by Tanzanian manufacturers or by Tanzanian contractors as defined in Regulation 26 and Regulation 109 of these Regulations. However, this must not be at the expense of true competition, although a measure of national preference may be granted in accordance with the provisions of section 22 of the Act and Regulations 109 to 112.

- (3) In connection with any public contract, the Government does not permit a procuring entity to deny pre-qualification, if required, to a firm for reasons unrelated to its capability and resources to successfully perform the contract nor does it permit a procuring entity to disqualify any tenderer for such reasons.
- (4) As exceptions to the foregoing:
  - (a) A foreign firm or goods manufactured in a foreign country may be excluded if:
    - (i) As a matter of law or official regulation, Tanzania prohibits commercial relations with that country; or
    - (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Tanzania prohibits any import of goods from that country or any payments to persons or entities in that country.
  - (b) a firm which has been engaged by a procuring entity to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works (other than a continuation of the firm's earlier consulting services) for the same project. This provision does not apply to the various firms (consultants, contractors or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract;
  - (c) Tanzanian government owned enterprises may participate only if they can establish that they:
    - (i) Are legally and financially autonomous; and
    - (ii) operate under commercial law.
- (5) No dependent agency of the public authority under a public financed project shall be permitted to tender or submit a proposal for the procurement of goods or works under the project other than Force Account units, as permitted under Regulation 90.
- (6) A firm which has been declared ineligible by the Government in accordance with section 60 of the Act or regulations 8(3) and 120(12) shall be ineligible to be awarded a public financed contract during the period of time determined by the Government.
- (7) A procuring entity may limit participation to Tanzanian suppliers or contractors in cases where:
  - (a) The method of procurement is to be by competitive quotation, further to regulation 85, single source, procurement further to regulation 86 or 87;
  - (b) works are being tendered with a value not exceeding the equivalent of T. Shs. 200,000,000 where foreign contractors are not expected to be interested.
- (8) Tanzanian manufacturers and contractors may tender independently or in joint venture with foreign firms, but joint ventures or other forms of association between national and foreign firms shall not be made mandatory.

## 7. Method of procurement

- (1) Procurement of goods, works and related services shall be made through international competitive tendering as defined in Part VI of these Regulations.
- (2) Subject to the appropriate tender board's prior written approval, other forms of procurement may be agreed upon between the procuring entity and the approving authority whenever it can be established that this is done with due regard for transparency, economy and efficiency in the implementation of the project.
- (3) There may be circumstances where international competitive tendering would not be the most economic and efficient method of procurement and where other methods of procurement are

deemed more appropriate than the particular procurement methods and the categories of goods and works to be applicable are as specified in the Third Schedule to these Regulations.

- (4) Margins of preference for domestically manufactured goods and Tanzanian contractors do not apply to methods of procurement other than international competitive tendering.

## 8. Probity and ethics in procurement

- (1) All public officers concerned with procurement and members of tender boards must be scrupulously honest in all their dealings with suppliers, contractors, members of the public and with the public authority itself.
- (2) Procuring entities and members of tender boards must conduct procurement proceedings with complete probity and in such a manner that public authority is respected and trusted as a client or a customer whilst maintaining good reputation with contractors and suppliers.
- (3) A procuring entity shall reject the tender of a supplier or contractor who gives or agrees to give, directly or indirectly, to any current public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or omission or decision of, or procedure followed by, the procuring entity or the approving authority in connection with that tender or any other tender.
- (4) Procurement shall not be made from a public officer acting in a private capacity, either alone or as a partner in a partnership or as an officer of a company.
- (5) A procuring entity shall not include in any tender document any condition or specification such as to favour any one supplier or contractor.
- (6) Any procuring entity, approving authority or a member of the staff or any committee of a tender board or of a procuring entity thereof shall declare any interest that they may have in any supplier or contractor, and shall take no part in, nor seek to influence in any way, procurement proceedings in which that supplier or contractor is involved or liable to be come involved.
- (7) The disclosure of interest made under this regulation shall be recorded in the minutes of the meeting at which it is made.

## 9. Equality of participation

Procuring entities and approving authorities shall by suppliers or contractors take the necessary measures to ensure the widest possible participation by suppliers or contractors on equal terms in invitations to tender for goods and works contracts, as appropriate, measures to:

- (a) Ensure publication of invitations to tender in the *Government Gazette*, local newspapers of wide circulation and any other appropriate information media;
- (b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;
- (c) encourage co-operation between Tanzanian companies and foreign firms, for example by means of pre-qualification of joint ventures and consortia between Tanzanian companies and foreign firms;
- (d) ensure that all the selection criteria are specified in the tender documents; and

*[Please note: numbering as in original.]*

- (f) ensure that the tender selected conforms to the requirements of the tender documents and meets the selection criteria stated therein.

## 10. Eligibility

- (1) Unless otherwise specified in accordance with Regulation 26 participation in the invitations to tender and in award of contracts shall be open on equal terms to:
  - (a) Natural persons, companies or firms or public or semi-public agencies of Tanzania and foreign countries;
  - (b) co-operative societies and other legal persons governed by public or private law;
  - (c) joint ventures or groupings of companies or firms.
- (2) Natural persons, companies or firms shall not be eligible for the award of contracts where:
  - (a) They are bankrupt;
  - (b) payments to them have been suspended in accordance with the judgement of a court of law other than a judgement declaring bankruptcy and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property;
  - (c) legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;
  - (d) they have been convicted, by a final judgement, of any crime or offence concerning their professional conduct;
  - (e) they are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;
  - (f) they are in breach of contract on another contract with the procuring entity;
  - (g) they have been declared ineligible due to corrupt or fraudulent practices.
- (3) To be eligible for participation in invitations to tender and the award of contracts, tenderers shall provide evidence satisfactory to the procuring entity of their eligibility under Regulation 10, proof of compliance with the necessary legal, technical and financial requirements and of their capability and adequacy of resources to carry out the contract effectively.
- (4) All tenders submitted shall include the following information:
  - (a) Copies of original documents defining the constitution and/or legal status, and establishing the place of registration and/or statutory seat and, if it is different, the place of central administration of the company, firm or partnership or, if a joint venture, of each party thereto constituting the tenderers;
  - (b) details of the experience and past performance of the tenderer or of each party to a joint venture on contracts of a similar nature within the past five years, and details of other contracts in hand including details of the actual and effective participation in each such contract;
  - (c) where applicable, the major items of equipment proposed for use in carrying out the contract; the qualifications and experience of key personnel proposed for administration and execution of the contract, both at and away from the place of execution of the contract;
  - (d) proposals relating to the nature, conditions and modalities of subcontracting wherever the subcontracting of any elements of the contract amounting to more than 10% of the tender price is envisaged;
  - (e) reports on the accounting and financial standing of the tenderer or of each party to a joint venture such as profit and loss statements, balance sheets and auditor's reports for the past



five years, an estimated financial projection for the next two years, and an authority from the tenderer or authorised representative of a joint venture to seek references from the tenderer's bankers; and

- (f) information regarding any current legal or arbitration proceedings or dispute in which the tenderer is involved. The information referred to shall be confined to matters of direct interest to the award or performance of the contract.

## 11. Transparency and fairness

- (1) Procuring entities and tender boards shall maintain adequate written records of all procurement proceedings in which they are involved, including any procurement conducted other than by competitive tendering. Such records shall show which suppliers or contractors responded to advertisements or were approached to tender, who was chosen, and the reasons. The results of any invitation to tender shall be published in the print media of wide circulation and shall be made available to the press on request. This is not only to demonstrate openness, but also to protect the public authority, its officers and members of tender boards from wrongful allegations.
- (2) The Government is committed to dealing fairly with all prospective suppliers or contractors, who except for the provisions for national preference contained in section 22 of the Act and Regulations 109 to 112 must be given equal opportunities of gaining public contracts.
- (3) A procuring entity and an approving authority are prohibited from showing favouritism when drawing up short lists of suppliers or contractors, or from writing specifications so as to favour a particular product, supplier or contractor.
- (4) A procuring entity shall ensure that payments due to suppliers and contractors are made properly and promptly in accordance with the terms of each procurement contract entered into, so as to maintain the credibility and creditworthiness of a public authority and the procuring entity shall ensure that commitments are recorded against voted funds before any contract is signed.

## 12. Environmental issues

- (1) A procuring entity shall avoid wherever possible the procurement of chemicals, pesticides or other goods which are known to have or suspected to have harmful effects on the health of the population, the environment, domestic animals, wildlife and flora.
- (2) Where the procurement of such goods is considered to be nevertheless necessary by a procuring entity, the ministry or department concerned shall ensure that the use of those goods is restricted so that any harmful effects are avoided entirely or limited as far as possible.
- (3) A procuring entity shall assess the impact on the environment of any works at the planning of any works project and in any case before procurement proceedings are commenced,
- (4) A procuring entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before procuring new replacements.

## 13. International obligations of Tanzania relating to procurement

To the extent that these Regulations conflict with an obligation of Tanzania under or arising out of any:

- (a) Treaty or other form of agreement to which it is a party with one or more other States;
- (b) agreement entered into by Tanzania with an intergovernmental international financing institution, the requirements of the Treaty or Agreement shall prevail but in all other respects, the procurement shall be governed by these Regulations.

#### 14. Donor funding for procurement

- (1) Should the public authority or Government enter into any agreement with another government, an agency of another government or an international financing institution for a loan, credit or grant of funds for procurement purposes, that agreement may specify rules and procedures that are to be followed in undertaking such procurement.
- (2) In such cases, a procuring entity and approving authority shall follow the provisions of the Act and these Regulations, unless there is conflict with the requirements of such an agreement for a loan, credit or grant of funds, when the requirements of that agreement shall take precedence.
- (3) A procuring entity must ensure that any procurement that is funded in whole or in part by such a loan, credit or grant is concluded according to procedures that will fulfil the Governments obligations to the government, agency or institution that extended that loan, credit or grant.
- (4) A procuring entity shall not seek clearance of tender documents or award recommendations from an external government, agency or institution that extended that loan, credit or grant before obtaining internal clearance of the same from an appropriate approving authority or tender board.
- (5) To the extent that the clearance or approval of the appropriate internal approving authority conflict with the external clearance or approval of an external approving authority arising out of the loan or credit or grant agreement, the clearance or approval of the external approving authority shall prevail, but in all other respects, the internal clearance or approval shall prevail.

#### 15. Qualification of suppliers or contractors

- (1) In order to participate in procurement proceedings, suppliers or contractors shall have to qualify by meeting such of the following criteria as the procuring entity considers appropriate in the particular procurement proceedings:
  - (a) That they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, and the personnel to perform the procurement contract;
  - (b) that they have legal capacity to enter into the procurement contract;
  - (c) that they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
  - (d) that they have fulfilled their obligations to pay taxes and social security contributions in Tanzania, where required;
  - (e) that they have not, and their directors or officers have not been convicted of any criminal offences related to their profession, offences related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of ten years proceeding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.
- (2) Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, a procuring entity may require suppliers or contractors participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the suppliers or contractors are qualified in accordance with the criteria referred to in subregulation (1)(b).
- (3) Any requirement established pursuant to this regulation shall be set forth in the pre-qualification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations, and shall apply equally to all suppliers or contractors.

- (4) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those provided for in this regulation.
- (5) The procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria and procedures set forth in the pre-qualification documents, if any, and in the solicitation documents or other documents for solicitation of proposals, offers or quotations.
- (6) Subject to Regulation 17(1) and regulation 26(2) the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof on the basis of nationality, or that is not objectively justifiable.
- (7) Local suppliers or contractors wishing to participate in any procurement proceeding shall satisfy all relevant requirements for registration with appropriate current professional statutory bodies in Tanzania.
- (8) Foreign suppliers or contractors wishing to participate in the procurement proceedings are exempted for the requirement under regulation 15(7), but where, as a result of the procurement proceedings, any foreign supplier or contractor is selected as having submitted the lowest evaluated responsive tender, such a supplier or contractor shall register with the appropriate professional statutory body and shall be required to submit evidence of registration as an approved supplier or contractor in Tanzania.

## 16. Pre-qualification proceedings

- (1) A tender board will require pre-qualification of large or complex contracts or turnkey contracts or build, own and transfer contracts to ensure, in advance of tendering, that invitations to tender are confined to capable firms.
- (2) For suppliers of goods or equipment, pre-qualification may be required where quality and/or performance is of primary importance and/or suppliers' back up and maintenance services are critical.
- (3) A procuring entity may engage in pre-qualification proceedings with a view towards identifying, prior to the submission of tenders, proposals or offers in procurement proceedings conducted pursuant to Part VII, suppliers and contractors that are qualified.
- (4) The provisions of Regulation 15 shall apply to pre-qualification proceedings.
- (5) If a procuring entity engages in pre-qualification proceedings, it shall provide a set of pre-qualification documents to each supplier or contractor that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents.
- (6) The price that the procuring entity may charge for the pre-qualification documents shall reflect only the cost of printing them and providing them to suppliers or contractors.
- (7) An invitation to pre-qualify shall contain at the minimum, the following information:
  - (a) The name and address of the procuring entity;
  - (b) the nature and quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;
  - (c) the desired or required time for the supply of the goods or for the completion of the works or the time table for the provision of the services;
  - (d) the criteria and procedures to be used for evaluating the qualification of suppliers or contractors in conformity with regulation 15;

- (e) a declaration which may not later be altered that contractors or suppliers may participate in the procurement proceedings regardless of nationality or declaration that participation is limited on the basis of nationality pursuant to regulation 26 as the case may be;
  - (f) the price, if any, charged by the procuring entity for the pre-qualification documents;
  - (g) the currency and terms of payment for the pre-qualification documents;
  - (h) the means of obtaining the pre-qualification documents and the place from which they may be obtained;
  - (i) the language or languages in which the pre-qualification documents are available;
  - (j) the place and deadline for the submission of applications to pre-qualify.
- (5) The invitation to pre-qualify shall be prepared by the procuring entity, or at its request with the assistance of the appropriate tender board and shall be advertised in accordance with the manner that shall be discussed and agreed between the appropriate tender board and the procuring entity.

*[Please note: numbering as in original.]*

- (6) A minimum period of 45 days shall be allowed for the preparation and submission of pre-qualification applications.
- (7) Where a tender board does not participate in the preparation of the invitation, the procuring entity shall be under obligation to send to the tender board, for comment and approval, the draft text of the invitation, and to incorporate any amendments agreed with the tender board into the final text of the invitation.
- (8) Invitations to tender which are issued without prior approval by a tender board and which do not satisfy these Regulations will not be considered valid.
- (9) The pre-qualification documents shall include, at a minimum the following information:
- (a) Instructions for preparing and submitting pre-qualification applications;
  - (b) a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings;
  - (c) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
  - (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for suppliers or contractors to prepare and submit their applications, taking into account the reasonable needs of the procuring entity;
  - (e) any other requirements that may be established by the procuring entity in conformity with these regulations relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.
- (10) When pre-qualification is undertaken, qualification of tenderers by a procuring entity shall be based upon the capability and resources of the applicants to perform the particular contract satisfactorily, taking into account their–
- (a) experience and past performance on similar contracts;
  - (b) knowledge of local working conditions in developing countries;
  - (c) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
  - (d) financial position; and
  - (e) current commitments.

- (11) A procuring entity shall respond to any request by a supplier or contractor for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the dead line for the submission of applications to pre-qualify. The response by the procuring entity shall be given within a reasonable time so as to enable the supplier or contractor to make a timely submission of its application to pre-qualify.
- (12) The response to any request that might reasonably be expected to be of interest to other suppliers or contractors shall, without identifying the source of the request, be communicated to all suppliers or contractors to which the procuring entity provided the pre-qualification documents.
- (13) Applications received for pre-qualification shall be analysed by the procuring entity, using the criteria for qualification explicitly stated in the invitation to pre-qualify and an evaluation report shall be prepared recommending a list of firms to be considered as pre-qualified.
- (14) The evaluation report shall be submitted to the tender board for approval and shall indicate the criteria used as well as the justification for the choice made, in respect of the retained and the non-retained firms.
- (15) Pre-qualification shall not be used to limit the number of suppliers or contractors on a shortlist or pre-qualification list so that all firms found capable of performing the contract satisfactorily in accordance with the approved pre-qualification criteria shall be pre-qualified.
- (16) All suppliers or contractors who pre-qualify to take part in a tender shall be invited to do so unless disqualified subsequently further to Regulation 90.
- (17) A joint venture of firms may pre-qualify by combining the capabilities and past experience of each of them and firms which have been individually pre-qualified may form a joint venture in order to submit a tender. Firms which have been pre-qualified as partners in a joint venture shall not be allowed to submit individual tenders.
- (18) Firms meeting the pre-qualification criteria and approval by the appropriate tender board shall be so notified by the procuring entity and invited to tender.
- (19) The notification shall indicate the terms and conditions under which tender documents shall be obtained as well as the date, hour and place for latest delivery of tenders by the tenderer, and of the tender opening.
- (20) Applicants who are not successful in the pre-qualification shall be accordingly informed, by the procuring entity, within one week after receipt of all the required approvals to the pre-qualification. Only suppliers or contractors that have been pre-qualified are entitled to participate further in the procurement proceedings.
- (21) A procuring entity shall make available to any member of the general public, upon request, the names of all suppliers or contractors that have been pre-qualified.
- (22) A procuring entity shall upon request communicate to suppliers or contractors that have not been pre-qualified the grounds therefor, but the procuring entity is not required to specify the evidence or give the reasons for its finding that those grounds were present.
- (23) Verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract, and award may be denied to a tenderer that is judged to no longer have the capability or resources to successfully perform the contract.

## **17. Participation by a supplier or contractor**

- (1) A supplier or a contractor is permitted to participate in procurement proceedings without regard to nationality, except in cases in which a procuring entity decides, on grounds specified in these Regulations or according to provisions of law, to limit participation in procurement proceedings on the basis of nationality.

- (2) A procuring entity that limits participation on the basis of nationality pursuant to subregulation 17(1) shall include in the record of the procurement proceedings a statement of the grounds and circumstances on which it relied.
- (3) A procuring entity, when first soliciting the participation of suppliers or contractors in the procurement proceedings, shall declare to them that they may participate in the procurement proceedings regardless of nationality, a declaration which may not later be altered but, if it decides to limit participation pursuant to subregulation 17(1), it shall so declare to them.

## **18. Form of communication**

- (1) Subject to provisions of these Regulations and any requirement of form specified by a procuring entity when first soliciting the participation of suppliers or contractors in the procurement proceedings, documents, notifications, decisions and other communications referred to in these Regulations to be submitted by a procuring entity or administrative authority to a supplier or contractor or by a supplier or contractor to the procuring entity shall be in a form that provides a record of the content of the communication.
- (2) Communications between suppliers or contractors and a procuring entity may be made by means of communication that does not provide a record of the content of the communication provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which provides a record of the confirmation.
- (3) The procuring entity shall not discriminate against or among suppliers or contractors on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

## **19. Rules concerning documentary evidence provided by suppliers or contractors**

If the procuring entity requires the legalisation of documentary evidence provided by suppliers or contractors to demonstrate their qualifications in procurement proceedings, the procuring entity shall not impose any requirements as to the legalisation of the documentary evidence other than those provided for in the laws of Tanzania relating to the legalisation of documents of the type in question.

## **20. Record of procurement proceedings**

- (1) The procuring entity shall maintain a record of the procurement proceedings containing, at a minimum, the following information:
  - (a) A brief description of the goods, or works to be procured, or of the procurement need for which the procuring entity requested proposals or offers;
  - (b) the names and addresses of suppliers or contractors who were pre-qualified or selected and invited to submit tenders or technical proposals;
  - (c) the names and addresses of suppliers or contractors that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered into and the contract price;
  - (d) information relative to the qualifications, or lack thereof, of suppliers or contractors that submitted tenders, proposals, offers or quotations;
  - (e) the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract, where these are known to the procuring entity;
  - (f) a summary of the evaluation and comparison of tenders, proposals, offers or quotations, including the application of any margin of preference pursuant to regulation [109](#) to [112](#);

- (g) if all tenders, proposals, offers or quotations were rejected pursuant to regulation 21, a statement to that effect and the grounds therefore, in accordance with regulation 21(1);
  - (h) if, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement contract, a statement to that effect and of the grounds therefore;
  - (i) the information required by regulation 8(3), if tender, proposal, offer or quotation was rejected pursuant to that provision;
  - (j) in procurement proceedings involving the use of a procurement method pursuant to regulation 80(2), the statement required under regulation 80(2) of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;
  - (k) in procurement proceedings in which the procuring entity, in accordance with regulation 17(2), limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation;
  - (l) a summary of any requests for clarification of the pre-qualification or solicitation documents, the responses thereto, as well as a summary of any modification of those documents.
- (2) Subject to regulation 107(8) the portion of the record referred to in subparagraphs (a) and (b) of subregulation (1) of this regulation shall, on request, be made available to any person after a tender, proposal, offer of quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
- (3) Subject to regulation 107(8), the portion of the record referred to in subparagraphs (c) to (g) of the subregulation (1), shall, on request, be made available to suppliers or contractors that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
- (4) Disclosure of the portion of the record referred to in subparagraphs (c) to (e), may be ordered at an earlier stage by a competent court provided that except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose:
- (a) Information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition;
  - (b) information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations, and tender, proposal, offer or quotation prices, other than the summary referred to in subregulation (1)(e).
- (4) Such records shall be kept for a period of not less than five years from the date of completion of the contract and may be made available within a reasonable time during that period to the Minister and the Controller and Auditor-General, the Central Tender Board or any other officer authorised by the accounting authority.
- (5) The procuring entity shall not be liable to suppliers or contractors for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with these Regulations.

## **21. Rejection of all tenders, proposals, offers or quotations and annulment of the tender proceedings**

- (1) Subject to approval by the tender board whose authority limit is appropriate to the estimated value of the goods or works required, and if so specified in the solicitation documents or other documents for solicitation of proposals, offers or quotations, the procuring entity may, prior to awarding the

contract and notwithstanding the stage reached in the proceedings leading to the conclusion of the contract:

- (a) Either decide to reject all tenders, proposals, offers or quotations at any time and to annul the tender proceedings in accordance with regulation 21(2) or order that the proceedings be recommenced, if necessary, using another method; or
  - (b) where the project is divided into lots, award only certain of the lots and possibly decide that the others be the subject of an other tender or other tenders, if necessary, using another method.
- (2) The annulment of a tender proceeding may take place in the following cases:
- (a) If no tender is responsive to the tender documents;
  - (b) if no tender satisfies the criteria for the award of the contract as set out in the tender documents;
  - (c) if the economic or technical data of the project have been altered;
  - (d) if exceptional circumstances render normal performance of the contract impossible;
  - (e) if every tender received exceeds the budgetary resources available;
  - (f) if the tenders received contain serious irregularities resulting in interference with the normal play of market forces; or
  - (g) if there has been no competition.
- (3) In the event of annulment of any tender proceeding, all tenderers who submitted tenders shall be notified thereof by the procuring entity.
- (4) The procuring entity shall incur no liability solely by virtue of its invoking subregulations (1) and (2) towards tenderers that submitted tenders, proposals, offers or quotations.
- (5) When the annulment of the tender proceeding is caused by circumstances which do not necessitate the opening of tenders, the unopened and sealed envelopes containing the price proposals, where appropriate, and in any event, the other elements of the tender shall be returned to the tenderers at the tenderers' cost.
- (6) Where all tenders are rejected pursuant to any of the foregoing subregulations:
- (a) The procuring entity shall review the causes justifying the rejection and consider whether revision of the specifications or modification in the project or both are required before inviting new tenders;
  - (b) new tenders shall be requested from at least all who were invited to submit tenders in the first instance plus new tenderers and a reasonable amount of time shall be allowed for the submission of the new tenders;
  - (c) where the approving entity considers it advisable it may require that the whole tender proceeding be repeated.

## 22. Public notice of procurement contract awards

- (1) Where an award of contract is made, the secretary to the tender board whose authority limit is appropriate to the approved contract sum, shall publish a notice in the *Gazette* and in two local news papers of wide circulation in Tanzania, one being a Kiswahili newspaper and the second being a English language newspaper, stating who has been awarded the contract, the contract amount and the date when the award was made.
- (2) After completion of contract, the accounting officer or chief executive officer of the procuring entity shall publish in the *Gazette* and in at least two newspapers of wide circulation in Tanzania being one in a Kiswahili language newspaper and the second in one English language newspaper, the



name of the supplier or contractor who executed the contract, the original contract period, the final contract period, original approved contract sum and the final contract amount paid to the supplier or contractor.

### **23. Rules concerning description of goods or construction**

- (1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods or construction to be procured, and requirements concerning testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology, or description of services that create obstacles to participation, including obstacles based on nationality, by suppliers or contractors in the procurement proceedings shall not be included or used in the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.
- (2) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods or construction shall be based on the relevant objective, technical and quality characteristics of the goods or construction to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods or construction to be procured and provided that words such as "or equivalent" are included.
- (3) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods or construction to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.
- (4) Due regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.

### **24. Price adjustment**

- (1) In the event of inflation, a price adjustment formula shall apply in order to arrive at a reasonable price.
- (2) Tenderers shall quote on a present day value using price adjustment based on official statistics of Government agencies or other official publications and the formula shall accommodate both rises and falls in price levels.
- (3) Price adjustment shall only be applied if it was specified in the solicitation documents.
- (4) The price adjustment formula or amount obtained by the use of an adjustment formula shall not be taken into account during the evaluation and comparison of tenders.

### **25. Language**

- (1) The pre-qualification documents, solicitation documents and other documents for solicitation of proposals, offers or quotations shall be formulated in the English language and shall specify that the text of the contract documents in that language is governing but the contracts entered into with Tanzanian tenderers (excluding joint ventures between Tanzanian and foreign firms) may, at the procuring entity's option, be in the Kiswahili language, which shall be the governing language for such contracts.
- (2) Pre-qualification applications and tenders may be formulated and submitted in any language in which the solicitation documents have been issued.

## 26. National preference

- (1) Suppliers or contractors 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 the Act, these Regulations, or any other provisions of any written law.
- (2) A procuring entity may, when procuring goods or works 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 Tanzanian contractors provided that this is clearly stated in the tender documents.
- (3) Contractors who are citizens of Tanzania shall be eligible to be granted a margin of preference as provided for in subsection (2) of this regulation 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 a public authority 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) the 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 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 regulation.
  - (b) For a joint venture of domestic companies:
    - (i) Individual member companies are incorporated or registered in the United Republic of Tanzania;
    - (ii) the joint venture is registered in Tanzania;
    - (iii) at least fifty percent of the ownership of the individual companies are held by citizens of Tanzania;
    - (iv) the joint venture shall 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) there is no 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 regulation.
  - (c) For partners or individual persons trading as contractors:
    - (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 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, a procuring entity may grant a maximum margin of preference of ten percent to domestic contractors subject to subsection (3) of this regulation.
- (5) In the case of contracts for goods and related services to be awarded on the basis of international competitive tendering, procuring entities may grant a maximum margin of preference of fifteen percent to domestically manufactured goods and related services.
- (6) The conditions and methods for calculating the margin of preference in the course of evaluating tenders shall be as set out in Regulations 110 and 112 of these Regulations.

## 27. Exclusive preference to local persons or firms

- (1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement of works or goods that has a value not exceeding T. Shs. 200,000,000 shall be reserved exclusively for local persons or firms, if they meet the requirements of regulation 26(3) of these Regulations, and shall be set aside unless the procuring entity determines that there is not a reasonable expectation of obtaining offers from five or more responsible local persons or firms that are competitive in terms of market prices, quality and delivery.
- (2) If the procuring entity does not proceed with the local person or firm set-aside, and procures on unrestricted basis, the procuring entity shall include in the procurement records the reason or reasons for the unrestricted procurement.
- (3) If the procuring entity receives only one acceptable offer from a responsible local person or firm in response to procurement set-aside, the procuring entity may consider to make an award to that person or firm.
- (4) If the procuring entity receives no acceptable offers from responsible local persons or firms, the set aside procurement shall be withdrawn and the requirements, if still valid, shall be procured on an unrestricted basis.
- (5) The procuring entity shall set-aside any procurement of a value of T. Shs. 200,000,000 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 firm offering goods or executing works; and
  - (b) award will be made at market prices.

## 28. Tender samples

- (1) If samples are required by the solicitation documents, then samples shall be:
  - (a) Submitted as part of the tender, in the quantities, sizes and other details requested in the invitation to tender;
  - (b) carriage paid;
  - (c) received on or before the closing time and date for the submission of tenders; and
  - (d) evaluated to determine compliance with all characteristics listed in the invitation.
- (2) Failure of samples to conform to all characteristics referred to in the invitation for tenders and failure to furnish samples by the time specified shall entitle a tender board to reject the tender.
- (3) Notwithstanding the other provisions of this regulation, the procuring entity may, on the prior approval of the appropriate tender board, call for samples where the tenderers offer is competitive.

- (4) Where it is not possible to avoid using a proprietary article as a sample, the tenderer shall make it clear that the proprietary article is displayed only as an example of the type or quality of the goods being tendered for and that competition shall not thereby be limited to that article only.
- (5) Samples made up from materials supplied by a tender board shall not be returned to the tenderer nor shall the tender board be liable for the cost of making them.
- (6) All samples produced from materials belonging to the tenderer which are not claimed by the tenderer within a period of three months from the date of the award of contract, shall be the property of the tender board and shall be sent to the Executive Secretary of the Central Tender Board who shall dispose of them in such a manner as may be directed by the Central Tender Board.

## **29. Tenders relating to public security**

Where the contract involves access to confidential information:

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

## **30. Specifications for vehicles, machinery, etc.**

- (1) Specifications for equipment, including vehicles, machinery, tools and spare parts for Government, shall, as far as it is practicable, be obtained from or be approved by the ministry responsible for matters related to electrical machinery and mechanical engineering.
- (2) The approval of the Government or any organisation for any specific department of Government, ministry or region to increase the fleet of equipment or vehicles shall not specify the make of such equipment or vehicles and the same shall be procured through competitive tendering.

## **31. Auditor's certificate**

The auditor of every public body shall, in his annual report state whether or not these Regulations have been complied with in relation to competitive tendering and approval of procurement by appropriate tender boards.

## **Part III – Procurement Organisation and Limits of Authority (regs 32-42)**

### **32. Approval of procurement**

- (1) Any procurement by a ministry or department of Government, local authority or parastatal organisation or agency of government must be authorised by a procuring entity and endorsed by an approving authority whose limit of authority, as laid down in the Second Schedule to these Regulations, is appropriate to the value of the goods or works being procured.
- (2) The accounting officer or chief executive officer shall consult the Central Tender Board for its approval on the procurement provisions under any international, bilateral or multilateral agreement.
- (3) Before tenders are invited, the procuring entity shall furnish to the tender board whose authority limit is appropriate to the estimated value of the goods or works required, for its comments, the text of the invitations to tender and the specifications, other tender and draft contract documents for the civil works, supply of goods or installation of equipment, etc., as the case may be, together

with a description of the advertising procedure to be followed for the tender, and shall make such modifications in the said documents or procedures as the tender board shall reasonably request.

- (4) Any further modification of the tender documents shall require the tender board's concurrence before it is issued to the prospective tenderers.
- (5) After tenders have been received and evaluated the procuring entity shall, before a final decision on the award is made, inform the tender board of the name of the tenderer to which it intends to award the contract and shall furnish to the tender board, in sufficient time for its review, a detailed report (prepared if the tender board shall so request, by experts acceptable to the tender board), on the evaluation and comparison of the tenders received, together with the recommendations for award and such information as the tender board shall reasonably request.
- (6) The tender board shall, if it determines that the intended award would be inconsistent with the Act or these Regulations, promptly inform the procuring entity and state the reasons for such determination.
- (7) In cases where pre-qualification is required, the procuring entity shall before qualification is invited, inform the tender board whose limit of authority is appropriate to the estimated value of the procurement in detail of the procedure to be followed, and shall introduce such modifications in said procedure as the tender board shall reasonably request.
- (8) The list of pre-qualified tenderers, together with a statement of their qualification and of the reasons for the exclusions of any applicant for pre-qualification, shall be furnished by the procuring entity to the tender board for its comment before the applicants are notified of the procuring entity's decision and the procuring entity shall make such additions or deletions from, or modifications in the said list as the tender board shall reasonably request.
- (9) Each tender board established under sections 11, 12, 13, 14 and 15 of the Act shall constitute a procurement management unit which shall consist of the head of procurement or purchasing and supplies and not more than six other procurement specialists or purchasing and supplies officers.
- (10) The functions of the procurement management unit shall be to invite, receive, process and make recommendations on tenders for the procurement of goods, works and services whose value is within the limits authorised in these Regulations to tender boards.
- (11) The Central Tender Board shall on such terms and conditions as it thinks fit, certify a procurement management unit constituted under regulation [32\(9\)](#) in categories as specified in the Fifth Schedule to these Regulations.

### **33. Accounting officers and delegated powers**

- (1) An accounting officer of any ministry, independent department or region is responsible for all procurement of goods and works undertaken by his or her department or region and shall be accountable for the use made of the funds voted by Parliament to that ministry or department and for the justification for the requirements that are procured.
- (2) Any contract or local purchase order entered into by the ministry or department shall be signed by the accounting officer or by a Government officer acting with powers delegated in writing by the accounting officer.
- (3) An accounting or chief executive officer may delegate his or her powers of procurement as follows:
  - (a) Within a Ministry or department—
    - (i) a procurement officer; or
    - (ii) the head of a procurement management unit; or
    - (iii) a head of a department; or
    - (iv) supervising officer; or

- (v) an engineer in charge of a project; or
  - (vi) any other public officer who is properly nominated;
  - (b) within a region, to a regional officer;
  - (c) within a district, to a district officer.
- (4) In each case, the delegated powers of procurement will not exceed the maximum appropriate limit of authority laid down in these Regulations.
- (5) An accounting officer shall delegate such powers in writing for a period not exceeding that during which he or she shall remain in post.

#### **34. Ministries and regions**

- (1) Where the value of the goods or works being procured exceeds the limit of authority of the accounting officer, procurement must be reviewed and approved by:
- (a) The tender board of that ministry established under the provisions of section 11 of the Act; or
  - (b) a regional tender board, as established under the provisions of section 12 of the Act, in cases where procurement is being undertaken by a regional administration or by another Government department within that region; or
  - (c) the Central Tender Board, as established under the provisions of section 5 of the Act, where the value of the goods or works being procured exceeds the limit of authority of a ministry or regional tender board.
- (2) A procuring entity acting for a government department in regions may request approval for procurement of goods or works of which the value is above its delegated powers, from the accounting officer and the tender board of the appropriate ministry instead of from a regional tender board.

#### **35. Districts**

- (1) Procurement that is being undertaken by a district administration or by another Government department within a district may be authorised by the district administrative secretary where the value of goods or works being procured is within his or her limit of authority.
- (2) Any such procurement where the value exceeds the limit of authority of the district administrative secretary shall be reviewed and approved by either–
- (a) a district tender board of that district, as established under the provisions of section 13 of the Act, provided that the value of such goods or works is within its limit of authority; or
  - (b) a tender board of a region which contains that districts; or
  - (c) the Central Tender Board, where the value of goods or works being procured exceeds the limit of authority of the regional tender board.
- (3) A procuring entity acting for a Government department in a district may request approval for procurement of goods or works of which the value is above its delegated powers, either from the accounting officer and the tender board of the appropriate ministry or from a regional officer of the ministry and the regional tender board instead of from a district tender board.

#### **36. Central Tender Board**

- (1) Where the value of goods or works being procured exceeds the limit authority of the regional tender board or the ministry tender board or the parastatal tender board or Government agency tender board, the procurement shall be reviewed and approved by the Central Tender Board.

- (2) The functions of the Central Tender Board shall be as are provided for in the Act.

### 37. All tender boards

- (1) Tenders may only be issued with the approval of the appropriate tender board, which may examine the draft tender documents before approving the issue of the tender.
- (2) A tender board shall establish a time and place for the return of the tenders and the public tender opening and shall be closed with the appropriate tender board provided that the closing date, time and place shall be specified in the tendering documents.
- (3) Only when the procurement has been approved by the relevant tender board is the accounting officer or his or her delegate authorised to award a contract to the successful supplier or contractor.
- (4) The validity of any act or processing of the tender board shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.
- (5) A decision of the tender board may be made by the tender board without a meeting by circular resolution by circulation of the relevant papers among members of the tender board, and the expression of the views of the majority thereof in writing, but any member shall be entitled to require that the decision be deferred and the subject matter be considered at a meeting of the tender board.

### 38. Emergency procurement

- (1) In exceptional circumstances where the accounting officer/chief executive officer considers that it is for the public interest that procurement should be made, the value of which exceeds the powers granted by these Regulations and time does not permit authority being obtained in the usual way, he may on his own responsibility effect the procurement; but he will at once report to the Paymaster-General, Treasury, explaining the reasons which induced him to depart from the ordinary course.
- (2) If a procurement entity finds that it is in the public interest that goods or works, the value of which exceeds his or her authority, ought to be procured as a matter of urgency, the procuring entity shall:
  - (a) Evaluate the need for such urgent procurement and decide which procurement method shall be followed in order to guarantee economy and efficiency, with due regard to circumstances of urgency and without regard to his limit of authority;
  - (b) procure the goods or works in accordance with the method of procurement selected; and
  - (c) immediately thereafter, present the unauthorised procurement to the Paymaster-General, Treasury for retrospective approval.
- (3) It must be clearly understood that officers or accounting officers or of chief executive officers or tender boards which make procurements in excess of the amounts allowed by these Regulations may be held personally liable if the expenditure is proved subsequently to have been unnecessary or extravagant, or was occasioned by the authority's lack of foresight in not procuring at the right time, and he may be held liable to makeup the difference between the actual cost of the goods or works and what their costs would have been through the appropriate channels.
- (4) Tender boards shall not grant retrospective approval for procurement, but they must be prepared to give advice to accounting officers or the Treasury, if called upon to do so.
- (5) The Central Tender Board in collaboration with the Stock Verification Department and the Technical Audit Unit of the Ministry of Finance shall advise the Paymaster-General on the appropriate action to take.
- (6) An award of a contract made by a procuring entity beyond its authority and not approved in retrospect shall not be valid and the authority that approved it will be responsible for the payment of the price(s) involved.

### 39. Alteration and amendment

- (1) A procurement contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendment is:
  - (a) To the benefit of the procuring entity or is not disadvantageous to the procuring entity; and
  - (b) is endorsed by the approving authority that reviewed and approved the original procurement.

### 40. 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;
- (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.

### 41. Procurement authorisation limits

- (1) Except in special cases that may be directed as such by the Minister, the authority to approve or award a contract for goods or works shall be that of the persons holding the positions shown in First Schedule to these Regulations as long as they are exercised within the corresponding procurement limits.
- (2) Where the estimated value of the procurement is within the purview of a specified tender board and where the recommended tenderer's tender price is within the purview of that tender board but the value of one or more of the remaining tenderers is above the authorisation limit of that tender board, the Secretary of that tender board shall, before communicating that tender board's decision, obtain the no objection report from the appropriate tender board whose limit of authority is appropriate to the highest tender price amongst the tenders which have been received in that respect.

### 42. Validity of procurement authorisation

- (1) Where an approval to award a contract and to enter into a written contract has been issued but the procuring entity is unable to conclude a contract with the approved supplier or contractor authority given by a tender board shall be valid for a period of:
  - (a) Six months for a local contract, which may be extended for a further period of three months without changing the terms and conditions of the original contract; or
  - (b) six months for an international contract which may be extended for a further period of six months without changing the terms and conditions of the original contract:

Provided that the approved supplier or contractor has not been notified of the award of contract.

- (2) Where the authority granted by a tender board expires in accordance with subregulation (1) above and where the approved supplier or contractor has not been notified of the award of contract, all tenders received shall be rejected, the procurement proceedings shall be annulled and new tenders shall be invited from at least all who had submitted tenders in the first instance as well as new ones.



## **Part IV – Central Tender Board Secretariat (regs 43-62)**

### **43. Performance of functions of the Central Tender Board by its members or its Secretariat and member of its staff**

- (1) The functions of the Central Tender Board may, except for authorising or rejecting to authorize award of contract, authorizing or rejecting to authorise variations, addenda or amendments to on-going contracts or approving sales by tender of goods or other property, be performed by any member of the Central Tender Board or its Secretariat or its staff authorized for that purpose by the Central Tender Board.
- (2) Nothing in subregulation (1) shall be construed as affecting the responsibilities of the Central Tender Board for functions performed on its behalf pursuant to subregulation (1).

### **44. Establishment of the Central Tender Board Secretariat**

There shall be the Secretariat of the Central Tender Board which shall assist the Central Tender Board in its daily discharge of its functions.

### **45. Composition of the Central Tender Board Secretariat**

The Central Tender Board Secretariat shall consist of procurement and other technical specialists together with the necessary supporting and administrative staff. The Executive Secretary of the Central Tender Board shall head the Central Tender Board Secretariat.

### **46. Appointment of officers of the Central Tender Board Secretariat**

- (1) The Executive Secretary of the Central Tender Board shall be appointed in accordance with section 10 of the Act.
- (2) The Central Tender Board shall, for all matters regarding employment policies and schemes of service, be guided by the Civil Service Commission.
- (3) The Central Tender Board may, subject to such conditions as it may impose, approve of the appointment to the staff of the Central Tender Board Secretariat, of any officer in the service of the Government, provided that in relation to pension, gratuity, allowances and other rights as a public officer, such officer shall be deemed to be in the service of the Government while so employed.

### **47. Functions of the Executive Secretary of the Central Tender Board**

- (1) The Executive Secretary of the Central Tender Board shall be the chief executive and administrative officer and responsible to the Board for the execution of the policy and management of the day to day affairs of the Central Tender Board.
- (2) Subject to the provisions of this regulation, the Executive Secretary, shall have such other functions as may be conferred upon him by the Central Tender Board.
- (3) The Executive Secretary shall delegate such powers and functions to other employees of the Central Tender Board Secretariat for the efficient management of the functions of the Central Tender Board.
- (4) The Executive Secretary shall attend all meetings of the Board as provided for under subregulations (6) and (7) of the First Schedule to the Act, and shall be the secretary at such meetings, but shall not have the right to vote.

#### 48. Functions of the Central Tender Board Secretariat

- (1) Subject to the provisions of these Regulations, it shall be the function of the Central Tender Board Secretariat, on behalf of the Central Tender Board—
  - (a) to provide advice and assistance to the board and, on request, to ministries, departments, parastatal organizations and regions on all procurement matters, including:
    - (i) Procedures and donors' requirements;
    - (ii) drafting tender documents, tender notices and advertisements;
    - (iii) evaluation of tenders;
    - (iv) contracts and contract management;
  - (b) to draw up guidelines and procedures, and to set standards and help implement good practice in procurement;
  - (c) to draft and maintain standard tender, contract and other procurement documents to be used as models in public procurement, and to assist procuring entities in their use;
  - (d) to draft general qualification criteria for suppliers and contractors;
  - (e) to set up and maintain management information systems, so as to provide for proper accountability and to build up a data base of information on specifications, sources of supply, prices and usage of goods;
  - (f) to monitor procurement practice so as to guide public authorities and to advise the board where Regulations or guidelines are being infringed or are inadequate so that action may be taken by the government;
  - (g) to monitor performance against standard procurement processing times;
  - (h) to prepare an annual report for the board;
  - (i) to co-operate in audits of procurement made by the Controller and Auditor-General or other appropriate authority or as may be directed by the board;
  - (j) to monitor the award and the implementation of public contracts with a view to ensuring that:
    - (i) Such contracts are awarded impartially and on merit;
    - (ii) the circumstances in which each contract is awarded or as the case may be, terminated, do not involve impropriety or irregularity;
    - (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; and
  - (k) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate to examine whether such licence is used in accordance with the terms and conditions thereof.
- (2) For the purposes of the discharge of its functions under these Regulations, the Central Tender Board Secretariat shall be entitled:
  - (a) To be advised of the award and, where applicable, the variation of any public contract by the public body responsible for such contract;
  - (b) subject to Regulation 53 to have access to all books, records, documents, or other property belonging to the public body or a contractor or a supplier or a consultant, whether in the

- possession of any officer of a public body or a contractor, supplier, consultant or any other person;
- (c) to have access to any premises or location where work on a public contract has been, is being or is to be carried out;
  - (d) to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person;
  - (e) to have access to any premises or location where it has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;
  - (f) to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as it considers necessary to any matter being investigated by it; and
  - (g) without prejudice to the provisions of regulations 52 and 53 to retain any such document, record or other property referred to in paragraph (f).
- (3) For the purposes of subregulation (2), the Central Tender Board Secretariat shall have power to enquire any public body to furnish the Central Tender Board Secretariat information with regard to the award of any public contract and such other information in relation thereto as the Central Tender Board Secretariat considers desirable.
- (4) For the purposes of paragraphs (d) and (e) of subregulation (2), the Central Tender Board Secretariat shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Central Tender Board Secretariat, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Central Tender Board Secretariat considers desirable.

#### **49. Scope of investigations by the Central Tender Board Secretariat**

- (1) Subject to subregulation (2), the Central Tender Board Secretariat may, if it considers necessary or desirable, conduct an investigation into any or all of the following matters:
- (a) The registration of contractors, suppliers or consultants in relation to the specific procurement;
  - (b) tender procedures relating to contracts awarded by the public bodies;
  - (c) the award of any public contract;
  - (d) the implementation of the terms of any public contract;
  - (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
  - (f) the practice and procedures relating to the grant, issue, suspension or revocation of any prescribed licence.
- (2) The Central Tender Board Secretariat shall not, without the prior written direction of the Secretary to the Cabinet acting at the direction of the Cabinet, investigate–
- (a) any public contract or any matters concerning any such contract entered into for the purposes of defence or for the supply of equipment to the Security Forces;
  - (b) the grant or issue of any prescribed licence for the purposes of defence or for the supply of equipment to the Security Forces,

and any report or comment thereon by the Central Tender Board Secretariat shall be made only to the Cabinet.

## 50. Initiation of investigation

- (1) Any investigation pursuant to regulation 49 may be undertaken by the Central Tender Board Secretariat on its own initiative or as a result of representations made to it, if in its opinion such investigation is warranted.

## 51. Procedure in respect of investigation

- (1) The Central Tender Board Secretariat may adopt whatever procedure it considers appropriate to the circumstances of a particular case and, subject to the provisions of these Regulations, may obtain information from such person or persons and in such manner and make such enquiries as it thinks fit.
- (2) Nothing in these Regulations shall be construed as requiring the Central Tender Board Secretariat to hold any hearing and, no person shall be entitled as of right to comment on any allegations or be heard by the Central Tender Board Secretariat.

## 52. Evidence

- (1) Subject to the provisions of subregulation (3) and regulation 53(1), the Central Tender Board Secretariat may at any time require any officer or member of a public body or any other person who, in its opinion, is able to give any assistance in relation to the investigation of any matter pursuant to these Regulations, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that officer, member or other person.
- (2) The Central Tender Board Secretariat may summon before it:
  - (a) Any person who has made representations to it; or
  - (b) any officer, member or employee of a public body or any other person who, in the opinion of the Central Tender Board Secretariat, is able to furnish information relating to the investigation.
- (3) No person shall, for the purposes of an investigation, be compelled to give any evidence, or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

## 53. Restriction of disclosure of certain matters

- (1) Where the Secretary to the Cabinet, acting on his own initiative or acting at the direction of the Cabinet—
  - (a) gives notice that the disclosure by the Central Tender Board or its Secretariat of any document or information specified in the notice, or any class of document or information so specified, would:
    - (i) Involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; or
    - (ii) prejudice the relations of the United Republic with the government of any other country or with any international organization; or
    - (iii) prejudice the detection of offences,

the Central Tender Board or its Secretariat or any member of its staff shall not communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified;

- (b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of the United Republic, the Central Tender Board or its Secretariat shall not further require such information or answer to be given or such document or thing to be produced.
- (2) Except as provided in subregulation (1), no regulation which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Central Tender Board or its Secretariat.

#### **54. Procedure after investigation**

- (1) After conducting an investigation under these Regulations, the Central Tender Board Secretariat shall, in writing inform the principal officer of the public body concerned of the result of that investigation and make such recommendations as it considers necessary in respect of the manner in which was investigated.
- (2) If any report of the Central Tender Board Secretariat reflects adversely upon any person, the Chairman of the Central Tender Board shall, so far as practicable, inform that person of the substance of the report.

#### **55. Disciplinary action against officers**

- (1) If the Central Tender Board Secretariat finds, during the course of its investigation or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer, or member of a public body, it shall refer the matter to the Central Tender Board.
- (2) The Chairman of the Central Tender Board shall refer the matter to the person or persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all such cases shall submit a special report to the Minister responsible for matters relating to finance.

#### **56. Abuse of authority by a public officer**

Where a public officer or officer exercises the power conferred on him by the Act and by these Regulations in abuse of the authority of his office he, as well any as other person involved in procuring the public officer to exercise powers in abuse of the authority commits an offence and may be proceeded against in accordance with section 96 of the Penal Code <sup>7</sup>.

#### **57. Proceedings of Central Tender Board or its Secretariat not to be void for want of form**

The proceedings of the Central Tender Board or its Secretariat shall not be rendered void for want of form.

#### **58. Funds of the Central Tender Board**

- (1) The funds of the Central Tender Board shall consist of:
  - (a) Moneys received by the Central Tender Board for goods or services provided under the authority of the Act and these Regulations;
  - (b) such moneys as may be voted by Parliament for the purposes of the Central Tender Board;
  - (c) any such other moneys borrowed, received by or made available to the Central Tender Board for the purposes of its functions.

- (2) The Central Tender Board may:
  - (a) Subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may required for the performance of its functions;
  - (b) charge and collect fees on tender and other related documents;
  - (c) levy fees and other charges for the services provided by the Central Tender Board.
- (3) There shall be paid from the funds of the Central Tender Board:
  - (a) The salaries, allowances and loans of the staff of the Central Tender Board;
  - (b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Central Tender Board when engaged on the business of the Central Tender Board, at such rates as the Minister may determine; and
  - (c) any other expenses incurred by the Central Tender Board in the performance of its functions.
- (4) The Central Tender Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

## 59. Financial year

The financial year of the Central Tender Board shall be the period of twelve months ending on the 30th June in each year.

## 60. Books of accounts

- (1) The Central Tender Board shall keep proper books of accounts and other records relating to its accounts.
- (2) Such books of accounts and other records shall be open for inspection by the Minister or any person duly authorized by him in that behalf.

## 61. Audit of accounts

- (1) The accounts of the Central Tender Board shall be audited annually and a detailed report thereon submitted to the Minister and to the Board.
- (3) For the performance of his duties under subregulation (1), the auditor to the Central Tender Board shall have access at all reasonable times to all books of accounts, records, returns, reports and other documents relating to the Central Tender Board accounts.

*[Please note: numbering as in the original.]*

- (4) In respect of each financial year, the auditor to the Central Tender Board shall certify whether or not:
  - (a) He has received all the explanations and other information necessary for the performance of his duties;
  - (b) the accounts of the Central Tender Board have been properly kept; and
  - (c) according to the explanations and other information received, and the books of account, records, returns, reports and other documents relating to the Central Tender Board's accounts produced to him, the accounts of the Central Tender Board reflect a true and accurate financial position of the Central Tender Board or of its profit and loss position, for the period covered by his certification.

## 62. Annual reports

- (1) The Executive Secretary of the Central Tender Board shall within three months after the end of each financial year, submit to the Minister and the Permanent Secretary of the ministry responsible for matters relating to finance, an annual report in respect of that year containing:
  - (a) A copy of the audited accounts of the Central Tender Board, together with the auditor's report on those accounts;
  - (b) a report on performance against targets and any other related information;
  - (c) a report on the operations of the Central Tender Board during that financial year; and
  - (d) such other information as the Permanent Secretary may require.
- (2) The annual report referred to in subregulation (1) shall also contain the Annual Performance Agreement between the Permanent Secretary and the Executive Secretary of the Central Tender Board.

## Part V – Procurement Planning and Financial Controls (regs 63-79)

### 63. Planning

- (1) Planning for implementation shall involve preparation of a project work plan describing the various project tasks and activities, including how the tasks will be accomplished and managed and identifying the resources necessary to carry out the various project activities.
- (2) Procurement planning shall begin at the design stage during the identification/preparation stages of the project cycle.
- (3) The procuring entity shall take a strategy decision whether the most economic and efficient procurement can best be achieved by separating contracts for each component.
- (4) Proper planning of procurement of recurrent items shall be based on an adequate stock control system.
- (5) Before making any procurement arrangements, a procuring entity:
  - (a) Shall check whether the item to be procured falls under the parastatal organisation, executive agency, independent department of Government, ministerial, regional, district or Central Tender Board;
  - (b) shall check from specialised central stores or service agents (e. g Government Stores, Medical Stores, Government Printers, Veterinary Stores) and from own Ministry/department stores offering competitive quality goods and services and in the case of non-availability of the requirements or availability at higher prices than market prices, a written confirmation shall be obtained as per regulation 75 of these Regulations.
- (6) A procuring entity must forecast its requirements for goods and works as accurately as is practicable, with particular reference to works already programmed in the public authority's annual work plan and included in the annual estimates.
- (7) The forecasts shall include an estimate of the optimum time to the nearest month for receipt of each consignment of goods or completion of required works.
- (8) The cost of such requirements shall then be estimated and compared with the likely availability of voted or donor funds. For these purposes, the price previously paid for similar procurement or any other market sourced information shall be utilised.
- (9) The estimate shall be shown in the tender evaluation report and priorities for procurement may be determined in accordance with available funds.

- (10) A procuring entity shall then draw up procurement plans for those requirements for which sufficient funds are available in the current vote, subhead or, if payment will be due in a subsequent financial year, have been budgeted for that year.
- (11) In compiling such plans, a procuring entity shall establish the appropriate method of procurement, as set out in Part VI of these Regulations, to be employed for each requirement.
- (12) The time scale for each procurement shall then be calculated on the basis of the standard processing times at Fourth Schedule to these Regulations, allowing any necessary margin for delays in transmission of documents or clarification of tenders. From this timescale, the start dates and critical points in the procurement process shall be set out in the procurement plans.
- (13) Except for institutions which have fully fledged engineering service departments or such other similar professional service departments, and those that are in position to use the services of such professional departments, all procuring entities shall engage the services of consultants to prepare tender documents, evaluate and make recommendations to accounting officers/chief executive officers.
- (14) Approval and award of contract shall be undertaken in line with the authorising levels given in the Second Schedule to these Regulations.

#### **64. Approval to proceed with procurement**

- (1) Before the preparation of tendering documents, shall be established genuine intention to proceed with the procurement.
- (2) Approval of the accounting officer or chief executive officer must be held either by inclusion of that procurement in a procurement programme or plan or by request as an individual item of procurement.

#### **65. Aggregating requirements**

- (1) In order to maximise economy and efficiency in its procurement, a procuring entity may group goods or works of a broadly similar or related nature into a single tender or number of tenders of a size and type that will be likely to attract the most suppliers or contractors, provided that this is practicable and will not cause unreasonable delay in the procurement.
- (2) Requirements that are to be debited to different vote subheads shall only be combined into one tender if all costs of the procurement can be easily identified and separately debited.
- (3) So as to maximise participation in such tenders, suppliers or contractors need not be required to tender for all the goods or works so grouped, but may be permitted to submit tender in respect of each item or a combination of items of goods, or individual contracts or a combination of contracts for works.
- (4) Such tenders shall be received and opened by the same deadline and evaluated simultaneously so as to determine the tender or combination of tenders that offers the lowest evaluated cost.
- (5) Where practicable and appropriate, a procuring entity may seek to combine tenders for goods or works of a broadly similar or related nature which are desired by more than one ministry or department into a single tender to be issued by the Ministry responsible for works on behalf of each ministry or department.

#### **66. Prohibition of splitting tenders and contracts**

- (1) A procuring entity shall not divide its procurement into separate contracts–
  - (a) for the purpose of avoiding international or national tendering; or
  - (b) so that the procurement may be authorised by a lower level of authority than would be appropriate for the total requirement.



- (2) Any procuring entity proved to have divided its procurement for the purposes of provisions of paragraphs (a) and (b) of subregulation (1) the head of that procuring entity and such other officer shall be held personally responsible in accordance with section 64 of the Act.
- (3) Proper planning of procurement of recurrent items needs to be based on an adequate stock control system.
- (4) User Ministries and departments should plan their requirements in such a manner that the same goods or works are not procured more than once in every six months within the limits given to the accounting officer/chief executive officer or tender boards. Items or consumables which require constant use shall be procured on specified length of period on annual basis. It is not permitted to subdivide the requirements to bring the total value within the lower limits of authorisation.

## 67. Packaging of procurement

- (1) In considering how a project may be carried out, account shall be taken of the advantage, for economic and technical reasons, of dividing the project into homogeneous lots or packages which are as large as possible.
- (2) Where a project has been divided into packages, the size of the package should be appropriate to foster maximum competition to obtain the most economic contract.
- (3) If similar items of equipment are to be procured for several subcomponents in a project or for several projects, it may be convenient to combine them all into one procurement package in order to achieve economies of sale.
- (4) Where a project has been divided into lots or packages, the instructions to tenderers shall state:
  - (a) The number of lots or packages;
  - (b) the nature, location and size of each lot; and
  - (c) where appropriate, the minimum and maximum number of lots or packages for which a tenderer may tender.
- (5) The procedure for submitting a tender shall be as follows:
  - (a) Tenderer may submit a tender for each lot or package;
  - (b) unless the instructions to tenderers provide otherwise, a tenderer may include in his tender the overall rebate he would grant in the event of amalgamation of some or all of the lots or packages for which he has submitted individual tenders;
  - (c) unless the instructions to tenderers state that lots or packages apportioned to the same tenderer shall form a single contract, each lot shall form a separate contract;
  - (d) where lots or packages are to be apportioned to different tenderers, the invitation to tender document or the instructions to tenderers may provide that the tenderer for a particular lot or packages shall ensure the co-ordination of the execution of all the lots or packages.

## 68. Appointment of consultants for procurement of goods or works

- (1) Where the appointment of a consultant is considered necessary for the effective procurement of goods or works and has not already been undertaken, a procuring entity must complete selection proceedings and enter into a contract with the chosen consultant in accordance with the Selection and Employment of Consultants Regulations, 2001 in sufficient time for that consultant to review the tender documents prior to the issue of tender.
- (2) The responsibilities of consultants in terms of their employment agreement may include the preparation of tendering documents. In such cases, ministerial or departmental policies, procedures and requirements generally affecting the procuring entity must be detailed in writing to the

consultant, including the need to use standard tendering documents and associated forms in all tendering documents.

- (3) Draft tendering documents prepared by a consultant must first be approved by the procuring entity before the same are submitted to higher authority for vetting.
- (4) Unless specific written approval is given by the appropriate tender board, officers responsible for briefing of consultants shall ensure that these requirements are complied with.

#### **69. Establishing contract period**

- (1) The contract period allowed must be a realistic assessment of the time in which a reasonably competent supplier or contractor could be expected to complete delivery of the goods or complete the works having regard not only to the desired completion date, but to the locality.
- (2) Where, after the preparation of tender documents, there is delay for any reason in calling tenders, the contract period allowed for completion should always be reviewed immediately prior to calling of tenders.
- (3) For particular types of contracts and particular weather conditions, sufficient time must be allowed for seasonal changes.
- (4) Any move to shorten the contract period unnecessarily can result in higher tender prices and may also lead to extravagant claims for time extensions. In the event that circumstances dictate a shorter than desirable contract period the attention of prospective tenderers should be drawn to this requirement specifically in the documents.

#### **70. Provision of estimate for works**

- (1) An accurate detailed estimate of cost based on the contract schedule must be prepared before tenders are called and any provisional or alternative items be clearly defined.
- (2) While contingencies may be included in the programmed figures and for financial authority, they are not to be included in the contract work estimate.
- (3) The estimate is to be reviewed and updated when the contract information sheet is prepared and the work or tender advertised provided that where, for any reason, there is a significant delay between the preparation of the contract information sheet and the date of tenders closing, the estimate is to be reviewed again.
- (4) Reasons for changing approved estimates other than for movement in the cost index, shall be fully documented and recorded in the procurement record.
- (5) Estimates of all works shall be signed by a registered engineer, registered quantity surveyor or registered architect certifying that they have been prepared capably and checked.
- (6) The estimate is then to be approved by the accounting officer or chief executive officer of the appropriate public authority.

#### **71. Approval of tendering documents**

- (1) Approval of the draft tendering documents is required before the tender is advertised and is to be obtained at the appropriate administrative and technical levels as may be established from time to time.
- (2) Before submission for approval, the documents shall be checked to ensure they are in order in all respects in order:
  - (a) That questions covered by the general conditions and special conditions of contract or bid data sheet have not been duplicated in or qualified unintentionally by, the specifications;

- (b) that no departure from standard practice in regard to percentages and terms of payments, etc. have been incorporated without proper approval;
- (c) that the correct forms have been included.

## 72. Number of sets of tender documents

Enough sets of tender documents shall be prepared to enable sufficient copies to be made available for the use of prospective tenderers at the places to be mentioned in the advertisement and an additional set is required for the secretary of the appropriate tender board.

## 73. Types of works contracts

Works and construction contracts may be separated into the following types:

### a. Lump sum contracts:

These, as the name implies, are contracts for a fixed amount for the works as specified and tendered for. Such

contracts may or may not be accompanied by a priced schedule but when such schedules are provided, their purpose is to assist in the evaluation of progress payments and for the pricing of variations as provided in the general conditions of contract. With a lump sum contract, the works shall not (except in respect of variations) be measured for the purpose of payment.

### b. Schedule of rates contracts:

A schedule of rates contract is a contract for which tenderers submit rates for the estimated quantities as set out in a bill of quantities which forms part of the tendering documents and from which the lump sum price is derived from the aggregation of sums tendered based on these quantities and rates. Payment under a schedule of rates contract is determined by measurement of the actual quantities completed and at the rates as tendered.

### c. Contracts with special features:

Contracts with special features including cost reimbursement type contracts are not to be let without Central Tender Board prior approval. In reimbursement contracts, the contractor is paid the actual cost of the work plus a fee. This fee may be a fixed sum, a percentage of the costs or a fluctuating fee. Where cost reimbursement contracts are used, the contract is to be arranged whenever possible on the basis of "cost plus fixed fee" rather than "cost plus percentage".

## 74. Requisition from allocated stores

- (1) A procuring entity which has access to allocated stores held by the ministry or department must ensure that any goods required are not already held in stock by or have been ordered for such stores, before commencing any other procurement action.
- (2) Such goods shall be obtained from the allocated stores by submission of an authorised requisition voucher to the storekeeper or stock controller of a ministry or department.

## 75. 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 item is not available or is 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 publish on quarterly year basis in the *Gazette* and in the local newspapers of wide circulation, the names of items available on the stores catalogue.

#### **76. Procurement of motor vehicles, heavy plant and spare parts**

- (1) For the purposes of these Regulations, "motor vehicles and heavy plant" include both fixed and movable plant such as engines, boilers, lorries, motor cars, motor cycles, tractors, road rollers, motor graders, etc.
- (2) The Director of Electrical and Mechanical Division of the Ministry of Works or his designated agent or authorised representative may be consulted and advice obtained before the procurement or purchase of motor vehicles or heavy plant takes place in order to ensure that detailed and acceptable schedule of requirements and specifications are prepared before any procurement is carried out.
- (3) Motor vehicles, heavy plant and spare parts to be purchased shall be brand new. Second hand motor vehicles, heavy plant and spare parts shall not be procured.
- (4) The Secretary to the Cabinet may, on the direction of the Cabinet and on the advise of the Director of Electrical and Mechanical Division of the Ministry of Works, determine the type, make and size of motor of the Ministry of Works, determine the type, make and size of motor vehicles or other motorised equipment to be procured for official use of specified state officials or other senior government officers. After that determination, the Secretary to the Cabinet shall issue a circular specifying the type, make or size of the preferred vehicles for that purpose.
- (5) The preferred motor vehicles or other motorised equipment as determined under subregulation (4) of this regulation, shall be procured either directly from the manufacturer of the said motor vehicles or through competitive quotations from reputable authorised local and international suppliers or dealers of the specified vehicles.
- (6) The procurement shall require the prior written approval of the tender board whose authority limit is appropriate to the value of the procurement in reference.

#### **77. Maintenance and repair of government owned motor vehicles, plant and equipment**

- (1) Whenever the need arises for maintaining or repairing a government - owned motor vehicle, plant or equipment, the appropriate government workshop or garage shall be responsible for the repair and maintenance.
- (2) In the event that the appropriate local government workshop or garage is unable to carry out the repair or maintenance due to non-availability of spare parts, technical know-how or other resource constraints or because the price offered by such workshop or garage is above the available market prices, a certificate to that effect shall be issued by such workshop or garage and the ministry or government department will be allowed to obtain the same services from:
  - (a) One of the approved and authorised private garages; or
  - (b) by competitive quotations from private garages offering the same services.
- (3) The Director of Electrical and Mechanical Division of the Ministry of Works shall, through competitive tendering or pre-qualification, keep an up-to-date list of private workshops or garages authorised to maintain and repair government-owned motor vehicles and plant to which ministries and government departments may be authorised to maintain and repair government-owned motor vehicles.
- (4) The transport officer or any other designated officer of the ministry or government department will maintain a record of maintenance, repairs and replacement in respect of each motor vehicle, piece of plant and equipment.
- (5) The record shall be made available for inspection by the Director of Electrical and Mechanical Division of the Ministry of Works and the Controller and Auditor-General.

## **78. Procurement of computers and other related information technology equipment and tools**

- (1) For the purposes of these Regulations "computers and other related information technology equipment and tools" means computers of any type, computer printers, scanners, server, CD ROMs, software, local area networks, etc.
- (2) The Director of Computer Services of the Ministry of Finance or his designated and approved agent or authorised representative must be consulted and advice obtained before the procurement or purchase of computers and other related information technology equipment and tools takes place in order to ensure that detailed and acceptable schedule of requirements and specifications are prepared before any procurement or purchase is carried out.

## **79. Commitment of funds**

- (1) In order to make sure that funds are available to cover the cost of any proposed procurement, a procuring entity shall ensure that an entry has been made in the relevant Vote Book, recording the estimated or known commitment, before commencing procurement proceedings.
- (2) In the case of contracts for works, a procuring entity shall update any estimate of costs shown in the annual estimates and calculate a total cost for the works, to include any elements that may be contracted separately.
- (3) A projection for the works as a whole may be prepared by the procuring entity and submitted to the Accountant of the Ministry who shall certify that funds sufficient for the whole of the works are available and have been committed.
- (4) The commitment shall be recorded in the Vote Book before procurement proceedings are commenced.
- (5) When the contract extends over several years an allocation of funds may be issued annually so that the total amount issued does not exceed the contract price plus a percentage for price and physical contingencies, unless specific approvals are obtained for additional work and cost price increased.

## **Part VI – Methods of Procurement and their conditions for use (regs 80-96)**

### **80. Selection of a method of procurement**

- (1) Except as otherwise provided by these Regulations, a procuring entity engaging in procurement of goods or works or build, operate and transfer (BOT) or build, own, operate and transfer (BOOT) and turnkey projects shall do so by means of competitive tendering proceedings.
- (2) In the procurement of goods, works, BOT, BOOT or turnkey project, a procuring entity may use a method of procurement other than competitive tendering proceedings only pursuant to regulation [84](#) or [85](#) or [86](#).
- (3) If the procuring entity uses a method of procurement pursuant to subregulation (2), it shall include in the record required under regulation [11](#) a statement of the grounds and circumstances on which it relied to justify the use of that method.
- (4) A procuring entity shall procure goods or works by competitive tendering using whichever of the methods specified in regulation [68](#) or [74](#) is the most appropriate to the requirements being procured. However, a procuring entity may select an appropriate alternative method of procurement as provided for in regulation [86](#) or [87](#) or [90](#) in any case where tendering would not be the most economic and efficient method of procurement and the nature and estimated value of the goods or works permit.

## 81. Pre-qualification

Before inviting open tenders, a procuring entity shall consider pre-qualifying suppliers or contractors further to regulation 16 so as to identify those who possess the necessary resources and competence for completion of the eventual contract.

## 82. International competitive tendering

- (1) In international competitive tendering or otherwise known as international competitive bidding (ICB), a procuring entity shall invite suppliers or contractors, regardless of their nationality, by means of a tender notice that shall be advertised nationally and internationally, or nationally only, to submit priced tenders for goods or works.
- (2) This form of tendering shall be used in all cases where:
  - (a) Payment may be made in whole or in part in foreign currency;
  - (b) the estimated cost of the goods or works exceeds the threshold for such tenders shown in Third Schedules to these Regulations; or
  - (c) it is desired to attract tenders from the widest range of suppliers or contractors, regardless of the estimated value of the goods or works to be procured.
- (2) Under the international competitive tendering the procuring entity shall advertise the invitation to tender in the form of the specific procurement notice (SPN) for any particular contract, in at least one newspaper of wide and general circulation in Tanzania and in any international newspaper as may be directed by an appropriate tender board.
- (3) For large or specialised contracts, the appropriate tender board may additionally require that the invitation to tender advertised in well-known technical magazines or trade publications, or in newspapers of wide international circulation.
- (4) The notification of the invitation to tender shall be done at the same time as the advertisement in the local newspapers. Notification shall be given in sufficient time to enable prospective tenders to obtain pre-qualification or tender documents and prepare and submit their responses.

## 83. National competitive tendering

- (1) In national competitive tendering, otherwise known as national competitive bidding (NCB), a procuring entity shall invite suppliers or contractors, regardless of their nationality, by means of a tender notice advertised only in the United Republic of Tanzania, to submit priced tenders for goods or works.
- (2) Such form of tendering may be used in cases where:
  - (a) Payment may be made wholly in Tanzanian shillings;
  - (b) the goods or works are available locally at prices below the international market;
  - (c) foreign tenderers are not expected to be interested, though they shall not be excluded from tendering; and
  - (d) the estimated cost of the goods or works is small and does not exceed the threshold for open international tendering specified in Third Schedule to these Regulations;
  - (e) works are scattered geographically or spread over time;
  - (f) works are labour intensive;
  - (g) the advantages of international competitive tendering are clearly out-weighed by the administrative or financial burden involved.

- (2) Procurement through national competitive tendering shall be advertised only in the national press, and may not be notified to the international community provided that the extent, the mode and the text of the advertisement shall be agreed upon and be approved by the tender board whose limit of authority is appropriate to the estimated cost of the procurement.
- (3) Tender documents may be in Kiswahili language.
- (4) If foreign firms wish to participate under these circumstances, they shall be allowed to do so.
- (5) Domestic or national preference shall not apply in the evaluation of tenders under the national competitive tendering.

#### **84. Restricted tendering**

- (1) A procuring entity may restrict the issue of tender documents to a limited number of specified suppliers or contractors when:
  - (a) Such suppliers or contractors have already pre-qualified further to Regulations 16 and 81 and the procedures set out in Regulation 16 of these Regulations; or
  - (b) the goods required are of a specialised nature or can be obtained from a limited number of reputable sources; or
  - (c) the works required are within the competence of a limited number of specialised contractors; or
  - (d) the estimated contract values are within the limit for restricted tendering shown at Third Schedule to these Regulations, and the time and cost required to examine and evaluate a large number of tenders would be disproportionate to that value; or
  - (e) there is an urgent need for the goods or works such that there would be insufficient time for a procuring entity to engage in open national or international tendering, provided that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have not been caused by dilatory conduct on its part; or
  - (f) other exceptional reasons justify departure from full competitive tendering procedures.
- (2) Other exceptional reasons may justify departure from full competitive tendering procedures.
- (3) The justification for restricting procurement further to regulation 84(1) must be shown in the record of procurement proceedings made further to regulation 20.
- (4) Except where suppliers or contractors have already pre-qualified, a procuring entity issuing a restricted tender shall seek tenders from a list of potential suppliers or contractors broad enough to assure competitive prices.
- (5) In cases where only a limited number of suppliers or contractors can reasonably be expected to be able to tender, the list shall include all such suppliers or contractors.
- (6) In all respects other than advertisement and issue of the tenders, the procedures for competitive tendering as set out in these Regulations shall apply.

#### **85. International and national shopping**

- (1) Shopping is a procurement method based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices, and is an appropriate method for procuring readily, available off-the-shelf goods or standard specification commodities that are small in value.

- (2) A tender board may approve for competition to be invited through request for quotations at international or national level, where it has been determined that:
  - (a) the goods to be procured are so diversified that it would be of no commercial interest for any single supplier to tender for them; or
  - (b) the goods are readily available off-the-shelf or standard specification commodities; and
  - (c) the goods can be purchased either locally or internationally.
- (3) A procuring entity shall not divide its procurement into separate contracts for the purpose of invoking subregulation (1) of this regulation.
- (4) When the procurement of goods by the procedure of shopping is approved, the procuring entity shall be authorised to address itself to suppliers from at least three suppliers. The list may include qualified agents of foreign suppliers in Tanzania.
- (5) When the procurement of goods by the procedure of shopping is approved, the procuring entity shall be authorised to address itself to suppliers from at least three suppliers which may include qualified agents of foreign suppliers in Tanzania.
- (6) The list of the suppliers to be contacted shall be submitted to the appropriate tender board for approval and thereafter the procuring entity shall address a request for quotations to all approved suppliers simultaneously.
- (7) A minimum period of forty-five days shall be allowed for the preparation of the tenders and quotations may be submitted by telex or facsimile.
- (8) A procuring entity shall request quotations from as many suppliers or contractors as practicable, but from at least three, if possible each of whom shall be informed whether any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.
- (9) The letter of invitation for quotations and any attachments shall include, at a minimum:
  - (a) The full name and address of the procuring entity;
  - (b) instructions to tenderers;
  - (c) a full description of the goods or works to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
  - (d) the quantities of any goods to be supplied and the required time and place of delivery, any requirements for such goods;
  - (e) in the case of works, bills of quantities, the location and the required time for their completion;
  - (f) whether any alternatives to the required specifications or characteristics of the goods or works, or to other contractual conditions, are to be permitted;
  - (g) the criteria for evaluation of quotations/tenders including any weighting factors that may be applied to technical, price or other factors;
  - (h) the period, generally ninety (90) days, during which the quotations are to remain valid;
  - (i) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
  - (j) a statement of the currency in which the successful supplier or contractor will be paid, if different from the quoted price;
  - (k) a statement that the procuring entity does not bind itself to accept any quotation and may reject all quotations;
  - (l) notice of the tenderer's right to review pursuant to Part VII of the Act;



- (m) the place and deadline for the submission of quotations, the deadline being expressed as a specific time and date, generally allowing not less than 45 days from the date of distribution of the letter of invitation.
- (10) All prospective tenderers shall be provided with the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis.
- (11) Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation and no negotiations shall take place between the tender evaluation committee and contractor or supplier with respect to a tender, proposal, offer or quotation submitted by the supplier or contractor.
- (12) The procurement contract shall be awarded to the supplier or contractor that gave the lowest-priced quotation meeting the needs of the procuring entity.

## 86. Single-source procurement for goods

- (1) Subject to approval by the tender board whose authority limit is appropriate to the estimated cost of the goods or works required, a procuring entity may engage in a single-source procurement or direct contracting in accordance with regulation 86(3) under the following circumstances:
  - (a) The goods are available only from a particular supplier or a particular supplier has exclusive rights in respect of the goods, and no reasonable alternative or substitute exists;
  - (b) there is an urgent need for the goods, and engaging in tendering proceedings or any other method of procurement would therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;
  - (c) owing to a catastrophic event, there is an urgent need for the goods, making it impractical to use other methods of procurement because of the time involved in using those methods;
  - (d) the procuring entity, having procured goods, equipment, technology, services or spare parts from a supplier, following national or international competitive tendering satisfactory to these regulations and to the tender board, whose limit of authority is appropriate to the estimated cost of the goods or works required determines that additional supplies of the same type as those purchased under an existing contract are required;
  - (e) the procuring entity seeks to enter into a contract with the supplier for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs; or
  - (f) the procuring entity applies the Public Procurement Act, 2001 pursuant to section 2(2)(b), to procurement involving national defence or national security and determines that a single-source procurement is the most appropriate method of procurement;
  - (g) where critical items need to be purchased from a specified supplier to ensure that the output of a process plant shall be guaranteed by the contractor responsible for the process design;
  - (h) where standardization of equipment is essential for economic and technical reasons and it has been proved to the tender board's satisfaction that compatibility of the existing equipment with another make of equipment cannot be established and that there is no advantage in having an alternative supplier;
  - (i) where standardization of spare parts is required so that they may be compatible with existing equipment or spare parts or stock items related to specific and specialized equipment or machinery;
  - (j) where on an on-going project, additional items need to be purchased for the completion of implementation.

- (2) For the purposes of these Regulations, standardisation shall be deemed to be appropriate where the original equipment must be suitable for the purposes of the project being financed and have been acquired at reasonable prices through national or international competitive tendering satisfactory to the tender board and provided that the number of the new items to be added is less than the existing value and cannot be obtained from other sources—
- (3) In the circumstances set forth in article 86(1) a procuring entity may procure the goods, by soliciting a proposal or price quotation from a single supplier.
- (4) Subject to approval by the appropriate tender board and following public notice and adequate opportunity to comment, a procuring entity may engage in single-source procurement when procurement from a particular supplier is necessary provided that in such a case, the letter of invitation to the selected supplier shall include, at a minimum:
  - (a) The full name and address of the procuring entity;
  - (b) instructions for submission of a quotation;
  - (c) a full description of the goods to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
  - (d) the quantities of any goods to be supplied and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods;
  - (e) whether any alternatives to the required specifications or characteristics of the goods, or to other contractual conditions, are to be permitted;
  - (f) the period, generally ninety days, during which the quotation is to remain valid;
  - (g) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
  - (h) a statement of the currency in which the supplier or contractor will be paid;
  - (i) a statement that the procuring entity does not bind itself to accept the quotation.
- (5) The procuring entity shall examine carefully any quotation received and, if necessary, negotiate subsequently with the supplier so as to ensure that the requirement for the goods is properly addressed and met as far as is practicable and that the price quoted is not excessive and is in line with reasonable expectations.
- (6) The procuring entity must nevertheless take care not to make undesirable reductions in the quality of the goods in order to achieve cost savings.
- (7) The justification for single-source procurement further to regulations 86(1) to 86(5) must be shown in the record of procurement proceedings made further to regulation 20.

## 87. Direct contracting for works

- (1) A procuring entity may obtain a priced quotation from a single contractor and negotiate and enter into a direct contract when:
  - (a) There is an urgent need for the works such that there would be insufficient time for a procuring entity to engage in tendering or any other method of procurement, provided that the circumstances giving rise to the urgency could not have been foreseen by the procuring entity and have not been caused by dilatory conduct on its part; or
  - (b) there is only one particular contractor which a procuring entity can reasonable expect to undertake the required works; or
  - (c) there are advantages to a procuring entity in using a particular contractor who has undertaken or is undertaking similar works or who may have already been mobilised with plant, equipment and staff in the vicinity;

- (d) where civil works already satisfactorily under construction are to be extended, and the corresponding contract had been awarded following national or international competitive tendering satisfactory to the tender board whose authority limit is appropriate to the revised contract sum, provided always that the tender board shall be satisfied that the prices on the extended contract are reasonable and competitive and that there is clearly no advantage to further tendering or that any new tendering would be unlikely to receive adequate responses, and the value of the contract extension is less than the original contract value;
  - (e) the estimated value of the works does not exceed the limit specified in Third Schedule to these Regulations.
- (2) The letter of invitation to the selected contractor shall include, at a minimum:
- (a) The full name and address of the procuring entity;
  - (b) instructions for submission of a quotation;
  - (c) a full description of the works to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
  - (d) bills of quantities, the location and the required time for their completion;
  - (e) whether any alternatives to the required specifications or characteristics of the works, or to other contractual conditions, are to be permitted;
  - (f) the period, generally ninety days, during which the quotation is to remain valid;
  - (g) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
  - (h) a statement of the currency in which the contractor will be paid;
  - (i) a statement that the procuring entity does not bind itself to accept the quotation.
- (3) A procuring entity shall examine carefully any quotation received and, if necessary, negotiate subsequently with the contractor so as to ensure that the requirement for the works is properly addressed and met as far as is practicable and that the price quoted is not excessive and is in line with reasonable expectations.
- (4) The procuring entity must nevertheless take care not to make undesirable reductions in the quality and scope of the works in order to achieve cost savings.
- (5) The justification for direct contracting further to regulation [87\(1\)](#) must be shown in the record of procurement proceedings made further to regulation [20](#).

## **88. Minor value procurement**

- (1) A procuring entity may procure goods or minor works directly from a supplier or contractor, where:
- (a) The value does not exceed the limit for minor value procurement specified in Third Schedule to these Regulations;
  - (b) the price quoted is reasonable; and
  - (c) no advantage to a procuring entity is likely to be obtained by seeking further quotations;
  - (d) the contract for the provision of such goods or works may be a Local Purchase Order (LPO).

## **89. Turnkey contracts**

- (1) A turnkey contract may be required for a major specialised works project, such as the construction of an industrial plant, where the supply of goods and the performance of various works need to be closely integrated. Under such a contract, the design and engineering, supply and installation

of equipment and the construction of the complete plant or works will be provided by a single contractor under the one contract.

- (2) Alternatively a procuring entity may:
  - (a) Remain responsible for the design and engineering, but invite tenders for a single contractor to take responsibility for the supply and installation of all goods and for the works required for a project;
  - (b) issue a tender for a single contract for all components of the design and works (known as "design and build" contract), but issue separate tenders for the supply of the goods required for a project;
  - (c) issue a single tender for a management contractor who may subcontract all the design, engineering, supply and works components of a project but who shall take responsibility for the timely completion of the project and all attendant risks which may be involved.

## 90. Force account

- (1) Force account or direct labour is construction by the use of public or semi-public agencies or departments concerned, where the public or semi-public agency has its own personnel and equipment. It may be the only practical method of constructing some kinds of works.
- (2) The use of force account or direct labour may be justified where:
  - (a) Quantities of work involved cannot be defined in advance;
  - (b) required works are small and scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable prices;
  - (c) work is required to be carried out without disrupting ongoing operations;
  - (d) risks of unavoidable work interruption are better borne by a procuring entity or public authority than by a contractor; or
  - (e) there are emergencies needing prompt attention.

## 91. Limited international competition

- (1) Limited international competition is essentially international competitive tendering by direct invitation without open advertisement and same is considered to be an appropriate method of procurement where:
  - (a) The contract values are small; or
  - (b) there is only a limited number of suppliers; or
  - (c) other exceptional reasons may justify departure from full international competitive tendering procedures.
- (2) Under limited international competition, a procuring entity shall seek tenders from a list of potential suppliers broad enough to assure competitive prices, such list shall include all suppliers when there are only a limited number.
- (3) National or domestic preferences shall not be applicable in the evaluation of tenders under the limited international tendering.
- (4) In all respects other than advertisement and preference international competitive tendering procedures shall apply.
- (5) A list of potential suppliers or conductors shall be prepared by the procuring entity and submitted to the appropriate tender board for comments and approval.

## 92. Procurement under build-operate-transfer and similar private sector arrangements

- (1) Where a public organisation is participating in financing the cost of a project procured under a build-own-operate/build-own-transfer/build-own-operate-transfer or similar type of private sector, either of the following procurement procedures may be used:
  - (a) The entrepreneur shall be selected under the international competitive tendering or limited international competition procedures acceptable to the Central Tender Board, which may include several stages in order to arrive at the optional combination of evaluation criteria such as:
    - (i) Cost and magnitude of financing offered;
    - (ii) performance specifications of the facilities offered;
    - (iii) the cost charged to the user or purchaser;
    - (iv) other income generated for the country or purchaser by the facility;
    - (v) the period of time facility's depreciation,the entrepreneur selected in this manner shall then be free to procure the goods, works and services required for the facility using its own procedures.
  - (b) Where the entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works or services required for the facility and to be financed by the government or public institution shall be procured in accordance with international competitive tendering or limited international competitive procedures.
  - (c) Where the entrepreneur has not been selected in the manner set forth in paragraphs (a) and (b), the goods, works or services required for the facility and to be financed by the government or public institution shall be procured in accordance with international competitive tendering or limited international competitive procedures.

## 93. Community participation in procurement

Where in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable in selected project components to:

- (a) call for the participation of local communities; or
- (b) increase the utilization of local know-how and materials; or
- (c) employ labour - intensive and other appropriate technologies,

the procurement procedures, specifications and contract packaging shall be suitably adapted to reflect these considerations, provided these are sufficient.

## 94. Procurement of commodities

- (1) Procurement of commodities such as grain, animal feed, cooking oil, fuel fertilizer and metals, the market prices of which fluctuate depending upon the demand and supply at any particular time, may involve multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favourable market conditions and to keep inventories low.
- (2) A procuring entity may draw up a list of pre-qualified suppliers to whom periodic invitations for the supply of commodities may be issued.
- (3) Such suppliers may then be invited to quote prices linked to the market price at the time of or prior to, the shipments of such commodities: Provided that tender validities shall be as short as possible.

- (4) A single currency in which the commodity is usually priced in the market may be used for tendering and payment, in which case that currency to be specified in the tender document.
- (5) Tender documents for supply of commodities may permit tenders to be sent by fax or telex where there is no requirement for tender security, or if standing tender securities valid over a specified period of time have been submitted by the pre-qualified suppliers. Standard contract conditions consistent with market practices may be used.

## **95. Procurement of agents**

- (1) A procuring entity may procure the services of a procurement agent to undertake any or all of those procurement functions which would otherwise be carried out by that entity provided that all such procurement functions are carried out in conformity with the Act and in accordance with these Regulations.
- (2) A procuring agent shall procure services by competitive selection in accordance with the Selection and Employment of Consultants Regulations, 2001.
- (3) A procuring entity shall:
  - (a) Be responsible for instructing any procurement agent that may be appointed further to regulation 95(1) to observe the relevant provisions of the Act and of these Regulations; and
  - (b) only authorise a procurement agent to act on its behalf within its limit of authority and shall ensure that any procurement of which the value exceeds such limit shall be reviewed and authorised by the appropriate approving authority before any contract is placed.
- (4) The procurement agent shall strictly follow all the procurement procedures outlined in these Regulations on behalf of the procuring entity including use of standard tender documents and documentation.

## **96. Inspection agents**

- (1) Where agents have been appointed by the Government to undertake pre-shipment inspection and certification of imports, the Minister may exempt goods that have been procured through competitive tendering or otherwise in accordance with these Regulations from price verification. Where exemption has not been granted, any inspection agents' fees are not to be included in the price tendered or considered in the evaluation of a tender.
- (2) Goods procured by Ministries and departments from sources outside the United Republic of Tanzania shall still be subject to inspection for quality and quantity, unless specifically exempted by the Minister.

## **Part VII – Tendering Proceedings (regs 97-118)**

### **Section I: Solicitation of Tenders and of Applications to Pre-Qualify (regs 97-103)**

#### **97. Competitive tendering for goods and 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.

#### **98. Invitation to tender and advertising**

- (1) Invitations to tender shall be made only through written invitations.

- (2) 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.
- (3) A procuring entity shall send, in good time before the planned issue of the tender, the draft text of the invitation, to the secretary of a tender board whose limit of authority is appropriate to the estimated value of the goods or works required, for comment and approval, and shall incorporate into the final text of the invitation, prior to publication, any amendments agreed with the appropriate tender board.
- (4) Invitations which are issued without prior approval by the appropriate tender board may not be considered as sufficient and adequate to satisfy a tender board's requirements, and consequently the procuring entity will be requested to issue new invitations to tender.
- (5) 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.
- (6) A tender notice shall be published in sufficient time, to enable prospective tenderers to obtain tender documents and prepare and submit their responses before the deadline for receipt of tenders.
- (7) 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.

## 99. Contents of invitation to tender

- (1) The invitation to tender shall contain at the minimum, the following information:
  - (a) The name and address of the procuring entity; the nature and quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;
  - (b) the desired or required time for the supply of the goods or for the completion of the works or the timetable for the provision of the services;
  - (c) the criteria and procedures to be used for evaluating the qualifications of suppliers or contractors, in conformity with Regulation [15](#);
  - (d) a declaration which shall not later be altered to the effect that contractors or suppliers may participate in the procurement proceedings regardless of nationality or declaration that participation is limited on the basis of nationality;
  - (e) the means or conditions of obtaining the solicitation documents and the place from which they may be obtained;
  - (f) the price, if any, charged by the procuring entity for the solicitation documents;
  - (g) the currency and means of payment for the solicitation documents;
  - (h) the language or languages in which the solicitation documents are available;
  - (i) the place for the submission of tenders;
  - (j) the deadline for the submission of tenders as well as the place, hour and date for opening tenders;
  - (k) the source of financing.

## 100. Issue of solicitation documents

- (1) The procuring entity shall provide the solicitation documents immediately after first publication of the tender notice to all suppliers or contractors who respond to the tender notice in accordance with the procedures and requirements specified in the invitation to tender.
- (2) If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of the solicitation documents to each supplier or contractor that has been pre-qualified and that pays the price, if any, charged for those documents.

## 101. Contents of solicitation documents

- (1) The solicitation documents shall include, at a minimum, the following information:
  - (a) Instructions to tenderers for preparing tenders;
  - (b) the criteria and procedures, in conformity with the provisions of Regulation 15, relative to the evaluation of the qualifications of contractors or suppliers and relative to the further demonstration of qualification pursuant to regulation 108(18);
  - (c) the requirements as to documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
  - (d) the nature and required technical and quality characteristics, in conformity with regulation 23 of the goods, construction or services to be procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate; the quantity of the goods; any incidental services to be performed; the location where the construction is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the construction is to be effected or the services are to be provided;
  - (e) the criteria to be used by the procuring entity in determining the successful tender, including any margin of preference and any criteria other than price to be used pursuant to regulation 108(15) and the relative weight of such criteria;
  - (f) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
  - (g) if alternatives to the characteristic of the goods, construction, services, contractual terms and conditions or other requirements set forth in the solicitation documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared;
  - (h) if contractors or suppliers are permitted to submit tenders for only a portion of the goods, construction or services to be procured, a description of the portion or portions for which tenders may be submitted;
  - (i) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes;
  - (j) the currency or currencies in which the tender price is to be formulated and expressed;
  - (k) the language or languages in conformity with regulation 25 in which tenders are to be prepared;
  - (l) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by contractors or suppliers submitting tenders, and any such requirements for any security for the performance of the procurement contract to be provided by the contractor or supplier



- that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) if a supplier or contractor may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
  - (n) the manner, place and deadline for the submission of tenders, in conformity with regulation 104;
  - (o) the means by which, contractors or suppliers may seek clarification of the solicitation documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of contractors or suppliers;
  - (p) the period of time during which tenders shall be in effect, in conformity with regulation 105;
  - (q) the place, date and time for the opening of tenders, in conformity with regulation 104;
  - (r) the procedures to be followed for opening and examining tenders;
  - (s) the currency that will be used for the purpose of evaluating and comparing tenders pursuant to regulation 108(16) and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
  - (t) references to the Public Procurement Act, the Regulations and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under regulation 128 or give rise to liability on the part of the procuring entity;
  - (u) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings, without the intervention of an intermediary;
  - (v) any commitments to be made by the supplier or contractor outside of the procurement contract, such as commitments relating to counter trade or to the transfer of technology;
  - (w) notice of the right provided under regulation 128 of these Regulations to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement proceedings;
  - (x) if the procuring entity reserves the right to reject all tenders pursuant to Regulation 21, a statement to that effect;
  - (y) any formalities that will be required once a tender has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to regulation 116, and approval by a higher authority or the public authority and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval;
  - (z) any other requirements established by the procuring entity in conformity with the Public Procurement Act, 2001 and the procurement regulations relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.
- (2) The solicitation documents shall be worded so as to permit and encourage competition and such documents shall set forth clearly and precisely all information necessary for a prospective tenderer to prepare a tender for the goods or works to be provided or executed.
- (3) A procuring entity shall use the appropriate standard tender documents (STD) issued by the Central Tender Board with minimum changes, acceptable to the Central Tender Board, as necessary to address project specific issues.

- (4) Any such changes shall be introduced only through tender or contract data sheets, or through special conditions of contract and not by introducing changes in the standard wording of the Central Tender Board's STDs. Where no relevant standard tender documents have been issued, the procuring entity shall use other internationally recognised standard conditions of contract and contract forms acceptable to the Central Tender Board.
- (5) The procuring entity shall send in good time before the planned issue of the tender documents, the draft text of the tender documents to the secretary of a tender board whose limit of authority is appropriate to the estimated value of the goods or works required, for comment and approval, and shall incorporate into the final text of the tender documents, any amendments agreed with the appropriate tender board. Tender documents that have not been approved by an appropriate tender board shall not be considered as sufficient and adequate to satisfy these Regulations.

## 102. Tender period

- (1) Although the time allowed for preparation of tenders shall depend on the magnitude and complexity of the procurement sought, tender boards will require that at least 45 calendar days from the date of first publication of the invitation to tender shall be allowed for the tender period. Where large works are involved, at least 90 calendar days from the date of the first publication of the invitation to tender shall be allowed to enable prospective tenderers conduct investigations at the site before submitting their tenders.
- (2) The particulars concerning the tender period shall be agreed upon between the appropriate tender board and the procuring entity at the appropriate time. The agreed tender period shall be mentioned in the invitation to tender or in the notification of qualification.
- (3) Once the tender period has been set and advertised, it shall not be changed, except in exceptional circumstances. In no case shall it be shortened and only in exceptional circumstances may it be extended with the prior approval of the tender board provided such action can be proved to be solely in the interest of better competition, fairness in the treatment of potential tenderers and economy for the procuring entity.
- (4) Any extension of the tender period shall be done reasonably in advance of the closing date and promptly communicated to all those who requested the tender documents.

## 103. Clarification and modifications of solicitation documents

- (1) A supplier or contractor may request a clarification of the solicitation documents from the procuring entity.
- (2) The procuring entity shall respond to any request by a supplier or contractor for clarification of the solicitation documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of tenders.
- (3) The procuring entity shall respond within a reasonable time so as to enable the supplier or contractor to make a timely submission of its tender and shall, without identifying the source of the request, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the solicitation documents.
- (4) At any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the solicitation documents by issuing an addendum.
- (5) The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors.
- (6) If the procuring entity convenes a meeting of suppliers or contractors, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents, and its responses to those requests, without identifying the source of the requests.

- (7) The minutes shall be provided promptly to all suppliers or contractors to which the procuring entity provided the solicitation documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders.

## **Section II: Submission of tender (regs 104-106)**

### **104. Submission of tenders**

- (1) The procuring entity shall fix the place for, and a specific date and time as the deadline for the submission of tenders.
- (2) The time for the tender opening shall be the same as time for the deadline for the receipt of tenders or promptly thereafter, and shall be announced, together with the place of the tender opening, in the invitation to tender.
- (3) Where in pursuant to regulation 103, the procuring entity issues a clarification or modification of the solicitation documents, or if a meeting of suppliers or contractors is held, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford suppliers or contractors reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their tenders.
- (4) The procuring entity may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline if it is not possible for one or more suppliers or contractors to submit their tenders by the deadline owing to any circumstance beyond their control.
- (5) Notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring entity provided the solicitation documents.
- (6) Tenders shall be delivered, by mail or by hand, to the address, within the time limit and in the form and manner indicated in the invitation to tender and stipulated in the tender documents as follows:
  - (a) Subject to subparagraph (b) of this subregulation a tender shall be submitted in writing, signed and in a sealed envelope;
  - (b) without prejudice to the right of a supplier or contractor to submit a tender in the form referred to in subparagraph (a), a tender may alternatively be submitted in any other form specified in the solicitation documents that provided a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality;
  - (c) the procuring entity shall, on request, provide to the supplier or contractor a receipt showing the date and time when its tender was received.
- (7) Where tender bonds or other tender securities have been provided for and stated in the tender documents, these shall be delivered not later than the closing date and time for the deposit or submission of the tenders in the amounts and in the form and manner stipulated.
- (8) Only tenders received within the time limit announced in the invitation to tender shall be eligible for consideration.
- (9) Tenders received after the deadline for the submission of tenders stipulated in the tender documents shall not be opened and shall not be considered and shall be returned to the supplier or contractor that submitted it.

### **105. Period of effectiveness of tender, modification and withdrawal of tenders**

- (1) The validity period required for tenders shall be specified in the invitation to tender. Any tender which purport to be valid for a shorter period shall be rejected by the procuring entity as being substantially non-responsive.

- (2) The period fixed by the procuring entity shall be sufficient to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalise a contract.
- (3) The validity period shall not exceed one hundred and twenty days from the final date fixed for the submission of tenders but it may vary depending on the nature and complexity of the contract.
- (4) In exceptional circumstances, prior to the expiry of the original period of effectiveness of tenders, the procuring entity may request suppliers or contractors to extend the period for an additional specified period of time.
- (5) A supplier or contractor may refuse the request without forfeiting its tender security and the effectiveness of its tender shall terminate upon the expiry of the unextended period of effectiveness. The request and the responses thereto shall be made in writing or by any other means that provide a record of the information contained therein.
- (6) Suppliers or contractors that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of their tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders.
- (7) A supplier or contractor whose tender security is not extended, or that has not provided a new tender security, shall be considered to have refused the request to extend the period of effectiveness of its tender.
- (8) The provisions of Regulation 106 regarding discharge and forfeiture of tender security shall continue to apply during the extended period of tender validity.
- (9) The successful tenderer shall remain bound by his tender for a further period of thirty days following the receipt of communication notifying him of his selection.
- (10) Unless otherwise stipulated in the solicitation documents, a supplier or contractor may modify, or withdraw the tender prior to the dead line for the submission offenders without forfeiting its tender security.
- (11) The modification or notice of withdrawal shall effective if it is received by the procuring entity prior to the deadline for submission of tenders.

## 106. Tender securities

- (1) When the procuring entity requires suppliers or contractors submitting tenders to provide a tender security:
  - (a) The requirement shall apply to all such suppliers or contractors;
  - (b) the solicitation documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security as well as the form and terms of the tender security, must be acceptable to the procuring entity;
  - (c) notwithstanding the provisions of regulation 106(1)(b) of these Regulations a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in Tanzania if the tender security and the issuer otherwise conform to the requirements set forth in the solicitation documents, unless the acceptance by the procuring entity of such a tender security would be in violation of a law of Tanzania;
  - (d) prior to submitting a tender, a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security, or of a proposed confirmer, if required; the procuring entity shall respond promptly to such a request;
  - (e) confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security on the grounds that

the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness.

- (2) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security, any requirement that refers directly or indirectly to conduct by the contractor or supplier submitting the tender shall not relate the conduct other than:
  - (a) Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stipulated in the solicitation documents;
  - (b) disagreement to arithmetical correction made to the tender prices;
  - (c) failure to sign the procurement contract if required by the procuring entity to do so;
  - (d) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.
- (3) The tender security, at the tenderer's option, shall be in the form of a certified cheque, a letter of credit or a bank guarantee from a reputable bank.
- (4) Tenderers shall be allowed to submit bank guarantees directly issued by a bank of their choice located in any country.
- (5) The tender security shall remain valid for a period of not less than twenty eight days beyond the validity period of the tender, in order to provide the procuring entity to act if the security is called for.
- (6) The tender securities of tenderers who have not been selected will be released not later than 30 days after the expiration of the tender validity period, as extended where appropriate in accordance with regulation 105(2), or upon the award of contract, whichever is earlier.
- (7) The tender security of the successful tenderer shall be discharged when the tenderer has signed the contract and furnished the required performance security to the satisfaction of the procuring entity.
- (8) The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of the tender security document, after whichever of the following that occurs earliest:
  - (a) The expiry of the tender security;
  - (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract if such a security is required by the solicitation documents;
  - (c) the rejection by the procuring entity of all tenders pursuant to these Regulations;
  - (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

### **Section III: Receipt of tenders and tender opening, evaluation and comparison of tenders (regs 107-118)**

#### **107. Receipt of tenders and tender opening**

- (1) The tender board that approved the issue of the tender documents shall receive tenders, which shall wherever possible be placed in a locked tender box.
- (2) The secretary to the tender board shall on request give each tenderer a receipt showing the time and the date that the tenders were received, particularly when the envelopes containing the tenders are too large to be placed in the tender box, or if no such box is available all tenders that are not

placed in a tender box shall be kept unopened in a secure place until the deadline time for opening that tender.

- (3) The secretary of each tender board shall be responsible to that board for holding securely the keys to its tender box or boxes including the postal box and for holding securely envelopes or packages containing any tenders which cannot be placed in a locked tender box.
- (4) Any tender that is received after the deadline time and date shall be returned unopened to the tenderer.
- (5) On receipt of the tenders, the envelopes shall be entered in a special register in the order in which they arrive. The registration number and the date and time of arrival shall be recorded on the envelope. Envelopes shall remain sealed and be kept in a safe place until they are opened under the conditions set out in regulations [107\(7\)](#) and [107\(8\)](#).
- (6) The time for the tender opening shall be the same as the time set for the deadline for the receipt of tenders or promptly thereafter and shall be announced, together with the place for the tender opening, in the invitation to tender.
- (7) The secretary of the tender board that approved the issue of the tenders shall convene a meeting for the purpose of opening the tenders that have been submitted.
- (8) 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.
- (9) At a public tender opening, the tenderers' names, the tender prices and the total amount of each tender, written notifications of tender modifications and withdrawals, any alternative tenders, if they have been requested or permitted, any discounts, the presence of the requisite tender security, and such other details as the tender board may consider appropriate shall, if any, be announced to those persons present at the opening of tenders, communicated on request to suppliers or contractors that have submitted tenders, but that are not present or represented at the opening of tenders and recorded by the secretary of the tender board or his delegate as each tender is opened.
- (10) In the case of a "two-envelope" system, the announcement shall include the fact that no price envelope has been opened.
- (11) Tenders received after the time stipulated, as well as those not opened and not read out at the tender opening, shall not be considered, and they shall be returned unopened.
- (12) Discounts offered by tenderers must be read out and announced in public during the process of tender opening. Any discount which is not read out at the formal tender opening ceremony shall not be taken into account in the evaluation and comparison of tenders.
- (13) While the tender opening proceedings are in progress, tenders shall be numbered consecutively, the last one being endorsed "and last" and initialled by the members of the tender opening committee in the presence of tenderers or their representatives.
- (14) The tender board that received and opened the tenders in public shall prepare, for its own records, minutes of the tender opening, including the information disclosed to those present in accordance with subregulation [\(9\)](#).
- (15) All tenders that have been accepted and opened shall be passed promptly with a copy of the record of the tenders received and those persons attending the meeting, to the respective procuring entity for evaluation.
- (16) After the public opening of tenders and before the announcement of the award of contract to the successful tenderer, information relating to the examination, tabulation, clarification, evaluation and comparison of tenders and recommendations concerning the award of the contract shall not be

disclosed or communicated to tenderers or any person or persons not officially concerned with such process.

- (17) After tenders have been opened, no tenderer shall be permitted to alter his tender; however, clarifications not changing the substance and price of the tender may be requested for by the procuring entity provided that such request for clarification and the tenderers' responses are made in writing.
- (18) Any attempt by a tenderer to influence the procuring entity in the process of examination, clarification, evaluation and comparison of tenders, and in decisions concerning the award of the contract, shall result in the rejection of his tender.

#### **108. Examination, evaluation and comparison of tenders**

- (1) A procuring entity shall establish a committee comprising not less than three and not more than five members for the purpose of conducting the evaluation.
- (2) If the evaluation of tenders is part of a consultancy contract or agreement, the respective consultant shall take charge of the works of the tender evaluation committee and shall be responsible for preparing the evaluation report and award recommendations.
- (3) The tender evaluation committee, appointed in accordance with Regulation 108(1) by the procuring entity, shall evaluate on a common basis, tenders that have been received on or before the deadline for the submission of tenders and opened 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.
- (4) The tender evaluation shall be consistent with the terms and conditions set forth in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents.
- (5) Tenders shall be comparable among themselves in order to determine the lowest evaluated tender provided that formal tender opening ceremony shall not be taken into account in the evaluation and comparison of tenders.
- (6) Prior to the detailed evaluation of tenders, the tender evaluation committee shall carry out a preliminary examination of the tenders to determine whether or not each tender contains errors in computation, and is substantially responsive to the requirements of the tender documents, whether the required guarantees have been provided, whether the documents have been properly signed and whether the tenders are otherwise generally in order.
- (7) A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender document(s) without material deviation or reservations.
- (8) A material deviation or reservation is one which affects the scope, quality or performance of the contract, or which, in any substantial way, is inconsistent with the tender document or limits the procuring entity's rights or the tenderer's obligations under the contract, and affects unfairly the competitive position of tenderers presenting responsive tenders.
- (9) Any tender not accompanied by an acceptable tender guarantee, where the same has been requested, shall be rejected by the procuring entity and the approving authority.
- (10) The procuring entity may ask suppliers or contractors for clarification of their tenders in order to assist in the examination, evaluation and comparison of tenders but no advantage may be used to change any matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

- (11) Notwithstanding subregulation (6), the procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders and the procuring entity shall give prompt notice of any such correction to the supplier or contractor that submitted the tender:
- (a) A procuring entity may regard a tender as being responsive only if it conforms to all the requirements set forth in the solicitation documents;
  - (b) a procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the tender;
  - (c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.
- (12) Any factors other than price that may be used in determining the lowest evaluated tender shall, as far as is practicable, be expressed in monetary terms.
- (13) Penalties for non-material deviation from the tender requirements may be expressed as a monetary addition to the tender price which may include the cost of making good deficiencies in compliance with the tender specifications.
- (14) Any procedure under which tenders above or below a predetermined assessment of tender value are automatically disqualified shall not be accepted.
- (15) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence.
- (16) If a tender is not responsive to the tender document, it shall be rejected by the procuring entity, and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation and all tenders determined to be substantially responsive shall be fully evaluated in accordance with subregulation.
- (17) A procuring entity shall not accept a tender:
- (a) If the supplier or contractor that submitted the tender is not qualified;
  - (b) if the supplier or contractor that submitted the tender does not accept a correction of an arithmetical error made pursuant to regulation 108(9);
  - (c) if the tender is not responsive;
  - (d) if the tender is not accompanied by an appropriate tender security, if required; regard to the terms, conditions and specifications in the tender document;
- [Please note: numbering as in original.]*
- (f) if the circumstances referred to in regulation 119 applies.
- (18) A procuring entity shall evaluate and compare all tenders that have been accepted in order to ascertain the successful tender in accordance with the procedures and criteria set forth in the solicitation documents provided no criterion shall be used that has not been set forth in the solicitation documents—
- (a) the successful tender shall be:
    - (i) The tender with the lowest evaluated tender price not necessarily the lowest submitted price, subject to any margin of preference applied;
    - (ii) if the procuring entity has so stipulated in the solicitation documents, the lowest evaluated tender ascertained on the basis of criteria specified in the solicitation documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms;



- (b) in determining the lowest evaluated tender the procuring entity may consider only the following:
    - (i) The tender price, subject to any margin of preference applied;
    - (ii) the cost of operating, maintaining and repairing the goods or construction, the time for delivery of the goods, completion of construction or provision of the services, the functional characteristics of the goods or construction, the terms of payment and of guarantees in respect of the goods, construction or services;
  - (c) in evaluating and comparing tenders a procuring entity may grant a margin of preference for the benefit of tenders for construction by Tanzanian contractors or for the benefit of tenders for domestically produced goods provided that the margin of preference shall be calculated in accordance with Regulations 110 to 112 and reflected in the record of the procurement proceedings.
- (19) Where tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to the same currency, and according to the rates specified in the solicitation documents, for the purpose of evaluating and comparing tenders.
- (20) The rates of exchange to be used in such valuation shall be the selling rates published by an official source and applicable to similar transactions:
- (a) On a date selected in advance and specified in the tender dossier provided that such date should not be earlier than 15 days prior to the date specified for the opening of tenders nor later than the original date prescribed in the tender dossier for expiry of the period of tender validity; or
  - (b) on the date of decision to award the contract or on the original date prescribed in the tender dossier for the expiry of the period of tender validity, whichever is earlier.
- (21) One of the options stipulated herein shall be selected by the procuring entity and clearly, stated in the tender documents. The evaluation and comparison of tenders for the supply of goods shall be on the CIF or CIP prices for imported goods and the ex-works prices for the goods offered from within the United Republic of Tanzania, together with prices for any required installation, training, commissioning and other similar services.
- (22) Whether or not it has engaged in pre-qualification proceedings, the procuring entity may require the supplier or contractor submitting the tender that has been found to be the successful to demonstrate again its qualifications. The criteria and procedures to be used for such further demonstration shall be set forth in the solicitation documents.
- (23) Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.
- (24) If the contractor or supplier submitting the successful tender is requested to demonstrate again its qualifications but fails to do so, the procuring entity shall reject that tender and shall select a successful tender in accordance with this regulation from among the remaining tenders subject to the right of the procuring entity reject all remaining tenders.
- (25) Under works and turnkey contracts, a contractor shall be responsible for all duties, taxes and other levies, and a tenderer shall take these factors into account in preparing his tender with view to making evaluation and comparison of tenders strictly in monetary terms.
- (26) A detailed report on the evaluation and comparison of tenders, setting forth the specific reasons which the determination of the lowest evaluated cost tender is based, shall be prepared by the procuring entity and addressed to the approving entity for approval.

## 109. National preferences

- (1) A margin of preference may be provided in the evaluation of tenders for:
  - (a) Goods manufactured in Tanzania, when comparing tenders offering such goods with those offering goods manufactured abroad; and
  - (b) works, when comparing tenders from eligible Tanzanian contractors with those from foreign firms,  
where such preference has been stated clearly in the tender documents.
- (2) Where a procuring entity has allowed such preference, the procedure set out below shall be followed in the evaluation and comparison of tenders.

## 110. Preference for goods manufactured or produced in Tanzania

- (1) A procuring entity may grant a margin of preference in the evaluation of tenders to those tenders which offer goods that have been manufactured, grown, mined or extracted in the United Republic of Tanzania, when compared to tenders offering such goods manufactured or originating elsewhere. Where such preference is to be granted, the methods and stages set forth in regulations [110\(2\)](#) to [110\(9\)](#) shall be followed in the evaluation and comparison of tenders.
- (2) For the purposes of comparison, responsive tenders shall be classified in one of the following three groups:
  - (a) **Group A:**

Tenders offering goods manufactured, grown, mined or extracted within the United Republic of Tanzania, provided that the tenderer establishes to the satisfaction of the procuring entity that—

    - (i) labour, raw materials and components originating from within the United Republic of Tanzania will account for more than 30 percent of the ex-works price of the goods offered; and
    - (ii) the production facility in which those goods will be manufactured, assembled or processed has been engaged in manufacturing, assembling or processing such goods at least since the time of submission of the tender.
  - (b) **Group B:**

All other tenders offering goods originating from within the United Republic of Tanzania.
  - (c) **Group C:**

Tenders offering goods from overseas which are to be directly imported.
- (3) The ex-works price quoted by Group A and Group B tenderers shall include all duties and taxes paid or payable on the raw or basic materials or components that have been purchased in the domestic market or imported, but shall exclude any sales and similar taxes on the finished product.
- (4) The price quoted in Group C tenderers shall be on CIF or CIP port of entry, border point or other destination, exclusive of customs duties and other import taxes.
- (5) The procuring entity shall first evaluate and compare all responsive tenders so as to determine the lowest evaluated tender within each group.
- (6) The lowest evaluated tenders in each group shall then be compared with each other. If, as a result of this comparison, a tender from Group A or Group B is the lowest, it shall be selected for the contract award.

- (7) If as a result of the comparison made under regulation 110(5) above, the overall lowest evaluated tender is from Group C, all Group C tenders shall be further compared with the lowest evaluated tender from Group A.
- (8) For the purposes of this comparison only, an amount equal to:
  - (i) The amount of the duties and other related import charges which a non-exempt importer would have to pay for the importation of the goods offered in such Group C tender; or
  - (ii) 15 percent of the GIF or CIP tender price of such goods if the said duties and charges exceed fifteen percent of such price,shall be added to the evaluated tender price of the imported goods offered in each Group C tender.
- (9) If the Group A tender in such further comparison is the lowest, it shall be selected for the contract award; if not, the lowest evaluated tender from Group C, as determined from the comparison made under regulation 110(7) shall be selected.

### **111. Goods forming part of a contract package**

- (1) In the case of tenders for the supply and installation of goods, turnkey contracts or any other form of procurement contract in which a number of discrete SECs of equipment is grouped into one contract package, a margin of preference shall not be applied to the whole package, but only to goods manufactured in Tanzania, as defined in regulation 110(2).
- (2) The price for goods offered from abroad shall be quoted CIF or CIP, and the price for goods offered from within the United Republic of Tanzania shall be quoted ex-works, free of sales and similar taxes. All other components, such as design, works, installation, and supervision, shall be quoted separately.
- (3) In the comparison offenders, only the CIF or CIP price for goods offered from outside the United Republic of Tanzania shall be increased, for the purposes of comparison only by—
  - (a) the applicable duty and other taxes payable by a non-exempt importer; or
  - (b) 15 percent,whichever is less.
- (4) If duties vary from SEC to SEC within a package, the appropriate tariff for each goods or piece of equipment shall apply but no preference shall be applied for any associated services or works included in the package.

### **112. Preference for Tanzanian contractors**

- (1) The specified margin of preference which shall not exceed a maximum of 10 percent may be granted to domestic contractors who meet the criteria for Tanzanian ownership.
- (2) Wherever a procuring entity decides that a margin of preference may be granted, domestic contractors shall be asked to provide, as part of the data for qualification, details of ownership and such other information as shall be required to determine whether a contractor or group of contractors is qualified for domestic preference.
- (3) The tender documents shall clearly indicate that a margin of domestic preference will be granted and the method that will be followed in the evaluation and comparison of tenders to give effect to such preference.
- (4) After tenders have been received and reviewed by the procuring entity, responsive tenders shall be classified into the following groups:
  - (a) Group A: Tenders offered by domestic contractors eligible for the preference;

- (b) Group B: Tenders offered by other contractors.
- (5) For the purpose of evaluation and comparison of tenders, an amount equal to the specified margin of preference shall be added to tenders received from contractors in Group B.

### **113. Prohibition of negotiations with suppliers or contractors**

- (1) No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor.
- (2) To assist in carrying out this regulation, public officers are not to advise tenderers that any matter has been referred to the accounting officer, chief executive officer or tender board for decision, nor are they to attempt to forecast a decision when making an interim reply.
- (3) Public officers writing to tenderers are acting as agents for the procuring entity or for the appropriate tender board and on no account are they to imply, when notifying a decision or clarification, that they themselves do not agree with that decision or clarification or say anything to weaken its force.

### **114. Denial of award in a case of limited resources**

- (1) A procuring entity may seek to limit the number or total value of awards made to any one supplier or contractor in cases where that supplier's or contractor's resources are known to be, or are likely to be insufficient for the additional commitments that would result from the proposed contract.
- (2) In the cases specified in subregulation (1), a procuring entity may recommend that an award be denied to a supplier or contractor that is considered no longer to have the capability or resources to perform the contract successfully.

### **115. Approval of award of contract**

- (1) The appropriate tender board shall review the evaluation and recommendation and may:
  - (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.
- (2) The tender board shall send a copy of its decision on the recommendations to the Executive Secretary of the Central Tender Board, the Controller and Auditor-General, the Attorney-General and the Technical Audit Unit of the Ministry of Finance.
- (3) Where the value of the proposed contract exceeds the limit of authority of a ministry tender board or regional tender board or parastatal tender board, the evaluation and recommendation shall be referred to the Central Tender Board by the secretary of the appropriate tender board.
- (4) The award shall be made, within the period of tender validity to the tenderer whose tender has been determined to be the lowest evaluated but which shall not necessarily be the lowest offered price, and which meets the appropriate standards of capability and financial resources.
- (5) The approved tenderer shall not be required, as a condition of award, to undertake responsibilities or work not stipulated in the tender documents, or otherwise to modify the tender as originally submitted.

- (6) A contract which is awarded without the approving authority's approval may not be eligible for public financing.

## 116. Acceptance of tender and entry into force of procurement contract

- (1) The tender that has been ascertained to be the successful tender shall be accepted and the notice of acceptance of the tender shall be given promptly to the supplier or contractor submitting the tender after all necessary in-country and outside the country approvals, required, have been obtained.
- (2) Notwithstanding the provisions of regulation 116(4), the solicitation documents may require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming to the tender and in such cases, the procuring entity (the requesting public authority) and the supplier or contractor shall sign the procurement contract within 28 calendar days after the notice referred to in subregulation (1) has been dispatched to the supplier or contractor.
- (3) Subject to regulation 116(4), where a written procurement contract is required to be signed pursuant to subparagraph (1) of this regulation, the procurement contract enters into force when the contract is signed by the supplier or contractor and by the procuring entity.
- (4) Between the time when the notice referred to in regulation 116(1) was dispatched to the contractor or supplier and the entry into force of the procurement contract, neither the procuring entity nor the contractor or supplier shall take any action that interferes with the entry into force of the procurement contract or its performance.
- (5) Where the solicitation documents stipulate that the procurement contract is subject to approval by a higher authority or a financing agency, the procurement contract shall not enter into force before the approval is given and the solicitation documents shall specify the estimated period of time following dispatch of the notice of acceptance of the tender that will be required to obtain the approval.
- (6) A failure to obtain the approval within the time specified in the solicitation documents shall not extend the period of effectiveness of tenders specified in the solicitation documents or the period of effectiveness of tender securities that may be required.
- (7) Except as provided in subregulations (3), (4) and (5), a procurement contract made in accordance with the terms and conditions of the accepted tender shall enter into force when the notice referred to in subregulation (1) has been dispatched to the supplier or contractor that submitted the tender, provided that the same is dispatched while the tender is in force.
- (8) The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor, or conveyed to an appropriate authority for transmission to the supplier or contractor, by a mode authorised by regulation 18.
- (9) If the supplier or contractor whose tender has been accepted fails to sign a written procurement contract, if required to do so, or fails to provide any required security for the performance of the contract, the procuring entity shall, on the prior written approval of the appropriate tender board, select a successful tender from among the remaining tenders that are in force, subject to the right of the procuring entity, to reject all remaining tenders.
- (10) The notice provided for in subregulation (1) shall be given to the supplier or contractor that submitted that tender.
- (11) Upon the entry into force of the procurement contract and, if required, the provision by the supplier or contractor of a security for the performance of the contract, notice of the procurement contract shall be given to other suppliers or contractors, specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.
- (12) The results of public invitation to tender shall be published in the *Government Gazette* and in at least two newspapers of wide circulation and/ or any other appropriate information media.

- (13) As a matter of procedure, the following information is to be disclosed after award of a contract:
- (a) The name of the successful tenderer, his price and all prices tendered are to be disclosed to tenderers so that the successful tenderer is to be advised of all the prices tendered at the time he receives his acceptance notice but no reference is to be made as to whether tender prices were tagged or clear and, apart from the successful tenderer, tenderers' names may not be linked to the tender prices;
  - (b) the name of the works, the name of the successful tenderer and his price, the number of tenders received and the range of tenders received are to be published in the *Gazette* for contracts let for 50,000,000 shillings or more in value and such publication is to be arranged by the secretary of the appropriate tender board and paid for by the appropriate procuring entity;
  - (c) the secretary of the appropriate tender board will submit each month for publication in the *Gazette* and in at least two newspapers of wide circulation, a list of contracts let in the categories mentioned for 50,000,000 shillings or more in value;
  - (d) to enable this information to be published and for purposes of recording and distributing statistical information, procuring entities must ensure that copies of acceptance notices, suitably notated with the number of tenders received, the range of tenders and the estimates are forwarded to the Central Tender Board Secretariat in every case for all contracts of 10,000,000 shillings or more in value. Copies must be posted to the Central Tender Board the same day as the acceptance notice goes to the supplier or contractor;
  - (e) in advising unsuccessful tenderers of the price submitted by the successful tenderer pursuant to regulation 116(12) in no circumstances is any part of a tenderer's schedule to be disclosed;
  - (f) where the lowest tender is not accepted, reasons can be given orally or on request to any tenderer who has submitted a lower tender than that accepted, if this informal response is acceptable to the tenderer provided that care and discretion is exercised in dealing with such requests and authority to answer enquiries of this nature is not delegated below the level of the secretary of the appropriate tender board;
  - (g) tender boards must record in the board minutes the reason or reasons why any lower or any other tender was not recommended or approved and this confidential information is to be made available to the officers concerned who must restrict their replies to enquiries to the reasons so recorded. It should also be clear to the tenderer enquiring that the reasons are those of the board;
  - (h) if any tenderer for a contract on which a decision or recommendation has been made prefers to make a formal approach and accordingly requests information, he is to be given a written statement. The statement shall list the material issues of fact and the broad reasons for the decision as recorded in the tender board's minutes;
  - (i) a tenderer with a lower price but passed over is to be given more detailed written reasons as to why his tender was not accepted, if he so specifically requests, such reasons must conform with those recorded in the tender board's minutes;
  - (j) requests for information from other than tenderers must be considered on their merits but generally, unless a tenderer specifically advises otherwise, all details of tenders submitted should be treated as confidential between the tenderer and the procuring entity or tender board.

#### **117. Tendering procedures for selected subcontractors and suppliers for provisional and prime cost sums in works contracts**

- (1) General conditions of contract may give the contract supervisor the right to decide the manner in which the works shall be executed where a provisional or prime cost sum has been provided for in the schedule or contract.

- (2) When work is to be carried out as a selected subcontract and the value is such that competitive tenders would be obtained, tenders shall close with the appropriate tender board which approved the head contract regardless of the value involved and regardless of whether it is the supplier, contractor or the procuring entity which calls tenders.
- (3) Tenders shall be invited in the name of the head contractor who may be consulted in regard to any special arrangements he may wish to have incorporated in tendering documents for the subcontract.
- (4) Acting on the recommendation of the contract supervisor, standard tender board procedures and approval action are to follow, prior to the contract supervisor directing acceptance of the approved tender. The tender selected by the procuring entity is first to be referred to the head contractor for his perusal before instructions to accept as a subcontract are issued. Unsuccessful tenders are to be declined by the contractor.
- (5) Similar action to above is to be taken for purchase of selected materials.
- (6) Tenders for provisional sums must not be invited prior to the main contract being let.
- (7) Except for the specific approval not given in writing by the government architect, tenders for building projects shall not be invited unless drawings and specifications for all building services subcontracts are complete and firm estimates of cost have been prepared.

#### **118. Process to be confidential**

- (1) Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of a contract shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.
- (2) Any effort by a tenderer to influence the procuring entity's or approving authority with a view to processing of tenders or award decisions may result in the rejection of his tender.

### **Part VIII – Prohibition (regs 119-127)**

#### **119. Fraud and corruption**

- (1) Procuring and approving entities as well as tenderers, suppliers, and contractors under public financed contracts shall proceed in a transparent and accountable manner during the procurement and execution of such contracts.
- (2) A procuring entity or an approving authority may, if satisfied after appropriate investigations and determination in accordance with its procedures, that any person or firm has engaged in corrupt or fraudulent practices in competing for the contract in question:
  - (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) A 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, or works;
  - (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.

- (4) An officer of the procuring entity or of a tender board or any other public officer in relation to procurement shall not, under colour of his office or employment, accept any fee or reward whatsoever from a tenderer or agent of tenderer other than his proper remuneration.
- (5) Any member of a procuring entity or approving authority or any other public officer 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 the Act.
- (6) A procuring entity shall, in any tender forms for public contracts, include an undertaking of the tenderer to observe the country's laws against fraud, corruption and bribery in competing for and executing a contract.

## 120. Improper inducement

- (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 thereof or any employee or any associate of an employee of the tender board or committee or any consultant or an associate of any consultant or person or an associate of any person providing services, a gift in any form, or extend any advantage to or for the benefit of any public official or as he may direct and whether directly or indirectly as an inducement for action or inaction by the official;
  - (b) approach any member or any associate of a member of the tender board or its committee or any of its officer or any associate of any officer with respect to any matter that is before the tender board or committee or that is expected to come before the tender board or committee.
- (2) No procuring entity, member of an approving authority or any current or former public officer or other public authority shall accept a gratuity in any form, any offer of employment or any other thing of service or value as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity or by the approving authority in connection with any procurement proceedings or tender; and a procuring entity shall promptly reject the tender of any supplier or contractor 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) Procuring entities, approving authorities and tenderers shall take measures reasonably within their power to ensure that no part of any payment made in connection with a procurement contract is received directly or indirectly by or for the benefit of a public officer with decision making responsibility or influence or of their relatives or business associates.
- (5) Procuring entities, approving authorities and tenderers shall take measures reasonably within their power to ensure that subcontracts and purchase orders relating to a procurement contract transaction are not used as a device to channel payments or other benefits directly or indirectly to or for the personal benefit of public officers with decision making responsibility or influence, or of their relatives or business associates.
- (6) Procuring entities and tenderers shall take measures reasonably within their power to ensure that any commission or remuneration paid to any agent, consultant or other intermediary represents no more than appropriate compensation for legitimate services, and that no part of any such payment is passed on by an agent, consultant or other intermediary as an improper inducement in contravention of these Regulations.
- (7) Procuring entities, approving authorities and tenderers shall take appropriate measures to ensure that agents, consultants and other intermediaries are not employed to gain any improper influence in connection with obtaining or retaining any business.
- (8) A procuring entity shall not include in any tender document any condition or specification such as to favour any one supplier or contractor.



- (9) Any member of an approving authority or a member of its staff of a procuring entity thereof or of a procuring entity or member of staff shall declare any interest that they may have in any supplier or contractor, and shall take no part in, nor seek to influence in any way, procurement proceedings in which that supplier or contractor is involved or liable to become involved.
- (10) A member of an approving authority or an officer of the procuring entity shall be disqualified for being nominated for or appointed or being a member of a tender board if such member or officer, or any partnership in which he is interested, enters into or has entered into any contract in force with the Government or parastatal organisation or Local Government authority, or any person on behalf of the Government, parastatal organisation or local government authority, or with such tender board or procuring authority for the supply of any goods, or the execution of any work or any other contract in which such member or his firm has any financial interest.
- (11) Any tender proved to have been awarded on the basis of inducement as described in the preceding subsections shall be revoked forthrightly and the same shall be reported to the relevant professional body for ethical proceedings.
- (12) A supplier or contractor 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 proceeding during the ten years following the date of the notice of such rejection or revocation.
- (13) Any rejection or revocation on the grounds of inducement or corrupt practices shall be notified to the Executive Secretary of the Central Tender Board who shall in turn take effect to notify all public authorities and approving authorities for the sake of effecting the contents of subregulation (12).
- (14) No organ of state and no member of any organ of state or any other person shall improperly interfere with the decisions and operations of the tender boards.

#### **121. Disability of members of the procuring entity and members of the approving authority on account of interest in contracts**

- (1) If a member of the procuring entity or a member of an approving authority has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the procuring entity or approving authority at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (2) A member of a procuring entity or a member of an approving authority who has disclosed an interest in accordance with this regulation shall immediately withdraw from the meeting.
- (3) Any person who fails to comply with the provisions of this regulation commits an offence and shall be liable to the provisions of section 64 of the Act unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

#### **122. Pecuniary interests for purposes of regulation 121**

- (1) For the purposes of regulation 121 and subject to subregulations (2) and (3), a person shall be treated, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - (a) He or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - (b) he is a partner, or is in the employment, of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

- (2) Subregulation (1) shall not apply to membership of or employment under any public body and a member of a company or other body shall not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.
- (3) In the case of married persons living together, the interest of one spouse shall, if known to the other, be deemed for the purposes of regulation 121 to be also an interest of the other.

### **123. General notices and recording of disclosure for the purposes of regulation 121**

- (1) A general notice given in writing to the head of the procuring entity, in case of an employee of the procuring entity, or to the secretary of the tender board whose authority limit is appropriate to the value of the procurement under consideration, by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, shall unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body, or to that person which may be the subject of consideration after the date of the notice.
- (2) The head of the procuring entity, in the case of an employee of the procuring entity or the Secretary of an appropriate tender board, in the case of an approving authority, shall cause to be recorded in a book to be kept for the purposes particulars of any disclosure made under Regulation 121 and of any notice given under this regulation, and the book shall be open at all reasonable hours to the inspection of any member of the public.

### **124. Prohibition of running contracts**

- (1) A procuring entity shall not invite, accept or place a running contract for the supply of goods or for the execution of works. All contracts shall have a specific starting and completion target date.
- (2) For the purposes of this regulation, "running contract" means a contract extending over a period of time for an estimated or variable quantity of goods or works obtained through request for submission of unit rates which are applied over an extended period of time and which offer the procuring entity to engage such suppliers or contractors without further competitive tenders.

### **125. Non-anticipation of tenders**

Acceptance of any tender shall not be anticipated and orders shall not be placed until the necessary authority has been received from the appropriate tender board or appropriate approving authority.

### **126. Tampering with submitted tenders**

- (1) No person shall:
  - (a) Open an envelope or other container in which a tender is contained, other than in the due and proper execution of his duties under these Regulations;
  - (b) burn, tear or otherwise destroy any tender; or
  - (c) erase or do any other act which falsifies or renders incomplete or misleading any tender.
- (2) For the purposes of this regulation, "tender" includes documents or things submitted together with the tender and which are relevant to the tender and which are in the possession of a tender board, tender evaluation committee, procuring entity or any person.

## 127. Institution of criminal proceedings

The measures provided by the Act shall not preclude the institution of criminal proceedings pursuant to the Penal Code<sup>8</sup>, the Prevention of Corruption Act<sup>9</sup> or any other written Law against any person discharging functions or exercising powers under the Act or these Regulations.

## Part IX – Review of Procurement Decisions and Resolution of Procurement Disputes (Regs 128-141)

### 128. Right to review

- (1) Subject to regulation 128(2), any supplier or contractor 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 the Act or these Regulations may seek a review in accordance with regulations 131 and 132 provided that the application for a review is received by the procuring entity or approving authority within twenty-eight days of the supplier or contractor becoming aware of the circumstances giving rise to the complaint or of when the supplier or contractor should have become aware of those circumstances.
- (2) The review referred to in subsection (1) shall not apply to:
  - (a) The selection of a method of procurement;
  - (b) the limitation of eligibility on the basis of nationality in accordance with section 22 of the Act or with these Regulations;
  - (c) a decision by the procuring entity to reject all tenders further to section 28 of the Act;
  - (d) failure to cite the Act, or these Regulations or any other law relating to the procurement proceedings.
- (3) No claim or complaint to any tender shall be admitted unless such claim or complaint is made by or in the real name of the tenderer or proprietor thereof, describing his place of residence or registration.

### 129. Settlement of disputes by procuring entities and approving authorities

- (1) Disputes between procuring entities and suppliers or contractors 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 in a written decision by the accounting officer or chief executive officer, 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, unless it is submitted within twenty eight days from the date the supplier or contractor submitting it become aware of the circumstances giving rise to the complaint or when that supplier or contractor should have become aware of those circumstances, whichever is earlier.
- (3) The head of a procuring entity or of the approving authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force.

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- (4) Unless the complaint is resolved by mutual agreement of the supplier or contractor 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, issue a written decision which shall:
  - (a) State the reasons for the decision; and
  - (b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.
- (5) Where the head of the procuring entity or of the approving authority does not issue a decision by the time specified in regulation 129(4), the supplier or contractor submitting the complaint or the procuring entity is entitled immediately thereafter to institute proceedings under regulations 130, 131 or 141 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 shall cease.
- (6) The decision of the procuring entity or approving authority shall be final unless the supplier or contractor applies for administrative review by the Central Tender Board further to section 8 of the Act except for complaints made against the Central Tender Board which shall be submitted to the Public Procurement Appeals Authority in accordance with regulation 131.

### **130. Administrative review**

- (1) A supplier or contractor who is aggrieved by the decision of a procuring entity or 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 Regulation 131 of these regulations.

### **131. Review by the Public Procurement Appeals Authority**

- (1) 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) 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.
- (3) A supplier or contractor entitled under regulation 128 to seek review may submit a complaint to the Public Procurement Appeals Authority–
  - (a) if the complaint cannot be submitted or entertained under regulation 129 or 130 because of entry into force of the procurement contract, and provided that the complaint is submitted within twenty days after the earlier of the time when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or the time when that supplier or contractor should have become aware of those circumstances;
  - (b) if the head of the procuring entity does not entertain the complaint because the procurement contract has entered into force, provided that the complaint is submitted within twenty days after the delivery of the decision not to entertain the complaint;
  - (c) pursuant to regulation 129(5), provided that the complaint is submitted within twenty days after the expiry of the period referred to in regulation 129(4); or
  - (d) if the supplier or contractor claims to be adversely affected by a decision of the head of the procuring entity or of the approving authority under regulation 130, provided that the complaint is submitted within twenty days after the delivery of the decision.
- (4) Upon receipt of a complaint, the Public Procurement Appeals Authority shall give notice of the complaint to the procuring entity or the approving authority.

- (5) The Public Procurement Appeals Authority may, unless it dismisses the complaint, 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 or contractor submitting the complaint 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.
- (6) The Public Procurement Appeals Authority shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.
- (7) The decision of the Public Procurement Appeals Authority shall be final unless an action is commenced under regulation 141 of these Regulations.

### **132. Certain rules applicable to review proceedings under regulations 129, 130 and 131**

- (1) After the submission of a complaint under regulations 129, 130 and 131 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 or contractors participating in the procurement proceedings to which the complaint relates, of the submission of the complaint and of its substance.
- (2) Any such supplier or contractor 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 or contractor who fails to participate in the review proceedings is 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 or contractor submitting the complaint, to the procuring entity and to any other supplier, contractor or consultant or government authority who has participated in the review proceedings and in addition, after the decision has been delivered, the complaint 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.

### 133. Suspension of procurement proceedings

- (1) The timely submission of a complaint under regulation [129](#), [130](#) or [131](#) shall suspend the procurement proceedings for a period of seven days, provided the complaint is not frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, and shows that it is probable that the complaint will succeed and the granting of the suspension would not cause disproportionate harm to the procuring entity or to supplier or contractor.
- (2) Where the procuring contract enters into force, the timely submission of a complaint under regulation [101](#) shall suspend the performance of the procurement contract for a period of seven days, provided the complaint meets the requirements set forth in regulation [133\(1\)](#).
- (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 regulation [133\(1\)](#), and the Public Procurement Appeals Authority may extend the suspension provided for in regulation [133\(2\)](#), in order to preserve the rights of the supplier or contractor submitting the complaint 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 regulation 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 the 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 therefor shall be made part of the record of the procurement proceedings.

### 134. Statement or notice of claim or complaint

- (1) The claimant shall communicate his statement or notice of claim in writing to the appeals authority and to the procuring entity. The statement of claim shall be signed by the person who signed the tender, offer, proposal or quotation. A copy of the tender documents and the tender submitted by the claimant, shall be annexed thereto.
- (2) The statement of claim shall include the following particulars:
  - (a) The names and addresses of the parties involved;
  - (b) a statement of the facts supporting the claim;
  - (c) the points at issue;
  - (d) the relief or remedy sought.
- (3) The claimant may annex to his statement of claim, all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

### 135. Experts appointed by appeals authority

- (1) The appeals authority:
  - (a) May appoint one or more experts to report to the appeals authority on specific issues;
  - (b) may require a party to give any such expert any relevant information or to produce or to provide access to, any relevant documents, goods or property for inspection by the expert.
- (2) Unless otherwise stated, the expert shall, after delivery of his written or oral report, participate in a hearing at which the parties shall have the opportunity to question him and present expert witnesses in order to testify on the points at issue.

**136. Language of dispute resolution**

- (1) Unless otherwise specified, the language of dispute resolution shall be the language of the tender documents, subject to the power of the appeals authority to determine otherwise having regard to any observations of the parties and the circumstances of the claim or dispute.
- (2) The appeals authority may order that any documents submitted in languages other than the language of dispute resolution be accompanied by a translation in whole or in part into the language of the dispute resolution.

**137. Place of dispute resolution**

- (1) Unless otherwise specified, the place of dispute resolution shall be decided by the appeals authority, taking into consideration any observations of the parties and the circumstances of the dispute.
- (2) The appeals authority may conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.
- (3) The decision of the appeals authority shall be deemed to have been made at the place of dispute resolution.

**138. Disclosure of trade secrets and other confidential information**

- (1) For the purposes of this regulation, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:
  - (a) In the possession of a party;
  - (b) not accessible to the public;
  - (c) of commercial, financial or industrial significance; and
  - (d) treated as confidential by the party possessing it.
- (2) A party invoking the confidentiality of any information it wishes or is required to submit in the dispute resolution, including to an expert appointed by the appeals authority, shall make an application to have the information classified as confidential by notice to the appeals authority. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.
- (3) The appeals authority shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the appeals authority so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.
- (4) In exceptional circumstances, *in lieu* of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party involving its confidentiality, the appeals authority may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.
- (5) The appeals authority may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Regulation 135 of these Regulations in order to report to it, on the basis of the confidential information on specific issues designated by the

appeals authority without disclosing the confidential information either to the party from whom the confidential information does not originate or to the appeals authority.

### 139. Default

- (1) The appeals authority may proceed with the dispute resolution and make decision if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the appeals authority.
- (2) Where a party, without showing good cause, fails to comply with any provision of, or any requirement under these Regulations or any direction given by an appeals authority, the appeals authority may draw inferences therefrom which it considers appropriate.
- (3) If one of the parties, duly notified under these Regulations, fails to appear at the hearing, without showing sufficient cause for such failure, the appeals authority may proceed with the dispute resolution.

### 140. Publication of the decision on appeal

Upon allowing any appeal from any decisions of the appeal authority, the appeal authority shall cause notice of its decision to be published in the *Government Gazette*.

### 141. Judicial Review

The court of competent jurisdiction shall have jurisdiction over actions pursuant to regulation [128](#) and petitions for judicial review of decisions made by review bodies or failure of those bodies to make a decision within the prescribed time-limit, pursuant to Regulation [129](#), [130](#) or [131](#).

## Part X – Miscellaneous provisions (regs 142-158)

### 142. Procedure for amendment of standard contract

- (1) Every effort shall be made to utilize as far as possible, the samples of standard contract documents prepared by the Central Tender Board.
- (2) Where it becomes necessary for unavoidable reasons to use an entirely different version such draft contract must receive the prior written approval of the Central Tender Board and the Attorney-General's Chambers.
- (3) Should it be necessary to amend any provision in the standard contract documents, the same can be effected only after receiving the prior written approval from the Central Tender Board and the Attorney-General.

### 143. Submission of contract documents

The head of the procuring entity concerned shall ensure that copies of all contracts are sent to the Attorney-General, Controller and Auditor-General, Office of the Stock Verification Unit of the Ministry of Finance, Technical Audit Unit of the Ministry of Finance or the Regional Officer of the Controller and Auditor-General, Attorney-General and the Stock Verification Unit as the case may be, and the Tanzania Revenue Authority within thirty days from the date of contract signature.

### 144. Amendments after signature

- (1) Once signed, the contract or written agreement may not be altered, except when an alteration is necessary for the benefit of the procuring entity or when an alteration does not put the procuring entity in a disadvantageous position and the tender board that approved the original contract shall be responsible for permitting any alteration.



- (2) Any alteration of the signed contract or written agreement which shall cause an increase or decrease in contract sum, shall only be done after receiving prior written approval of the tender board that approved the original contract and from the office of the Attorney-General.
- (3) The contract extension which includes the remission or reduction of penalties in favour of the supplier or contractor shall be permitted only in the case of *force majeure* or default or shortcoming on the part of the purchaser or employer.
- (4) Proposed variations such as additions and/or deductions which are not incidental to or arising out of the contract, and which alter the scope, extent or intention of the contract, must in every case be referred to the appropriate tender board for approval before instructions are issued to the supplier or contractor.
- (5) The contract supervisor or the procuring entity has no authority to authorise additions beyond the scope of the contract without having obtained prior written approval of the tender board and from the Paymaster-General of the Ministry of Finance for additional financial authority to meet the cost or estimated cost of such work.
- (6) For any contract, any changes in the scope of the contract beyond twenty percent of the original contract shall require the prior written approval of the Central Tender Board and for contracts whose changes in price are less than 20 percent approvals for additional expenditure shall be obtained in accordance with section 59 of the Act.
- (7) Although these procedures refer primarily to the post contract situation, an important requirement which must be observed once execution of contract has commenced is that cost increases involving all changes which alter the scope, extent or intention of such contracts must have the prior written approval of the appropriate tender board.
- (8) All alterations requested by procuring entities shall be regarded as changes in the scope of the contract and that additional financial authority is required in every case provided however, the contingency sum is not to be used for changes of scope.
- (9) For the purposes of this regulation, the term "changes in the scope of the contract" includes all changes in the quantity or quality of goods to be supplied or work to be performed by a supplier or contractor with whom a contract has been entered into and such changes shall generally be changes of a policy nature such as an increase in the area of a building or finish to a higher standard than originally specified, but do not include changes of a technical nature (variations due to site and ground conditions differing from those originally disclosed or substitution for materials not available).
- (10) No changes of a policy nature in the scope of the contract shall be made after a financial authority has been granted, but if in any case it is considered that the scope of the contract be extended because of a change of circumstances, additional financial authority is to be obtained before the increase in the scope of the contract is committed and ordered.
- (11) In the case of works projects carried out under the supervision of the Ministry responsible for works on behalf of another Ministry or department, all changes requested by the client will be regarded as changes of a policy nature and the term "changes in the scope of contract" shall also be regarded as covering differences between the price to be paid for the prime cost items or provisional sum items and the allowance included for such items in the contract price.

#### 145. Time extension orders

- (1) A time extension order may be issued only by the accounting officer or chief executive officer provided that reasons for granting time extension orders must be fully documented in the procurement record.
- (2) The order shall state the section of the general conditions of contract under which it is issued as well as the duration of the extension and the special circumstances which have been taken into account.

- (3) Where for any special circumstances an extension of time is claimed by the supplier or contractor it must be submitted in writing within twenty eight days after such special circumstance has arisen or as soon thereafter as is practicable and must state the actual grounds for the extension.
- (4) Time extension orders shall not be granted lightly as these in turn may affect recommendations for retention or remission of liquidated damages, but the supplier or contractor shall be treated fairly regarding extensions of time if the procuring entity is to have reasonable prospects of enforcing liquidated damages should the supplier or contractor resort to arbitration.
- (5) A copy of each time extension order issued in respect of contracts is to be sent to the appropriate tender board and to the Controller and Auditor-General.
- (6) Under no circumstances shall the supplier or contractor be requested to carry out further work on the contract once the contract completion certificate has been issued since such request may lead to invalidation of the procuring entity's right to impose liquidated damages and also lead to claims for time extensions.
- (7) Contract supervisors must ensure that any extra work required, after a contract has been accepted as complete, is arranged independently of the original contract.

#### **146. Liquidated damages**

- (1) Liquidated damages rates per day to be imposed on the supplier or contractor for undelivered materials/goods or delayed works shall be as follows:
  - (a) In cases of procurement of goods or materials, the liquidated damages shall be imposed at 0.10 up to 0.20 percent of undelivered materials/goods' value, up to a sum equivalent to the amount of the performance guarantee;
  - (b) in cases of contracting for works, the liquidated damages shall be imposed at 0.10 up to 0.15 percent of the contract value, up to a sum equivalent to the amount of the performance guarantee.
- (2) The liquidated damages rates shall be specified in the request for proposals or the tender documents and also in the contract and the maximum amount of the liquidated damages shall be equal to the amount of the performance bond or guarantee established in the contract.

#### **147. Liquidated damages for person abandoning works**

- (1) Where a successful supplier or contractor fails to execute the contract or agreement within the specified time or fails to comply with the contract or agreement without a justifiable and acceptable reason which result to the termination of such contract or agreement, the head of the procuring entity shall refer the matter to the accounting officer concerned for appropriate action.
- (2) When the accounting officer rules that any person has been regarded as abandoning work, the name of such person shall be forwarded by the procuring entity to the Executive Secretary, Central Tender Board and to the Attorney-General for their information and appropriate action.
- (3) A procuring entity shall not procure from, contract with or engage a person or firm whose contract has been terminated pursuant to subregulation (1) except with the prior written approval of the Central Tender Board.

#### **148. Management of contracts**

A procuring entity shall be responsible for the effective management of any procurement of goods or works which it is undertaking and shall, to that end:

- (a) Monitor:
  - (i) the timely delivery of goods in the correct quantities and to the quality specified in each contract; and

- (ii) the progress and timely completion of works in accordance with the terms of each contract;
- (b) take or initiate steps to correct or discipline deviations from observance of contract condition;
- (c) ensure that the responsibilities imposed on it by the contract are fully discharged.

#### **149. Management of contracts for supply of goods**

- (1) A procuring entity shall obtain reports on the receipt of goods that have been delivered against contracts and provided these are satisfactory, shall authorise prompt payment to the supplier.
- (2) Where receipt of goods is delayed, or seems likely to be delayed, beyond the time for delivery stated in the contract, the procuring entity shall seek reports and explanations from the suppliers or their agents and may institute liquidated damages/charges as may be provided for in the contract.

#### **150. Management of contracts for works**

- (1) In the case of contracts for works, a procuring entity shall monitor the contractor's performance against the schedule of works stated in the contract, by means of daily or weekly reports from the procuring entity's supervisor responsible for the works.
- (2) Provided that the contractor's performance is satisfactory, the procuring entity shall authorise payments by measurement and certification, at the intervals or stages stated in the contract provided further that percentage of each such payment may be retained as retention money, if so stated in the contract.
- (3) If a contractor's performance does not meet the requirements stated in the contract, the procuring entity shall draw the contractor's attention to any short-comings, and may refuse to authorize further payments until these are remedied.
- (4) If agreement cannot be reached with the contractor so as to remedy the situation, the procuring entity shall notify the contractor formally that he is in breach of the terms of the contract, and may invoke the procedure for disputes further to the provisions of that contract.
- (5) In the event that a contractor fails to remedy faults or to complete the works to the satisfaction of the procuring entity, that procuring entity may either:
  - (a) Withhold payment of any moneys retained;
  - (b) call any performance security if such has been furnished by the contractor.
- (6) Funds that have been committed under any contingency included in the total contract value may be used:
  - (a) To cover variations in cost according to any formula stated in the contract; or
  - (b) for additional works that are considered to be necessary by the procuring entity.
- (7) When the works have been completed to the satisfaction of the procuring entity, and after any period provided in the Contract has elapsed, the procuring entity shall promptly authorise final payment to be made to the contractor on his application, and release the contractor from any performance guarantee provided the contractor has made good all the defects identified therein.

#### **151. Reporting to approving authority**

A procuring entity shall, whenever so requested, furnish reports on the award, signature, progress and completion of contracts to the authority that approved the recommendation and award of that contract.

## 152. Monitoring by Central Tender Board

- (1) The Secretariat of the Central Tender Board shall monitor procurement being undertaken by all procuring entities, and may call for reports from both procuring entities and approving authorities for this purpose.
- (2) The Central Tender Board shall not be concerned with the operation of the "supply management" system.

## 153. Inspection and acceptance of goods

- (1) Goods delivered shall be inspected, sampled and tested by the receiving ministry, department, region or parastatal body and they shall not be accepted unless they comply with the stipulations of the contract.
- (2) Contracts shall contain a clause that the supplier shall be responsible for all costs and expenses incurred due to a justified rejection of his goods on the ground that they do not comply with the stipulations of the contract.
- (3) To assist in the acceptance of goods and works, a procuring entity shall establish such committees as it considers necessary for the discharge of these functions which committees shall include but are not limited to the following:
  - (a) Goods inspection and acceptance committee; and
  - (b) the works inspection committee.

## 154. Inspection of goods

The goods inspection and acceptance committee shall act as follows:

- (a) Inspect the goods at the office of the procuring entity or, user, or at the site specified in the contract and any inspection at any other site, in writing, must be with a prior consent of the procuring entity;
- (b) inspect and count the goods in order to ascertain whether they are correct and complete in accordance with the agreement. In case of a technical or scientific test or experiment, an expert or qualified person in respect of the goods may be invited for consultation or the goods may be sent to a qualified person;
- (c) when the goods have been found correct and complete they shall be accepted, and the supplier shall be regarded as having effected delivery on the day the goods were brought to the place of delivery. After the acceptance, the goods will be handed over to the responsible officer who shall be appointed by the procuring entity. At least two signed acceptance certificates shall be issued, one copy for the supplier and the other for the responsible officer to enable the processing of payment, and to make a report to the procuring entity;
- (d) in cases where the supplier delivers the correct goods but deficient in number, or free from deficiency in number but not altogether correct, if the contract does not provide otherwise, only the correct ones shall be inspected and accepted in accordance with regulation [154\(c\)](#), and this must be promptly reported to the procuring entity who in turn shall notify the supplier within three (3) working days from the date of the finding thereof provided that this shall not deprive the procuring entity of the right to impose a fine on the supplier for the incomplete and incorrect delivery;
- (e) inspection and acceptance of the goods which come in a set or unit, any missing component part of which would render the use thereof incomplete, in which case the supplier shall be deemed not to have delivered the goods shall be promptly reported to the procuring entity who in turn shall notify the supplier within three working days from the date of the finding thereof;

- (f) if any member of the goods inspection and acceptance committee refuses to accept delivery by making a dissenting opinion, the committee shall submit it to the head of the procuring entity for consideration and decision;
- (g) if, should the head of the procuring entity agrees with acceptance of delivery, the committee shall proceed in accordance with paragraphs (c) and (d);
- (h) the inspection and acceptance of the goods shall be completed within the time specified in the contract.

### 155. Inspection and acceptance of works

The work(s) inspection committee shall act as follows:

- (a) Inspect, supervise and see to it that the work(s) is progressing in accordance with the approved programme of works and order variations to the contracted work(s), if considered expedient in accordance with the contract conditions, drawings and specifications;
- (b) if the contractor refuses to comply with the order, the inspection committee shall order the stop of the whole work(s), or a part of the work(s), as the case may be, until the contractor agrees to comply with the order;
- (c) if after contract execution, the contract conditions, drawings or specifications in contract are found to be conflicting or if the work is carried out according to these drawings, specifications and conditions contained in the contract, and upon its completion, it will be insecure, the committee shall order that the work(s) be suspended temporarily and shall submit the case to the head of the procuring entity for a decision;
- (d) acting in accordance with the above paragraph, the work(s) inspection committee shall make a daily record of the contractor's performance and the surrounding circumstances;
- (e) the record shall be kept, and handed over to the head of the procuring entity upon completion of each instalment or part of the work(s);
- (f) such record shall be considered as an essential official document for the purpose of inspection and acceptance of the works;
- (g) if a supervisor is appointed to take charge of work(s) in progress, the committee shall oversee his performance;
- (h) on the first day which is specified in the contract for the contractor to commence the work(s), the work(s) inspection committee shall be present at the work site and shall within three (3) working days from the specified date, report to the head of the procuring entity on the performance of the contractor and state whether the work(s) has been done in accordance with the terms of the contract;
- (i) the full number of the work(s) inspection committee shall either designate one of the committee members or the supervisor to take charge of the duties of the committee;
- (j) on the day which is designated for the delivery of each instalment or part of the contracted works, the inspection committee shall be present at the work site and shall, within three working days from the specified date, report to the head of the procuring entity on the performance of the contractor and state whether the work(s) has been completed in accordance with the conditions of contract;
- (k) the inspection of contractor's work(s) shall normally be within three working days counted from the date when the committee chairman acknowledges the delivery thereof, and the acceptance shall be made within a reasonable time;
- (l) when the work(s) has been found correct and complete in accordance with the drawings, specifications and conditions in the contract, the contractor shall be deemed to have completely delivered the work(s) on the day the contractor delivers such work(s) and the committee shall

issue at least two signed performance certificates for the whole work(s) or an instalment or part of contracted work(s) as the case may be;

- (m) one copy of the certificate shall go to the contractor and one to the responsible officer in order to process payment and to make a report to the employer;
- (n) in case the whole work(s) or any part of the work(s) delivered by the contractor is found to be inconsistent with the drawings, specifications, and conditions as contained in the contract, the finding shall be brought through the responsible officer to the attention of the head of the procuring entity for information;
- (o) in case any member of the work(s) inspection committee refuses to accept the contractor's work(s) by making a dissenting opinion, such a statement shall be submitted to the head of the procuring entity for consideration and action.

### 156. Appointment of a supervisor

- (1) For any contracted work(s) which the head of the procuring entity considers necessary to have a supervisor appointed or in case the work(s) inspection committee reports its inability to closely supervise the work(s), a public officer under the jurisdiction of the procuring entity whom the head of the procuring entity considers suitable, or an official of the department responsible for works or the unit or body which is responsible for the design work of the contract and whose head of procuring entity has consented thereto, or a consultant to be employed, shall be appointed as a supervisor.
- (2) The supervisor shall take charge of the works inspection committee and make a weekly or monthly performance report to the committee or as may be ordered by the committee.

### 157. Amendment of the Regulations

- (1) The Minister may, by order published in the *Gazette*, modify or alter these Regulations and their application in such manner and to such extent as may be necessary or expedient to bring these Regulations into conformity with the provisions of the Act.
- (2) The Minister may, before the commencement of each financial year, by order published in the *Gazette*, vary upwards or decrease the thresholds of the limits of authority for any approving authority and the respective approving authority shall comply with such variation.

### 158. Disapplication of other regulations, rules, etc.

Upon the coming into operation of these Regulations, except for the Selection and Employment of Consultants Regulations, 2001 all regulations, procedures and rules relating to public procurement shall cease to have any effect, power, function, authority or duty in relation to any matter connected with public procurement.

## First Schedule (Regulation 2)

### Public authorities to which these regulations apply

#### Selection and employment of consultants

Public Body	Parent Ministry
Ministries	-

<b>Public Body</b>	<b>Parent Ministry</b>
Departments	-
Regional tender boards	-
District tender boards	-
Tanroads	Works
<b>Other Executive Agencies</b>	
TanESCO	Energy and Minerals
Tanzania Railways Corporation	Communications and Transport
Tanzania Harbours Authority	Communications and Transport
Tanzania Revenue Authority	Finance
National Social Security Fund	Labour, Youth Development and Sports
National Environment Management Council	Vice-President's Office
Institute of Development Management, Mzumbe	Prime Minister's Office
Centre for Foreign Relations	Foreign Affairs and International Co-operation
<b>Public Body</b>	<b>Parent Ministry</b>
Capital Development Authority	Prime Minister's Office
Tanzania Broadcasting Commission	Prime Minister's Office
Tanzania School of Journalism	Prime Minister's Office
Audio Visual Institute	Prime Minister's Office
Televisheni ya Taifa	Prime Minister's Office
Institute of Judicial Administration	Justice and Constitutional Affairs

<b>Public Body</b>	<b>Parent Ministry</b>
Freedom from Hunger Campaign	Agriculture and Food Security
Rufiji Basin Development Authority	Agriculture and Food Security
Tanzania Pesticides Research Institute	Agriculture and Food Security
Co-operative College - Moshi	Agriculture and Food Security
Co-operative Audit and Supervision	Agriculture and Food Security
College of Business Education	Trade and Industry
Tanzania Industrial Research and Development Organisation (TIRDO)	Trade and Industry
Centre for Agricultural Mechanical and Rural Technical	Trade and Industry
High Precision Technology Centre (HPTC)	Trade and Industry
Tanzania Engineering and Manufacturing Design Organisation (TEMDO)	Trade and Industry
Small Scale Industries Organisation (SIDO)	Trade and Industry
Board of External Trade (BET)	Trade and Industry
London Trade Centre	Trade and Industry
Tanzania Bureau of Standards (TBS)	Trade and Industry
National Examination Council	Education and Culture
Tanzania Library Services	Education and Culture
Institute of Education	Education and Culture
Institute of Adult Education	Education and Culture
National Correspondence Institute	Education and Culture



<b>Public Body</b>	<b>Parent Ministry</b>
CHEWATA	Education and Culture
National Arts Council	Education and Culture
National Kiswahili Council	Education and Culture
National Sports Council	Education and Culture
National Board for Materials Management	Works
National Construction Council	Works
Contractors' Registration Board	Works
Ardhi Institute - Morogoro	Land and Human Settlement Development
Land Use Planning Commission	Lands and Human Settlement Development
Institute of Finance Management	Finance
Institute of Accountancy Arusha	Finance
National Board of Accountants and Auditors	Finance
Commission for Insurance	Finance
Muhimbili Medical Centre	Health
Muhimbili Orthopaedic Institute	Health
Ocean Road Cancer Institute	Health
Kilimanjaro Christian Medical Centre	Health
Voluntary Agencies (Hospital)	Health
Bugando Medical Centre	Health
National Institute for Medical Research	Health

<b>Public Body</b>	<b>Parent Ministry</b>
Tanzania Food and Nutrition Centre	Health
Voluntary Agency (Training)	Health
Hombolo Local Government Training Centre	Regional Administration and Local Government
Kibaha Education Centre	Regional Administration and Local Government
Shirika la Nyumba	Defence and National Service
Suma JKT	Defence and National Service
Tanzania Petroleum Development Corporation (TPDC)	Energy and Minerals
Dar es Salaam Maritime Institute	Communications and Transport
National Institute of Transport	Communications and Transport
Tanzania Airports Authority	Communications and Transport
Tanzania Meteorology Authority	Communications and Transport
National Social Welfare Training Centre	Labour and Youth and Sports
National Productivity Centre	President's office Planning and Privatisation
East African Statistical Centre	President's Office Planning and Privatisation
Tanzania Investment Centre	President's Office Planning and Privatisation
Institute of Rural Development Planning	President's Office Planning and Privatisation
National Business Council	President's Office Planning and Privatisation
Parastatal Sector Reform Commission	President's Office Planning and Privatisation
Kivukoni Academy of Social Sciences	Science, Technology and Higher Education
Open University	Science, Technology and Higher Education

<b>Public Body</b>	<b>Parent Ministry</b>
University College of Lands and Architectural Studies (UCLAS)	Science, Technology and Higher Education
Sokoine University of Agriculture	Science, Technology and Higher Education
University of Dar es Salaam	Science, Technology and Higher Education
Higher Education Accreditation Council	Science, Technology and Higher Education
Muhimbili University College of Health Sciences	Science, Technology and Higher Education
Dar es salaam Institute of Technology	Science, Technology and Higher Education
National Accreditation Council of Technical Education (NACTE)	Science, Technology and Higher Education
National Radiation Commission	Science, Technology and Higher Education
Tanzania Commission of Science and Technology	Science, Technology and Higher Education
Serengeti Wildlife Research Institute	Natural Resource and Tourism
Tanzania Forest Research Institute	Natural Resource and Tourism
Tanzania National Parks	Natural Resource and Tourism
Marine Parks	Natural Resource and Tourism
Tanzania Tourist Board (TTB)	Natural Resource and Tourism
National Museum and Archives	Natural Resource and Tourism
Ngorongoro Conservation Authority	Natural Resource and Tourism
Dar es Salaam Water Supply and Sanitation Authority (DAWASA)	Water and Livestock Development
Other Urban Water Supply and Sanitation Authorities	Water and Livestock Development
Regional Water Boards	Water and Livestock Development

Public Body	Parent Ministry
Department of the Government Aircraft	Communication and Transport

## Second Schedule

### Limits of authority

- (a) Limits of authority for Central Tender Board, Ministries, Government departments, regions, districts, executive agencies, local government authorities and Tanzania foreign embassies and diplomatic missions:

S/No.	Organisation	Prescribed Limit in T. Shs. '000 and type of contract		
		Works	Goods	Services
1.	Ministries	450,000	270,000	90,000
2.	TanRoads Headquarters	4,500,000	2,700,000	900,000
3.	TanRoads Regions	450,000	270,000	90,000
4.	Other Executive Agencies	200,000	120,000	40,000
5.	Regional Tender Boards	100,000	60,000	20,000
6.	District Tender Boards	50,000	30,000	10,000
7.	Local Government Authority	Unlimited	Unlimited	Unlimited
8.	Independent Government Departments	50,000	30,000	10,000
9.	Medical Tender Board	200,000	120,000	40,000
10.	Tanzania foreign embassies and missions	50,000	30,000	10,000
11.	Central Tender Board	Thresholds above Ministries, and Tanroads Headquarters		

- (b) Limits of authority for parastatal organizations of the nature of Institutions for Higher Education:

S/No.	Organisation	Prescribed limit in T. Shs. ' 000 and type of contract		
Works	Goods	Services		
1.	Muhimbili College of Health Sciences	50,000	30,000	10,000
2.	University of Dar es Salaam	100,000	60,000	20,000
3.	Sokoine University of Agriculture	100,000	60,000	20,000
4.	Open University	100,000	60,000	20,000
5.	University College of Lands and Architectural Studies	50,000	30,000	10,000
6.	Dar es Salaam Institute of Technology	50,000	30,000	10,000
7.	Tanzania Commission for Science and Technology	50,000	30,000	10,000
8.	Kivukoni Academy of Social Sciences	50,000	30,000	10,000

(c) Limits of authority or parastatal organisations of the nature of Hospitals and Medical Research Institutes:

S/No.	Organisation	Prescribed Limit in T. Shs. ' 000 and type of contract		
Works	Goods	Services		
1.	Muhimbili Medical Centre	10,000	6,000	2,000
2.	Muhimbili Orthopaedic Institute	5,000	3,000	1,000
3.	Ocean Road Cancer Institute	5,000	3,000	1,000
4.	Kilimanjaro Christian Medical Centre	10,000	6,000	2,000
5.	Bugando Medical Centre	10,000	6,000	2,000

S/No.	Organisation	Prescribed Limit in T. Shs. '000 and type of contract		
6.	National Institute for Medical Research	10,000	6,000	2,000
7.	Tanzania Food and Nutrition Centre	10,000	6,000	2,000
8.	Voluntary Agency (Training)	5,000	3,000	1,000
9.	Voluntary Agency (Hospital)	5,000	3,000	1,000

## (d) Limits of authority for Parastatal Organisations:

S/No.	Organisation	Prescribed limit in T. Shs. '000 and type of contract		
		Goods	Services	
<b>Works</b>				
1.	Tanzania Electricity Supply Company Limited	18,000,000	10,800,000	3,600,000
2.	Tanzania Railways Corporation	22,500,000	13,500,000	4,500,000
3.	Tanzania Harbours Authority	22,500,000	13,500,000	4,500,000
4.	Tanzania Revenue Authority	9,000,000	5,400,000	1,800,000
5.	National Social Security Fund	9,000,000	5,400,000	1,800,000
6.	National Environment Management Council	200,000	120,000	40,000
7.	Institute of Development Management Mzumbe	50,000	30,000	10,000
8.	Centre for Foreign Relations	50,000	30,000	10,000
9.	Capital Development Authority	50,000	30,000	10,000
10.	Tanzania Broadcasting Commission	10,000	6,000	2,000

S/No.	Organisation	Prescribed limit in T. Shs. '000 and type of contract		
11.	Tanzania School of Journalism	10,000	6,000	2,000
12.	Audio Visual Institute	5,000	3,000	1,000
13.	Televisheni ya Taifa (TVT)	5,000	3,000	1,000
14.	Institute of Judicial administration	5,000	3,000	1,000
15.	Freedom from Hunger Campaign	5,000	3,000	1,000
16.	Rufiji Basin Development Authority	100,000	60,000	20,000
17.	Tanzania Pesticides Research Institute	10,000	6,000	2,000
18.	Co-operative College Moshi	10,000	6,000	2,000
19.	Co-operative Audit and Supervision	5,000	3,000	1,000
20.	College of Business Education	10,000	6,000	2,000
21.	Tanzania Industrial Research and Development Organisation (TIRDO)	10,000	6,000	2,000
22.	Centre for Agricultural Mechanical and Rural Technology	10,000	6,000	2,000
23.	High Precision Technology Centre	5,000	3,000	1,000
24.	Tanzania Engineering and Manufacturing Design Organisation	10,000	6,000	2,000
25.	Small Scale Industries Organisation	10,000	6,000	2,000
26.	Board of External Trade	5,000	3,000	1,000
27.	London Trade Centre	5,000	3,000	1,000
28.	Tanzania Bureau of Standards	10,000	6,000	2,000

S/No.	Organisation	Prescribed limit in T. Shs. '000 and type of contract		
29.	National Examination Council	10,000	6,000	2,000
30.	Tanzania Library Services	5,000	3,000	1,000
31.	Institute of Education	5,000	3,000	1,000
32.	Institute of Adult Education	5,000	3,000	1,000
33.	National Correspondence Institute	5,000	3,000	1,000
34.	CHEWATA	5,000	3,000	1,000
35.	National Arts Council	5,000	3,000	1,000
36.	National Sports Council	5,000	3,000	1,000
37.	National Sports Council	5,000	3,000	1,000
38.	National Board for Materials Management	5,000	3,000	1,000
39.	National Construction Council	10,000	6,000	2,000
40.	Contractors Registration Board	10,000	6,000	2,000
41.	Ardhi Institute Morogoro	5,000	3,000	1,000
42.	Land Use Planning Commission	5,000	3,000	1,000
43.	Institute of Finance Management	10,000	6,000	2,000
44.	Institute of Accountancy Arusha	10,000	6,000	2,000
45.	National Board of Accountants and Auditors	10,000	6,000	2,000
46.	Hombolo Local Government Training centre	10,000	6,000	2,000
47.	Kibaha Education Centre	10,000	6,000	2,000



S/No.	Organisation	Prescribed limit in T. Shs. '000 and type of contract		
48.	Tanzania Petroleum Development Corporation	800,000	480,000	160,000
49.	Dar es Salaam Maritime Institute	10,000	6,000	2,000
50.	National Institute of Transport	10,000	6,000	2,000
51.	National Social Welfare Training Centre	5,000	3,000	1,000
52.	National Productivity Centre	5,000	3,000	1,000
53.	East African Statistical Centre	5,000	3,000	1,000
54.	Tanzania Investment Centre	10,000	6,000	2,000
55.	Institute of Rural Development Planning	10,000	6,000	2,000
56.	National Business Council	5,000	3,000	1,000
57.	Presidential Parastatal Sector Reform Commission	100,000	60,000	20,000
58.	Serengeti Wildlife Research Institute	10,000	6,000	2,000
59.	Tanzania Forest Research Institute	10,000	6,000	2,000
60.	Tanzania National Parks	50,000	30,000	10,000
61.	Tanzania Marine Parks	10,000	6,000	2,000
62.	Tanzania Tourist Board (TTB)	50,000	30,000	10,000
63.	National Museum and Archives	5,000	3,000	1,000
64.	Ngorongoro Conservation Authority	10,000	6,000	2,000
65.	National Insurance Corporation of Tanzania Limited	9,000,000	5,400,000	1,800,000

S/No.	Organisation	Prescribed limit in T. Shs. '000 and type of contract		
66.	Parastatal Pension Fund	9,000,000	5,400,000	1,800,000
67.	Public Service Pension Fund	800,000	480,000	160,000
68.	Air Tanzania Corporation	22,500,000	13,500,000	4,500,000
69.	Engineers Registration Board	10,000	6,000	2,000
70.	Architects and Quantity Surveyors Registration Board	10,000	6,000	2,000
71.	Other Urban Water Supply and Sanitation Authorities	50,000	30,000	10,000
72.	Regional Water Boards	10,000	6,000	2,000
73.	Department of Government Aircrafts	10,000	6,000	2,000

These thresholds do not apply on the sale or privatisation of parastatal organizations or industries per se. These apply to the procurement of goods, works and services for the operations of the Presidential Parastatal Sector Reform Commission to enable it carry out the privatisation operations.

(e) Authorised Ministerial Procurement Limits for Accounting Officers and Heads of Departments:

Method of procurement	Maximum procurement value per annum subject to the limit of T. Shs. 3,000,000 per contract for the Accounting Officer and T. Shs. 1,000,000 per contract for the Head of Department	
	Heads of Department	Accounting Officers
Direct contracting for works and services on quotations basis with minimum five quotations from different sources	Up to T. Shs. 3,000,000	Up to T. Shs. 9,000,000

<b>Method of procurement</b>	<b>Maximum procurement value per annum subject to the limit of T. Shs. 3,000,000 per contract for the Accounting Officer and T. Shs. 1,000,000 per contract for the Head of Department</b>	
Direct shopping for goods on quotations basis with minimum five quotations from different sources	Up to T. Shs. 3,000,000	Up to T. Shs. 9,000,000

**NOTES:**

- (i) *For the procurement to be approved by the Head of Department, the procurement must have the prior endorsement of the Secretary to the Ministerial Tender Board and by at least two other members of that Ministerial Tender Board.*
- (ii) *For the procurement to be approved by the Accounting Officer, the procurement must have the prior endorsement of the Secretary to the Ministerial Tender Committee and by at least two other members of that Ministerial Tender Board.*
- (f) Authorised Parastatal organizations Procurement Limits for Chief Executive Officers [for Parastatal Organizations with tender board authorization limits exceeding T. Shs. 5,000,000,000 for works]:

<b>Method of procurement</b>	<b>Maximum procurement value per annum subject to the limit of T. Shs. 5,000,000 per contract for the chief executive.</b>
<b>Heads of Department</b>	
Direct contracting for works and services on quotations basis with minimum five quotations from different sources	Up to T. Shs. 15,000,000
Direct shopping for goods on quotations basis with minimum five quotations from different sources	Up to T. Shs. 15,000,000

**NOTES:**

*For the procurement to be approved by the Chief Executive, the procurement must have the prior endorsement of the Secretary to the Parastatal Organization Tender Board and at least two other member of the Parastatal Organization Tender Board.*

(g) Authorised TanRoads Procurement Limits:

<i>Method of procurement</i>	<b>Maximum procurement value per annum subject to the limit of T. Shs. 50,000,000 per contract for the Chief Executive and T. Shs. 5,000,000 per contract for the TanRoads Regional Manager</b>	
<i>TanRoads Regional Manager</i>	<i>TanRoads Chief Executive</i>	
Direct contracting for works and services on quotations basis with minimum five quotations from different sources	Up to T. Shs. 15,000,000	Up to T. Shs. 150,000,000
Direct shopping for goods on quotations basis with minimum five quotations from different sources	Up to T. Shs. 15,000,000	Up to T. Shs. 150,000,000

**NOTES:**

- (i) For the procurement to be approved by the TanRoads Chief Executive, the procurement must have the prior endorsement of the Secretary to the TanRoads Regional Tender Board and at least two other member of the TanRoads Regional Tender Board.
- (ii) For the procurement to be approved by the TanRoads Regional Manager the procurement must have the prior endorsement of the Secretary to the TanRoads Regional Tender Board and at least two other members of the TanRoads Regional Tender Board.

**Third Schedule****Maximum limits for methods of procurement of services****(Expressed in T. Shs.)**

	<b>Goods, T. Shs.</b>	<b>Works</b>
International competitive tendering	No limit	No limit
National competitive tendering	Up to T. Shs. 800,000,000	Up to T. Shs. 1,600,000,000
Restricted tendering	Up to T. Shs. 400,000,000	Up to T. Shs. 800,000,000
Competitive quotations	Up to T. Shs. 80,000,000	Up to T. Shs. 200,000,000
Single Source Procurement	No limit, but must be justified	Up to T. Shs. 800,000,000

	<b>Goods, T. Shs.</b>	<b>Works</b>
Minor Value Procurement	T. Shs. 2,500,000	T. Shs. 8,000,000

**NOTES:**

The various methods of tendering shown may only be used where the estimated value of the goods or works being tendered does not exceed the limit indicated. Each limit is the threshold for the next more competitive form of tendering.

However, a procuring entity may use whichever form of tendering is the most appropriate and cost-effective, provided the limits are not exceeded, e.g., open international tendering may be used where the estimated value of the requirement is below T. Shs. 800,000,000, as long as the additional expense of advertising, etc., is justified by the additional exposure and completion.

**Fourth Schedule (Regulation 63(7))****Standard processing times for procurement****National and International Competitive Tendering**

		<b>Time (Weeks)</b>	<b>Total Elapsed Weeks (Min./ Max.)</b>
1.	Finalise specifications, OR Consultancy: Define and agree terms of reference	2/4	2/4
1. a <sup>10</sup> <sub>1</sub>	Obtain Donor agency approval	4	
2.	Preparation of tender documents	2	4/6
3.	Approval of tender document by Purchasing Committee or Tender Board	2	6/8
3. a	Donor agency approval	4	
4.	Advertise and issue tender	2	8/10
5.	Return of bids and tender opening	6/9	14/19
6.	Evaluation of bids (with clarifications)	3(6)	17/22

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This additional time is only required for clearance by the donor agency.

		<b>Time (Weeks)</b>	<b>Total Elapsed Weeks (Min./Max.)</b>
7.	Examination and approval by tender board	2	19/24
7. a <sup>11</sup> 2	Review and approval by donor agency	4	
8.	Notification of award to successful bidder	1	20/25
9.	Award of contract (Ministry of Justice and Constitutional approval, if required)	2(4)	22/27 (26/31)

*NB: The above timings include time for transmission of documents and any internal approvals.*

### **Fifth Schedule (Regulation 32(8))**

#### **Certification or capacity rating criteria for procurement management unit**

1. The certification or capacity rating criteria to be used by the Central Tender Board for a procurement management unit shall include the following—
  - (1) The human resources and skills relating to—
    - (a) the employment of professionally qualified personnel;
    - (b) the training and skills development; and
    - (c) on the job experience and performance.
  - (2) The administrative and operational procedures in use including the organisational structure of the procurement management unit.
  - (3) The physical structures, materials and resources such as—
    - (a) adequate office space;
    - (b) availability of requisite office machinery;
    - (c) operating budget of the unit; and
    - (d) vehicles.
  - (4) The duties and experience such as—
    - (a) the responsibility to co-ordinate and supervise procurement functions in a ministry or parastatal body;
    - (b) co-ordinating and managing tender committee operations and activities according to established tender regulations and procurement standards;
    - (c) carrying out informal procurement and supplies management with a track record or successful use of guide to informal tender procurement;

- (d) Carrying out formal tender procurement of goods involving;
  - (e) Carrying out formal procurement of services and works relating to—
    - (i) the preparation of tender documents, invitation, evaluation and award of consultancy service contracts; and
    - (ii) the preparation of documentation, issuing of invitation, evaluation, selection and award of works contracts and supervision of works;
  - (f) undertaking international purchases and contracts;
  - (g) carrying out procurements under donor supported projects.
- (5) The extent to which the services rendered to client institutions were satisfactory.
- (6) Total spend and impact of activities of the unit on institutional savings.
2. The following shall be the minimum requirements for certifying procurement management units under the following categories—
- (a) Government Institutions

### **Category A**

shall call for formal tenders whose estimated cost is valued up to one hundred million Tanzanian Shillings with a minimum rating criteria to include the following—

- (i) employment of at least one fully qualified procurement professional;
- (ii) availability of adequate office space, requisite office equipment and operating budget;
- (iii) experience in co-ordinating and supervision of procurement functions in the ministry and proven track record of successful use of guide in informal tender procurement; and
- (iv) management of tender committee operations and activities according to required standards.

### **Category B**

shall call for formal tenders whose estimated cost is valued up to five hundred million Tanzanian Shillings with a minimum rating criteria to include the following—

- (i) employment of at least two fully qualified procurement professionals;
- (ii) availability of adequate office space, requisite office equipment, transport and operating budget;
- (iii) experience in co-ordinating and supervision of procurement functions of the Ministry and proven track record of successful use of guide to informal tender procurement; and preparation of tender documentation for goods;
- (iv) management of tender committee operations and activities to the required standard or level; and
- (v) the preparation and issue of contract documents including contract administration.

### Category C

shall call for formal tenders whose estimated cost is valued up to four billion Tanzanian Shillings with a minimum rating criteria to include the following—

- (i) employment of 3-5 fully qualified procurement professionals;
  - (ii) availability of adequate office space, office equipment transport and operating budget;
  - (iii) experience in co-ordinating and supervision of procurement functions of the ministry;
  - (iv) a proven track record of—
    - successful use of guide to informal tender procurement;
    - effective use of guide to formal tender procurement of goods, services and works;
    - the preparation of tender documents of a complex nature; and
    - the preparation, issue and administration of contracts;
  - (v) management of tender committee operations and activities which are satisfactory to the required standards;
  - (vi) the extent to which the services rendered to client institutions were satisfactory;
- (b) Parastatal bodies including Local Authorities

### Category A

shall call for formal tenders whose estimated cost is valued up to one hundred million Tanzanian Shillings with a minimum rating criteria to include the following—

- (i) employment of at least one qualified procurement professional personnel;
- (ii) availability of adequate office space, office equipment and operating budget;
- (iii) ability to co-ordinate and supervise procurement functions of parastatal body;
- (iv) track record of successful procurement through use of guide to informal tender procurement;
- (v) management of tender committee operations and activities to the required level.

### Category B

shall call for formal tenders whose estimated cost is valued up to five hundred million Tanzania shillings with a minimum rating criteria to include the following—

- (i) employment of at least two fully qualified procurement professionals;
- (ii) availability of adequate office space, requisite office equipment, transport and operating budget;
- (iii) experience in co-ordinating and supervision of procurement functions of parastatal body and proven record of—
  - (a) successful use of guide to informal tender procurement; and



- (b) preparation of tender documentation for goods and works;
- (iv) management of tender committee/board operations and activities to the required standard or level; and
- (v) the preparation and issue of contract documents including contract administration.

### **Category C**

shall for formal tenders whose estimated cost is valued up to eight billion Tanzanian shillings with a minimum rating to include the following—

- (i) employment of 3 - 5 fully qualified procurement professional;
- (ii) availability of adequate office space, office equipment, transport and operating budget;
- (iii) ability to co-ordinate and supervise procurement functions of the parastatal body;
- (iv) a proven track record of—
  - successful use of guide to formal tender procurement;
  - effective use of formal tender procurement of goods, services and works;
  - the preparation of complex tender documents; and
  - the preparation, issue and administration of contracts;
- (v) management of tender committee operations and activities which are satisfactory to the required standards;
- (vi) the extent to which the services rendered to client institutions were satisfactory.

## **Sixth Schedule (Regulation 84(5))**

### **Memorandum**

Government of the United Republic of Tanzania

### **Procedures for tendering for public sector contracts**

The following procedures will apply to the letting of contracts for the public sector projects. These procedures are in addition to the standard legal and administrative requirements; they will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of the United Republic of Tanzania and any of the competing tenders.

- (1) Each tenderer must submit a statement, as part of the tender documents, with the following text.

"This company places importance on competitive tendering taking place on a basis that is free, fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relations or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects, or contract including agents,

consultants, consortium partners, sub-contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and Compliance Program are attached".

(Alternatively: This company has issued, for the purposes of this tender, a Compliance Program copy attached which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers").

- (2)
  - (a) This statement must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and, where relevant, of its subsidiary in the United Republic of Tanzania. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
  - (b) Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the tenderer may cover the subcontractors and consortium partners in its own statement, provided the tenderer assumes full responsibility.
- (3)
  - (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
  - (b) Each tenderer will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
  - (c) The successful tenderer will also make full disclosure quarterly or semi-annually of all payments to agents and other third parties during the execution of the contract.
  - (d) Within six months of the completion of the performance of the contract, the successful tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.
  - (e) Statements required according to subparagraphs (b) and (d) of this subregulation will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
  - (a) Cancellation of the contract;
  - (b) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages); unsuccessful tenderer would present their claims under international arbitration;
  - (c) Forfeiture of the tender security; and
  - (d) Debarment by the Government of the United Republic of Tanzania from tendering for further public contracts for a period of ten years and as the Government may deem appropriate.
- (6) Tenderers shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their general or project-specific Compliance Programs.
- (7) The Government of the United Republic of Tanzania has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by tenderers for this contract,

and to which in turn all tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a tenderer may be disclosed to another tenderer or to the public).