

GOVERNMENT NOTICE No. 97 published on 15/4/2005

**THE PUBLIC PROCUREMENT (GOODS, WORKS,
NON-CONSULTANT SERVICES AND DISPOSAL OF PUBLIC
ASSETS BY TENDER) REGULATIONS, 2005**

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THE PUBLIC PROCUREMENT ACT, 2004
(NO. 21 OF 2004)

REGULATIONS

Made under Section 88

THE PUBLIC PROCUREMENT (GOODS, WORKS, NON-CONSULTANT SERVICES AND
DISPOSAL OF PUBLIC ASSETS BY TENDER) REGULATIONS, 2005

PART I
PRELIMINARY PROVISIONS

Citation	<p>1. These Regulations may be cited as the Public Procurement (Goods, Works, Non-consultant Services and Disposal of Public Assets by Tender) Regulations, 2005 and shall be deemed to have come into operation on the date of commencement of the Act.</p>
Application	<p>2.-(1) Subject to sub-regulation (2), these Regulations shall apply to all procurement of goods, works and non-consultant services undertaken by a procuring entity except where the context provide otherwise in which case the provisions of the Act shall prevail.</p> <p>(2) These Regulations shall apply to the disposal of public assets by tender.</p> <p>(3) These Regulations shall not apply to procurement of the services of consultants and to disposal of public assets by other methods.</p>
Interpretation	<p>3. In these Regulations, unless the context requires otherwise:</p>
Act No.6 of 2001	<p>"accounting officer" means a Public officer appointed in accordance with the provisions of the Public Finance Act, 2001;</p>
Act No 21 of 2004	<p>"Act" means the Public Procurement Act, 2004;</p> <p>"appeals authority" means the accounting officer, chief executive officer, the Authority or the Public Procurement Appeals Authority or the court of competent jurisdiction when dealing with complaints and the resolution of procurement disputes;</p> <p>"Approving Authority" means an accounting officer or chief executive officer, a ministry tender board, a regional tender board, a district tender board, or a parastatal tender board;</p>

- “assets” means entries on a balance sheet showing all properties, tangible and intangible, and claims against others that may be applied, directly or indirectly, to cover the liabilities of an organization, such as cash, stock, patents, customer lists, copyrights, brand recognition, and goodwill."
- “Authority” means the Public Procurement Regulatory Authority established by section 5 of the Act;
- “best net outcome” means maximising the overall benefit to the government from the disposal of the asset;
- “communication" means certificates, notices, orders and instructions issued;
- “companies" 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 or disposal of public assets whereby suppliers, service providers, contractors or asset buyers are invited by a procuring entity to compete with each other in submitting priced tenders for the supply of goods, provision of services, execution of works or acquisition of assets;
- “consultant" means a firm, company, corporation, organisation, partnership or individual person engaged in or able to be engaged in the business of providing services in architecture, economics, engineering, surveying or any field of professional 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 or asset buyer as a result of procurement proceedings, supply of goods or for the execution of works or for sale of public asset;
- “contractor" means a firm, 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 a 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 procuring entity of the benefits of free and open competition;

"framework contract" means a contractual arrangement which allows the procuring entity to procure goods, services or works that are needed continuously or repeatedly at an agreed price over an agreed period of time, through a placement of a number of orders;

"highest evaluated price" means the price offered by a tenderer for the asset to be disposed of that is found to be the highest 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;

"limit of authority" means the maximum value of any single contract that may be approved by an accounting officer or chief executive without the prior approval of tender board as set out in the Second Schedule to these Regulations;

"lowest evaluated cost" means the price offered by a supplier, service provider, or contractor that is found to be the lowest 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;

"non-consultancy service" means a service of a skilled or non skilled nature, which is not a consultancy service and includes, but is not limited to, cleaning, security, maintenance, and repair services;

"parastatal organisation" means:

Cap. 212

- (a) any body corporate established by or under any written law other than the Companies Ordinance; or

- Cap. 212 (b) any corporation registered under the Companies Ordinance, in which not less than fifty percent of the share capital is owned by the Government or by another parastatal organisation or in the case of a company which is limited by guarantee, where the Government has undertaken to meet fifty percent or more of the liabilities of that company; or
- Act No.30 of 1997 (c) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act, 1997;
- “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 in case of procurement or the highest evaluated tenderer in case of disposal of assets, has the experience, capability and resources to carry out the contract effectively;
- “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 in case of procurement or the highest evaluated tenderer in case of disposal of assets, has the experience, capability and resources to carry out the contract effectively;
- “pre-qualification” means a formal procedure whereby suppliers, contractors, or buyers 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 or services by a procuring entity spending public funds on behalf of a ministry, department or regional administration of the Government or public body and includes all functions that pertain to the obtaining of any goods or works or services 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;
- “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;

Cap. 212

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

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

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

“public body or public authority” means:-

- (a) any ministry, department or agency of Government;
- (b) any body corporate or statutory body or authority established for the purposes of the Government;
- (c) any company registered under the Companies Ordinance, 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;
- (d) any local government authority;
- (e) any parastatal organization.

“public officer or officer” means:

- (a) any person holding or acting in an office of emolument in the services of the Government;
- (b) a person holding or acting in the office of minister in the Government ;
- (c) an employee of any body corporate such as is referred to in the definition of public authority;
- (d) any person conducting negotiations, for or in relation to a public contract, or a prospective public contract on behalf of a public body or public authority; or
- (e) a person who is a consultant to a public body or public authority;

“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;

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

"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 highest evaluated price, in case the method of disposal was a 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;

"tender" means, either

- (a) a request drawn by a procuring entity for offers or quotations to be made by suppliers, service providers, contractors or asset buyers, or
- (b) offer, quotation or technical proposal made by a supplier service provider, contractor or asset buyer 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 board" means a Tender Board established under Section 28 of the Act;

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

"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;

"works" means:

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

PART II GENERAL PROVISIONS

Procurement
policy

4.-(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, contractors, and service providers equal opportunities to compete in providing goods or executing works or providing services;
- (c) encouragement of national manufacturing, contracting and service industries;
- (d) the importance of integrity, accountability, fairness and transparency in the procurement process.

(3) The disposal of public assets policies are based on the need to achieve the best available net return when disposing of public assets by tender, whilst conducting all disposal with honesty and fairness.

(4) All public officers and members of tender boards who are undertaking or approving disposal of public assets shall be guided by the following basic considerations of the policy on disposal of public assets by tender:

- (a) the need for best net outcome and efficiency in the use of public funds and in the implementation of projects including disposal of assets;
- (b) the best interests of a public authority, in giving all eligible buyers equal opportunities to compete in buying the assets;
- (c) the need to ensure that national social, economic and environmental interests are protected;

Economy
and
efficiency

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

- (a) the goods, works and services procured are of satisfactory quality;
- (b) the goods, works, or services are appropriate to the public authority requirements and, where necessary, goods or services are compatible with any similar goods or services already supplied or provided for public authority's use or for a particular project;
- (c) the goods are delivered, the services are provided, the works are completed in a timely fashion in accordance with the public authority's priorities; and
- (e) the public assets, including assets identified by a board of survey, which are found obsolete, dormant or unserviceable are disposed in a manner which attracts maximum competition while reducing the administration and transaction costs.

Eligible
suppliers,
contractors,
service
providers
and asset
buyers

6.-(1) Any supplier, contractor, service provider or asset buyer who qualifies for consideration further to Regulations 10 and 14 of these Regulations shall be eligible to take part in procurement or disposal proceedings, regardless of their nationality except where this is limited further to Regulations 25 and or by other provisions of other written Laws.

(2) A procuring entity shall not deny pre-qualification, if required, to a firm for reasons unrelated to its capability and resources to successfully perform the contract.

(3) 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 or acquiring assets from the same project. This provision does not apply to the various firms (consultants, contractors or suppliers) which together are performing the contractors 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 and
 - (iii) are registered by the relevant registration boards or authorities

4. 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 73.

5. A firm which has been declared ineligible by the Government in accordance with Section 72 of the Act or Regulations 8(3) and 101(9) shall be ineligible to be awarded a public financed contract during the period of time determined by the Government.

6. Tanzanian manufacturers, contractors, or buyers 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. Where a tenderer submits a tender as part of a joint venture, consortium or association, the solicitation or contract document shall state where appropriate:

- (a) that a party to a joint venture, consortium or association shall be jointly and severally liable for the performance of the contract;
- (b) that a party to a joint venture, consortium or association shall be eligible to participate in the procurement or disposal by tender and where one party is deemed to be ineligible, the whole joint venture, consortium or association shall be declared ineligible;
- (c) that a copy of the joint venture, consortium or association agreement, or the proposed agreement, shall be required to be submitted as part of the tender or as a condition of contract effectiveness;
- (d) that a joint venture, consortium or association shall appoint a lead member who shall have the authority to bind the joint venture, consortium, or association and the lead member shall at the time of contract award confirm the appointment by submission of a power of attorney to the procuring entity;
- (e) that any tender from a joint venture, consortium or association shall indicate the part of proposed contract to be performed by each party and each party shall be evaluated or prequalified or post qualified with respect to its contribution only; or

- (f) that the responsibilities of each party in subparagraph (e) shall not be substantially altered without prior written approval of the procuring entity;
- Method of procurement
- 7.-(1) Procurement of goods, works and related services through international and national competitive tendering as defined in Part VI of these Regulations shall be considered first before other methods of tendering described in Regulations 67 to 71 are used.
- (2) Subject to the appropriate tender board's prior written approval, other forms of procurement may be used whenever it can be established that this is done with due regard for transparency, economy and efficiency in the implementation of the project.
- (3) Disposal of public assets through international and national competitive tendering shall be considered only:
- (a) for high value or unusual assets;
 - (b) for assets located in remote areas;
 - (c) for assets that have a geographically dispersed potential market;
 - (d) for assets with end-user or export restrictions attached to their sale;
- (e) where conditions need to be attached to the sale of the asset; or
- (f) where post-bid negotiations may be required.
- Probity and ethics in procurement or disposal by tender
- 8.-(1) All public officers concerned with procurement or disposal of public assets by tender and members of tender boards must be scrupulously honest in all their dealings with suppliers, contractors, service providers, buyers, members of the public and with the public authority itself.
- (2) Procuring entities and members of tender boards must conduct procurement and disposal by tender 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, suppliers, service providers and buyers.
- (3) A procuring entity shall reject the tender of a supplier, contractor, service provider, or buyer 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 or disposal by tender 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, contractor, service providers and buyer.

(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, contractor, service provider or buyer and shall take no part in, nor seek to influence in any way, procurement or disposal by tender proceedings in which that supplier, contractor, service provider or buyer is involved or liable to become involved.

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

Equality of participation

9. To ensure the widest possible participation by suppliers, contractors, service providers or buyers on equal terms in invitations to tender for goods, works, services or disposal of assets, as appropriate, procuring entities and approving authorities shall take the necessary measures to:

- (a) ensure publication of invitations to tender in the Authority's journal and website, 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) ensure that all the selection criteria are specified in the tender documents; and
- (d) ensure that the tender selected conforms to the requirements of the tender documents and meets the selection criteria stated therein.

Eligibility

10.-(1) Unless otherwise specified in accordance with Regulations 25 and 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) cooperative societies and other legal persons governed by public or private law.

(c) joint ventures, consortium or association of 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) has been blacklisted in accordance with Section 57 of the Act or ineligible in accordance with Section 73(7) of the Act.

(3) To be eligible for participation in invitation to tender and award of contracts tenderers shall provide evidence satisfactory to the procuring entity of their eligibility under this Regulation, 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 and details of other contracts in hand including details of the actual and effective participation in each such contract;
 - (c) where applicable, the major items of equipment proposed for use in carrying out the contract; the qualifications and experience of key personnel proposed for administration and execution of the contract, both at and away from the place of execution of the contract;
 - (d) proposals relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any elements of the contract amounting to more than 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, 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.

Transpare-
ncy and
fairness

11-(1) Procuring entities and tender boards shall maintain adequate written records of all procurement or disposal proceedings in which they are involved, including any procurement conducted other than by competitive tendering. Such records shall show which suppliers, contractors, service providers or buyers responded to advertisements or were approached to tender, who was chosen, and the reasons.

(2) A procuring entity shall ensure that payments due to suppliers, contractors, service providers or due to the procuring entity by the buyer of a public asset are made properly and promptly in accordance with the terms of each procurement or disposal 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.

Environ-
mental issues

12-(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 stage of the project and in any case before procurement proceeding are commenced.

(4) A procuring entity shall pay due regard to repair and re-use of goods wherever practicable and economically viable before disposing them by tender and procuring new replacements.

Donor
funding for
procurement

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

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

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

Qualification
of suppliers,
contractors,
service
providers or
asset buyers

14.-(1) To qualify to participate in procurement or disposal proceedings, suppliers, contractors, service providers or asset buyers shall meet the following criteria:

- (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 or disposal contract;
- (b) that they have legal capacity to enter into the procurement or disposal 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 and that they abide to employment, environmental, health and safety requirements 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 or disposal contract within a period of ten years preceding the commencement of the procurement or disposal proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.

(2) Subject to the right of suppliers, contractors, service providers or buyers to protect their intellectual property or trade secrets, a procuring entity may require suppliers, contractors, service providers or buyers participating in procurement or disposal proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the suppliers, contractors, service providers or buyers are qualified in accordance with the criteria referred to in sub-regulation (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, contractors, service providers or buyers.

(4) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers, contractors, service providers or buyers other than those provided for in this Regulation.

(5) The procuring entity shall evaluate the qualifications of suppliers, contractors, service providers or buyers 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 16(1) and Regulation 25(1) 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, contractors, service providers, buyers or against categories thereof on the basis of nationality, or that is not objectively justifiable.

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

(8) Foreign suppliers, contractors, service providers or buyers wishing to participate in the procurement or disposal proceedings are exempted for the requirement under sub-regulation (7), but where, as a result of the procurement proceedings, any foreign supplier, contractor, service providers or buyers is selected as having submitted the lowest evaluated responsive tender or best evaluated price tender in case of disposal, such a supplier, contractor, service provider or buyer shall be required to register with the appropriate professional statutory body before signing the procurement contract.

Pre-
qualification
proceedings

15.-(1) A tender board may 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) The provisions of Regulation 14 shall apply to pre-qualification proceedings.

(4) If a procuring entity engages in pre-qualification proceedings, it shall provide a set of pre-qualification documents to each supplier, contractor, service provider or buyer that requests them in accordance with the invitation to pre-qualify upon paying the price, if any, charged for those documents.

(5) 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 timetable 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 14;
- (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 Regulations 25 and 26 as the case may be;

- (f) the price, currency and terms of payment for the pre-qualification documents;
- (g) the means of obtaining the pre-qualification documents and the place from which they may be obtained;
- (h) the language or languages in which the pre-qualification documents are available; and
- (i) the place and deadline for the submission of application to prequalify.

(6) The invitation to pre-qualify shall be prepared by the procurement management unit and approved by the tender board, and shall be advertised in accordance with the method of procurement or disposal used.

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

(8) The pre-qualification documents shall be approved by an appropriate tender board.

(9) Invitations to pre-qualify which are issued without prior approval by a tender board and which do not satisfy these Regulations will not be considered valid.

(10) 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, service providers, contractors or asset buyers 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; and
- (e) any other requirements that may be established by the procuring entity in conformity with these regulations relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings.

(11) 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
- (c) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
- (d) financial position; and
- (e) current commitments.

(12) A procuring entity shall respond to any request by a supplier, contractor, service provider or buyer for clarification of the pre-qualification documents that is received by the procuring entity within two weeks prior to the deadline for the submission of applications to pre-qualify. The response by the procuring entity shall be given within three working days so as to enable the supplier, contractor, service provider or buyer to make a timely submission of its application to pre-qualify.

(13) The response to any request shall, without identifying the source of the request, be communicated to all suppliers, contractors, service providers or buyers to which the procuring entity provided the pre-qualification documents.

(14) 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.

(15) 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 pre-qualified and the non-prequalified firms.

(16) Pre-qualification shall not be used to limit the number of suppliers, contractors, service providers 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.

(17) All suppliers, contractors, service providers or buyers who pre-qualify to take part in a tender shall be invited to do so unless disqualified subsequently further to Regulation 10.

(18) 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 and firms which have been pre-qualified as partners in a joint venture shall not be allowed to submit individual tenders.

(19) 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.

(20) 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.

(21) 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, contractors, service providers or buyers that have been pre-qualified are entitled to participate further in the procurement or disposal proceedings.

(22) A procuring entity shall make available to any member of the general public, upon request, the names of all suppliers, contractors, service providers or buyers that have been pre-qualified.

(23) A procuring entity shall, upon request, communicate to suppliers, contractors, service providers or buyers that have not been pre-qualified the grounds thereof, but the procuring entity is not required to specify the evidence or give the reasons for those grounds.

(24) 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 assessed to no longer have the capability or resources to successfully perform the contract.

(25) In a situation where all the firms fail to pre-qualify on the basis of set out requirements, the procuring entity may waive or relax some of the requirements and evaluate all firms on the basis of the relaxed requirements subject to ensuring that they satisfy those conditions during the tendering of the goods, works services or of disposal of public assets by tender.

Participation
by a
supplier,
contractor,
service
provider or
asset buyer

16.-(1) A supplier, a contractor, a service provider or an asset buyer is permitted to participate in procurement or disposal 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 or disposal proceedings on the basis of nationality.

(2) A procuring entity that limits participation on the basis of nationality pursuant to sub-regulation (1) shall include in the record of the procurement or disposal proceedings a statement of the grounds and circumstances on which it relied.

(3) A procuring entity, when first soliciting the participation of suppliers, contractors, service providers or buyers in the procurement or disposal proceedings, shall declare to them that they may participate in the procurement or disposal proceedings as appropriate regardless of nationality, a declaration which may not later be altered but, if it decides to limit participation pursuant to sub-regulation (1), it shall so declare to them

Form of
communication

17.-(1) Subject to provisions of these Regulations communication between suppliers, contractors, service providers or buyers and the procuring entity shall be in a form that provides a record of the content of the communication.

(2) Communications between suppliers, contractors, service providers or buyers 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, contractors, service providers or buyers on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

Rules concerning documentary evidence provided by suppliers, contractors, service providers or asset buyers

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

Record of procurement or disposal proceedings

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

- (a) a brief description of the goods, works, or services to be procured, or of assets to be disposed of;
- (b) the names and addresses of suppliers, contractors, service providers or asset buyers who were pre-qualified or selected and invited to submit tenders or technical proposals;
- (c) the names and addresses of suppliers, contractors, service providers or asset buyers that submitted tenders, proposals, offers or quotations, and the name and address of the supplier, contractor, service provider or asset buyer with whom the procurement or disposal contract is entered into and the contract price;
- (d) information relative to the qualifications, or lack thereof, of suppliers, contractors, service providers or asset buyers that submitted tenders, proposals, offers or quotations;
- (e) the price, valuation of assets or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement or disposal contract, where these are known to the procuring entity;
- (f) a summary of the evaluation and comparison of tenders, proposals, offers or quotations, including the application of any margin of preference pursuant to Regulation 91 to 93;

- (g) if all tenders, proposals, offers or quotations were rejected pursuant to Regulation 20, a statement to that effect and the grounds thereof, in accordance with Regulation 20(1) and 20(2);
 - (h) if, in procurement or disposal proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement or disposal 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 63(3), the statement required under Regulation 63(3) 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 16(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; and

 - (l) a summary of any requests for clarification of the pre-qualification or solicitation documents, the responses thereto, as well a summary of any modification of those documents.
- (2) Subject to Regulation 89(8) the portion of the record referred to in subparagraphs (a) and (b) of sub-regulation (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 or disposal proceedings have been terminated without resulting in a procurement or disposal contract.
- (3) Subject to Regulation 89(8), the portion of the record referred to in subparagraphs (c) to (g) of the sub-regulation (1), shall, on request, be made available to suppliers, contractors, service providers or asset buyers that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposal, offer or quotation has been accepted or procurement or disposal proceedings have been terminated without resulting in a procurement or disposal contract.

(4) Disclosure of the portion of the record referred to in subparagraphs (c) to (e) of sub-regulation (1), 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; or
- (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 sub-regulation (1) (e).

(5) 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 Authority or any other officer authorised by the accounting officer.

(6) The procuring entity shall not be liable to suppliers, contractors, service providers or buyers for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with these Regulations.

20.-(1) Subject to approval by the tender board, 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 sub-regulation (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 another tender or other tenders, if necessary, using another method.

Rejection of
all tenders
proposals,
offers or
quotations
and
annulment
of
the tender
proceedings

(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;
- (g) if funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available; or
- (h) 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 sub-regulations (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.

(6) Where all tenders are rejected pursuant to any of the foregoing sub-regulations:

- (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; or
- (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.

Public notice of procurement or disposal contract awards and completion

21.-(1) Where an award of contract is made, the secretary to the tender board shall notify the Authority 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 notify the Authority, the name of the supplier, contractor, service provider, or buyer 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, contractor or service provider, or paid by the asset buyer to the disposing entity.

(3) The Authority shall publish in the *Gazette*, local newspapers of wide circulation in United Republic of Tanzania, and in its journal and website the names of those who have been awarded the contract, the contract amount, the date when the award was made, contract period, and the final contract amount paid to the supplier, contractor, or service provider and the price at which the assets disposed of by tender have been sold.

Rules concerning description of goods, works, services or assets

22.-(1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods, or works 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, contractors or service providers 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, works or services 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, works or services to be procured shall be used, where available, in formulating any statement of requirements, specifications, plans, drawings and designs to be included in the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.

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

(5) Solicitation documents or notices for disposal of assets by tender, and any additional information made available to a prospective tenderer shall specify that the asset is to be sold on "as is, where is" basis and shall disclaim liability after sale.

(6) Notwithstanding sub-regulation (5), a procuring entity shall give a full and accurate description of an asset to be disposed of.

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

Price adjust-
ment

23.-(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.

Language

24.-(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.

National preference

25.-(1) A procuring entity shall, when procuring goods, works, or services by means of international and national competitive tendering, grant a margin of preference for the benefit of tenderers for certain goods manufactured, mined, extracted or grown in the United Republic of Tanzania, or works by Tanzanian contractors provided that this is clearly stated in the tender documents.

(2) Suppliers, contractors, service providers or buyers of assets who are citizens of Tanzania shall be eligible to be granted a margin of preference as provided for in sub-regulation (1) only if they meet the criteria given in section 49 of the Act, and are registered by the Authority pursuant to Regulation 27 or any other statutory body acceptable to the Authority.

(3) For contracts for works to be awarded on the basis of international competitive tendering or national competitive tendering in which foreign contractors are participating, a procuring entity may grant a maximum margin of preference provided in the Fourth Schedule of these Regulations to domestic contractors subject to sub-regulation (2).

(4) In the case of contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering in which foreign suppliers are participating, procuring entities may grant a maximum margin of preference provided in the Fourth Schedule of these Regulations to domestically manufactured goods and related services.

(5) Where contracts for non-consultant services are to be awarded on the basis of international competitive tendering or national competitive tendering in which foreign service providers are participating, procuring

entities may grant a maximum margin of preference provided in the Fourth Schedule of these Regulations to domestic service providers.

(6) In the case contracts for disposal of public assets by tender are to be awarded on the basis of international competitive tendering or national competitive tendering in which foreign buyers participate, procuring entities may grant a maximum margin of preference provided in the Fourth Schedule of these Regulations to domestic buyers.

(7) The conditions and methods for calculating the margin of preference in the course of evaluating tenders shall be as set out in Regulations 91 and 93 of these Regulations.

Exclusive preference to local persons or firms

26. (1) Procurement of works or goods with a value not exceeding the values provided in the Fourth Schedule of these Regulations shall be reserved exclusively for local persons or firms who meet the requirements of Section 49 of the Act.

(2) The exclusive preference will also be granted to joint ventures or associations between foreign and local contractors or service provider in which the contribution of the local contractors or service provider in the association is greater than the figure provided in the Fourth Schedule of these Regulations.

(3) In applying exclusive preference to local contractors or service provider, the procuring entity shall have the responsibility of ensuring that selected persons or firms are capable of providing quality of works or services.

Registration for purposes of preference schemes

27.-(1) Wherever a procuring entity decides that a margin of preference or exclusive preference may be granted, it shall make use of the Authority's register of local contractors and service providers to determine whether a local contractors or service providers is qualified for margin of preference or exclusive preference.

-(2) The Authority shall establish and maintain a register of contractors and service providers for the purpose of offering to a procuring entity:

- (a) reliable and up-to-date information on the competencies of existing service providers and suppliers in the market, and the structure of the market for various services and supplies; and
- (b) a record of current and past contracts and performance by a provider.

(3) In order to avoid duplication of efforts, where a particular group of contractors or service providers are already being registered by a statutory body, the Authority shall work closely with such a statutory body to obtain the necessary information required to establish eligibility for the preference scheme.

(4) The Authority shall request all necessary details as it deems fit to establish eligibility for preference scheme for service providers who are not being registered by any statutory body.

(5) A supplier or service provider shall not be required to register with the Authority as a condition of participation in any procurement or disposal process except where a supplier or service provider wishes to benefit from a preference scheme pursuant to Regulations 25 and 26.

(6) Registration shall be open to all contractors and service providers.

28.-(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.

Tender
sample or
inspection of
assets

(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 procuring entity and shall dispose of them in such a manner as may be directed by the Accounting Officer.

(7) A procuring entity shall offer a reasonable opportunity to potential buyers of public assets, to inspect an asset before the date or deadline for tendering.

(8) Arrangements for the inspection of the assets shall be included in the invitation notice or solicitation documents, where appropriate.

Tender relating to public security

29. Where the contract involves access to confidential information:-

- (a) A procuring entities 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.

Specifications for vehicles machinery etc

30.-(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 Authority shall liaise with the ministry responsible for matters related to electrical, machinery and mechanical engineering to produce standard specification documents for use by the procuring entities.

(3) 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.

Auditor's
certificate

31.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 or disposal by tender by appropriate tender boards.

PART III

DELEGATION OF PROCUREMENT AUTHORITY

Delegation
and
contracting
out
procurement
and disposal
by tender
functions

32.-(1) Subject to the Act and these Regulations, an accounting officer or chief executive officer may:

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

(2) For avoidance of doubt, delegation of functions shall be within the procuring entity and contracting out of functions shall be outside the procuring entity

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

(4) Where a function is delegated or contracted out, an accounting officer or chief executive officer shall ensure the independence of functions and powers in accordance with Section 38 of the Act.

(5) A function may be delegated or contracted out where it is cost effective because of the work load or type of work or circumstances of the procurement management unit;

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

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

Delegation of
the
Accounting
Officer or
Chief
Executive
Officer own
functions

33.-(1) An accounting officer or chief executive officer may delegate in writing the following functions to a member of staff of the procuring entity:

- (a) certifying the availability of funds required for procurement;
- (b) committing of funds prior to contract placement;
- (c) communicating award decisions;
- (d) ensuring that the implementation of the awarded contract is in accordance with the terms and the conditions of award;
- (e) implementing the recommendations of the Authority.

(2) The accounting officer or chief executive officer shall not delegate the following powers and functions:

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

(3) In order to maintain independence of functions, the functions of the accounting officer or chief executive officer prescribed in sub-regulation (1) shall not be delegated to:

- (a) a member of a tender board or any delegated tender board; or
- (b) a member of a procurement management unit or any delegated procurement management unit

Delegations of
the functions
of tender
board or
procurement
management
unit

34.-(1) An accounting officer or chief executive officer may, on recommendation of the tender board, delegate any of the procurement or disposal by tender functions of the tender board or procurement management unit to:

- (a) a sub-division of the procuring entity; or
- (b) a member of staff of the procuring entity.

(2) A tender board may recommend to the accounting officer or chief executive officer the delegation of procurement and disposal by tender function to a sub-division of the procuring entity, subject to any value limitations or other exceptions where:

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

(3) Where an accounting officer or chief executive officer approves a delegation of authority to a sub-division, he shall, in the same way as the procuring entity:-

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

(4) When procurement is delegated to a sub-division of the procuring entity, the tender board and procurement management unit of the procuring entity shall;

- (a) remain responsible for work and decisions of the bodies to whom the procurement and disposal function by tender is delegated;

- (b) monitor or audit delegated bodies as required
- (c) submit consolidated reports covering all the procurement and disposal activities of the procuring entity to the Authority or any other body;
- (d) liaise with the Authority or any other body on behalf of the body to whom the procurement and disposal by tender functions are delegated; and
- (e) advise the body to whom the procurement and disposal functions are delegated on all matters relating to public procurement and disposal of public assets by tender.

(5) A tender board and procurement management unit to whom the procurement and disposal by tender functions are delegated shall:-

- (a) submit such reports to the main tender board of the procuring entity as may be required;
- (b) give a copy of the minutes of all its meetings to the main tender body of the procuring entity;
- (c) seek advice from the main tender board and procurement management unit on all matters relating to public procurement and disposal of public assets by tender
- (d) request the main tender board and procurement management unit to act on its behalf in matters requiring liaison with the Authority or any other body

(6) An accounting officer or chief executive officer shall not delegate any of the following functions of tender board to a sub-division of the procuring entity:

- (a) Providing overall guidance on procurement development within the procuring entity;
- (b) Liasing directly with the Authority on matters within its jurisdiction; and
- (c) Making recommendations to the accounting officer in respect to delegation of functions.

(7) An accounting officer or chief executive officer shall not delegate any of the following functions of procurement management unit to a sub-division of the procuring entity

- (a) advising user departments on any individual procurement method or practice;
- (b) liaising directly with the Authority on matters within its jurisdiction;
- (c) acting as procurement coordinator for the procuring entity
- (d) planning for procurement of the procuring entity;
- (e) preparing reports required for submission to the tender board or accounting officer or chief executive officer.

(8) An accounting officer or chief executive officer may revoke the delegation of the authority through written instructions to the holder of the delegated function in case where

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

Contracting
out to another
procuring
entity

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

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

(2) A tender board may recommend the contracting out limited procurement or disposal by tender function to another procuring entity:-

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

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

Contracting
out to
procurement
Agent

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

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

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

- (a) administering and managing contracts;
- (b) reporting to the procurement management unit any departure from the terms and conditions of the awarded contract;
- (c) preparing change orders in accordance with the terms and conditions of the contract; or
- (d) certifying invoices for payment to consultants.

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

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

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

Disagreements between the Accounting Officer or chief executive officer and the Tender Board

37. (1) Where the accounting officer is not satisfied with the decision of the tender board regarding application or interpretation of any procurement method, process or practice or disposal by tender under these Regulations, the accounting officer may:

- (a) return the decision to the tender board for review giving written reasons for the dissatisfaction and ;
- (b) where not satisfied with the outcome of the review he may request for an independent review by the Authority .

(2) Where a tender board disagrees with the views of the accounting officer or chief executive officer on its recommendations under subregulation (1) it may request for independent advice from the Authority

(3) A party seeking advice from the Authority under subregulation (1) and (2) shall state in writing the reasons for its disagreement

Disagreements between the Tender Board and the procurement management unit

38-(1) Where a tender board disagrees with the recommendations of the procurement management unit, it may:

- (a) return the submission to the procurement management unit for review giving written reasons for its disagreement; or
- (b) request for independent advice from the Authority.

(2) Where a procurement management unit disagrees with the views of the tender board on its recommendations under subregulation (1)(a) it may request for independent advice from the Authority

(3) A party seeking advice from the Authority under subregulation (1) and (2) shall state in writing the reasons for its disagreement

Disagreements between the procurement management unit and the user department

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

(2) Where such review fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the tender board for a formal decision by the tender board.

PART IV
ORGANISATION AND LIMITS OF AUTHORITY FOR
PROCUREMENT AND DISPOSAL BY TENDER

Approval of
procurement
or disposal by
tender

40.-(1) Any procurement by a procuring entity must be authorised by an Accounting Officer and endorsed by a tender board.

(2) Any disposal by tender by a procuring entity must be authorized by the Permanent Secretary to the Treasury

(3) Before tenders are invited, the procurement management unit shall furnish to the tender board 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, non-consultant services, installation of equipment, or disposal of assets 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 procurement management unit shall furnish to the tender board, in sufficient time for its review, a detailed report, 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 procurement management unit and state the reasons for such determination.

(7) In cases where pre-qualification is required, the procurement management unit shall before qualification is invited, inform the tender board 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 procurement management unit to the tender board for its comment before the applicants are notified of the procuring entity's decision and the procuring management unit shall make such additions or deletions from, or modifications in the said list as the tender board shall direct.

Approval by

41.-(1) Tenders may only be issued with the approval

tender
boards

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 which shall be specified in the tendering documents.

(3) Only when the procurement or disposal 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, service provider, contractor or buyer.

(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) The tender board may request for an independent review by the Authority in relation to any disagreement with the accounting officer on any decision pertaining to the application or interpretation of these Regulations.

(6) 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.

Emergency
procure-
ment

42.-(1) If an accounting officer 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 Accounting Officer 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.

(2) Officers or accounting officer 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 make the difference between the actual cost of the goods or works and what their costs would have been through the appropriate channels.

(3) 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.

(4) The Authority 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.

(5) An award of a contract made by an Accounting Officer beyond its authority and not approved in retrospect shall nevertheless be valid and the Accounting Officer who approved it will be responsible for the payment of the price(s) involved.

Alteration
and
amendment

43. A procurement or disposal contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendments is endorsed by the approving authority that reviewed and approved the original procurement or disposal by tender.

Variatio-ns
to contract
value

44. Any variations to the value of a procurement or disposal contract shall be reviewed and approved by the appropriate tender board.

Validity of
procure-
ment or
disposal
authori-
sation

45.-(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, contractor, service provider, or asset buyer, authority given by a tender board shall be valid for a period of three months which may be extended for a further period of three months without changing the terms and conditions of the original contract provided that the approved supplier, contractor, service provider or buyer of assets has not been notified of the award of contract.

(2) Where the authority granted by a tender board

expires in accordance with sub-regulation (1) and where the approved supplier, contractor, service provider or buyer 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 V

PROCUREMENT AND DISPOSAL PLANNING AND FINANCIAL CONTROLS

Planning

46.-(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. It should also involve reviewing of assets on an annual basis to identify those which are obsolete and should be subject to disposal.

(2) Procurement planning shall begin at the design stage during the identification and 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) A procuring entity must forecast its requirements for goods, services and works as accurately as is practicable, with particular reference to activities already programmed in its annual work plan and included in its annual estimates.

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

(7) The forecasts shall include an estimate of the optimum time to the nearest month for receipt of each consignment of goods, provision of service or completion of required works.

(8) The estimate shall be shown in the tender evaluation report and priorities for procurement may be determined in accordance with available funds.

(9) A procuring entity shall 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.

(10) 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.

(11) The timescale for each procurement shall then be calculated on the basis of the standard processing times prescribed in the Third 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.

(12) A procuring entities may engage the services of consultants to prepare tender documents, evaluate tenders and make recommendations to the tender board, where the capability of its inhouse professional services department is inadequate.

Approval to
proceed with
procurement

47.-(1) Before the preparation of tendering documents, there 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.

Aggregating
requirements

48.-(1) In order to maximize economy and efficiency in its procurement or disposal, a procuring entity may group goods, works or services of a broadly similar or related nature, or pool assets for purposes of common disposal into a single tender or number of tenders of a size and type that will be likely to attract the most suppliers, contractors service providers, or buyers provided that this is practicable and will not cause unreasonable delay in the procurement or disposal.

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

(3) So as to maximise participation in such tenders, suppliers, contractors, service providers, or buyers need not be required to tender for all the goods, works, services or assets 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 or services, or individual assets or a combination of assets for common disposal.

(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, or the highest evaluated price.

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

Prohibition
of splitting
tenders and
contracts

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

(2) Any procuring entity proved to have divided its procurement for the purposes of provisions of sub-regulation (1) the head of that procuring entity and such other officer shall be held personally responsible in accordance with Section 76 of the Act.

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

(4) Procuring entities should plan their requirements in such a manner that the same goods or works are not procured more than once every six months within the limits given to the accounting officer or chief executive officer. 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.

Packaging of
procurement

50.-(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 had 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 sub-components in a project or for several projects, it may be convenient to combine them all into one procurement package in order to achieve economies of scale.

(4) Where a project 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 for package tenders shall be as follows:-

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

Appoint-
ment of a
consultant
for procure-
ment of
works

51.-(1) Where the appointment of a consultant is considered necessary for the effective procurement of works, and has not already been undertaken, a procuring entity must complete selection proceedings and enter into a contract with the selected consultant in accordance with the Public Procurement (Selection and Employment of Consultants) Regulations, 2005 in sufficient time for that consultant to review the tender documents prior to the issue of tender.

(2) The responsibilities of consultant 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 procurement management unit before the same are submitted to the tender board for vetting.

(4) Unless specific written approval is given by the appropriate tender board, officers responsible for briefing of procurement agent shall ensure that these requirements are complied with.

Establishing
contract
period

52.-(1) The contract period allowed must be a realistic assessment of the time in which a reasonably competent supplier, contractor or service provider could be expected to complete delivery of the goods, complete the works, or complete providing the services having regard not only to the desired completion date, but to the locality.

(2) In the event that circumstances dictate a shorter than desirable contract period the attention of prospective tenderers should specifically be drawn to this requirement in the documents.

(3) For particular types of contracts and particular weather conditions, sufficient time must be allowed for seasonal changes.

(4) 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.

Provision of
cost estimate
for works,
services and
valuation of
assets

53.-(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 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 procuring entity.

(7) A procuring entity shall obtain two valuations of an asset before commencing any disposal proceedings as follows:

- (a) if required by law, a first valuation shall be obtained from a competent authority and a second independent, market-based valuation shall be obtained from an appropriate authority or provider; or
- (b) where there is no legal requirement, two independent valuations shall be obtained from appropriate authorities or providers;

(8) The two valuations shall be confidential and the identity and recommendations of each valuer shall not be revealed to the other.

(9) Notwithstanding sub-regulation (7), no valuation of an asset shall be required where the cost of valuation is likely to be in excess of the money expected to be realised through the disposal process.

(10) Where the valuation is within a range specified in the guidelines issued by the Authority a procuring entity shall use an average of the two valuations to determine a reserve price for the asset, which shall be the minimum sale price of the asset subject to sub-regulation (15)

(11) Where the valuations differ by more than the range specified in the guidelines issued by the Authority, the valuers shall be informed of significant difference in their valuation, without specifying the values, and shall be asked to revise their valuation.

(12) Where the revised valuation is submitted which is within the range specified in the guidelines, a procuring entity shall proceed to set a reserve price in accordance with sub-regulation (10).

(13) Where the valuer confirms the original valuation, or where the revised valuation still differs by more than the range specified in the guidelines, a third independent valuation shall be obtained.

(14) Where a third valuation is obtained, a procuring entity shall recommend a reserve price, using all three valuations and the range of variation between them.

(15) Where the highest evaluated tender is less than the

reserve price, a tender board in consultation with an accounting officer may:

- (a) obtain further valuation from an independent source;
- (b) arrange for new tenders to be submitted;
- (c) use an alternative method of disposal, which is likely to obtain a higher price; or
- (d) sell the asset at the reduced price subject to obtaining the approval from the Authority.

(16) In deciding on the appropriate action, a tender board and an accounting officer shall consider the difference between the highest evaluated tender and the valuation or reserve price, the likely cost of possible action and the possibility of collusion between tenderers.

Approval of
tendering
documents

54.-(1) Approval of the tender documents by the tender board is required before the tender is advertised.

(2) Before submission for approval, the documents shall be checked to ensure:

- (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; and
- (c) that the correct forms have been included.

Number of
sets of
tender
documents

55. 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.

Types of
works or
services
contracts

56. Works and non-consultant contracts may be separated into the following types:

- (1) Lumpsum contracts:

These are contracts for a fixed amount for the works as specified and tendered for. Such contracts may or may not be accompanied by a priced schedule but when such schedules are provided, their purpose is to assist in the evaluation of progress payments and for the pricing of variations

as provided in the general conditions of contract. With a

lump sum contract, the works shall not (except in respect of variations) be measured for the purpose of payment.

(2) Schedule of rates contracts:

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

(3) Contracts with special features:

Contracts with special features including cost reimbursement type in which the contractor is paid the actual cost of the work plus a fee. This fee may be a fixed sum, a percentage of the costs or a fluctuating fee. Where cost reimbursement contracts are used, the contract is to be arranged whenever possible on the basis of “cost plus fixed fee” rather than “cost plus percentage”.

(4) Performance based contracts:

Contracts in which all aspects of acquisition are structured around the purpose of work to be performed, and include, to the maximum extent practicable, describing requirements in terms of results required rather than the methods of performance of the work, and the measurable performance standard. This type of contract places on the contractor the responsibility to perform most of the quality control functions traditionally performed by the procuring entity, and contains measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of requirements, and positive and negative incentives. The pricing for such contracts, depending on contract length and circumstance in each case, shall be in form of:

- (a) Firm prices during the project’s duration, where the procuring entity shall negotiate firm prices, unless the inflation contingencies being considered suggest that a fixed price with variation of price would offer better value for money; or
- (b) Fixed price with variation of price during the project’s duration, where the procuring entity will normally seek a fixed price with variation of price, although this does not rule out a firm price if this is agreed between both parties and the inflation contingencies are realistic; or

(c) Target cost incentive arrangements whenever risks of a particular procurement are perceived to be too great to offer either of the contracts in sub-paragraph (a) or (b), in which case the procuring entity shall look to risks and rewards equitably, and such arrangements shall normally be bound by a maximum price and will be considered, in addition to such other sharing arrangements as:

- (i) undertakings by the service provider to reduce costs in accordance with the efficiency plan, the savings being shared in the agreed manner between the service provider and the procuring entity;
- (ii) payments to the service provider related to measurable improved performance.

Procurement from Government Stores Department

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

(2) The Government Stores Department shall arrange for procurement of common use items by the procuring entities through framework contracts.

(3) The Government stores department shall publish on quarterly year basis in the Gazette, the Authority Website and in the local newspapers of wide circulation, the names of items available on the stores catalogue and names of suppliers awarded the framework contracts.

Procurement of motor vehicles, heavy plant, and spare parts

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

(3) Motor vehicles, heavy plant and spare parts to be purchased shall be brand new

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

of the Cabinet and on the advise of the ministry responsible for matters related to electrical, machinery and mechanical engineering, determine the type, make and size of motor vehicles or other motorised equipment to be procured for official use of specified state officials or other senior government officer. 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 sub-regulation (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.

Mainten-
ance and
repair of
government
owned
motor
vehicles,
plant and
equipment

59.-(1) Appropriate government workshop or garage shall be responsible for the repair and maintenance of government - owned motor vehicle, plant or equipment.

(2) Where the 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, the procuring entity will 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 ministry responsible for matters related to electrical, machinery and mechanical engineering 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 procuring entities may be authorised to maintain and repair government - owned motor vehicles.

(4) The transport officer or any other designated officer of the procuring entity 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 ministry responsible for matters related to electrical, machinery and mechanical engineering and the Controller and Auditor General.

Procurement of computers and other related information technology Equipment and tools

60.-(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, softwares, local area networks, etc.

(2) The ministry responsible for matters related to computers and other related information technology services shall prepare detailed and acceptable schedule of requirements and specifications which shall be made available to the Authority for use by the procuring entities when procuring for such items.

Procurement of other sector –specific goods

61. The ministries responsible for matters related to specific sector goods shall prepare detailed and acceptable schedule of requirements and specifications which shall be made available to the Authority for use by the procuring entities for the procurement of such goods.

Commitment of funds

62.-(1) Procuring entities shall ensure that funds have been voted or committed before commencing procurement proceedings.

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

PART VI

METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

Selection of a method of procurement

63.-(1) Except as otherwise provided for by these Regulations, a procuring entity engaging in procurement of goods, works, non-consultant services or public private partnership such as build, operate and transfer, build, own, operate and transfer, turnkey projects, and disposal of public assets by tender shall do so by means of competitive tendering proceedings.

(2) In the procurement of goods, works, non-consultant services, public private partnership or turnkey project, a procuring entity may use a method of procurement other than competitive tendering proceedings only pursuant to Regulation 70, 71 or 72.

(3) If the procuring entity uses a method of procurement

pursuant to sub-regulation (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 may select an appropriate alternative method of procurement as provided for in Regulation 72, 73 or 76 in the case where tendering would not be the most economic and efficient method of procurement and the nature and estimated value of the goods, works, or services permit.

Pre-
qualifica-
tion

64. Before inviting open tenders a procuring entity shall consider pre-qualifying suppliers, contractors or service providers further to Regulation 15 so as to identify those who possess the necessary resources and competence for completion of the eventual contract.

Internati-
onal
competitive
tendering

65.-(1) In international competitive tendering or otherwise known as international competitive bidding, a procuring entity shall invite suppliers, contractors, service providers or asset buyers regardless of their nationality, by means of a tender notice that shall be advertised nationally and internationally to submit priced tenders for goods, works or services or purchase of public assets.

(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 provided in the Third Schedule to these Regulations; or

(c) it is desired to attract tenders from the widest range of suppliers, contractors or service providers, regardless of the estimated value of the goods or works to be procured.

(3) Under the international competitive tendering the procuring entity shall advertise the invitation to tender in the form of the specific procurement notice or specific disposal notice for any particular procurement or disposal contract, in the Authority's website and journal, and 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.

(4) 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.

(5) The notification of the invitation to tender shall be

done at the same time as the advertisement in the local newspapers.

(6) Notification shall be given in sufficient time to enable prospective tenders to obtain pre-qualification or tender documents and prepare and submit their responses.

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

National
competitive
tendering

66.-(1) In national competitive tendering, otherwise known as national competitive bidding, a procuring entity shall invite suppliers service providers, contractors, or asset buyers regardless of their nationality, by means of a tender notice advertised only in the United Republic of Tanzania, to submit priced tenders for goods, services, works or purchase of public assets.

(2) Such form of tendering may be used in cases where:

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

(3) Tender documents may be in Kiswahili language;

(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.

(5) Domestic or national preference shall apply in the

evaluation of tenders under the national competitive tendering where foreign firms have participated.

Restricted
tendering

67.-(1) A procuring entity may restrict the issue of tender documents to a limited number of specified suppliers, contractors, or service providers when:

- (a) such suppliers, contractors or service providers have already pre-qualified further to Regulations 15 and 64 and the procedures set out in Regulation 15 of these Regulations; or
- (b) the goods, works, or services required are of a specialised nature or can be obtained from a limited number of specialised contractors, service providers or reputable sources; or
- (c) the estimated contract values are within the limit for restricted tendering prescribed in the Second Schedule to these Regulations; or
- (d) there is an urgent need for the goods, works or services such that there would be insufficient time for a procuring entity to engage in open national or international tendering, 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.

(2) The justification for restricting procurement further to sub-regulation (1) must be shown in the record of procurement proceedings made further to Regulation 19.

(3) Except where suppliers, contractors or service provider have already pre-qualified, a procuring entity issuing a restricted tender shall seek tenders from a list of potential suppliers, contractors, or service providers broad enough to assure competitive prices.

(4) In cases where only a limited number of suppliers, contractors or service providers can reasonably be expected to be able to tender, the list shall include all such suppliers, contractors or service providers.

(5) In all respects other than advertisement and issue of the tenders, the procedures for competitive tendering as set out in these Regulations shall apply.

International

68.-(1) Shopping is a procurement method based on

and national
shopping

comparing price quotations obtained from several suppliers 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.

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

(4) Quotations shall be obtained from at least three suppliers which may include qualified agents of foreign suppliers in Tanzania.

(5) 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.

(6) A minimum period prescribed in the Third Schedule of these Regulations for international shopping and for local shopping shall be allowed for the preparation of the tenders and quotations may be submitted by letter, or any other form acceptable to the appropriate tender board.

(7) 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) a full description of the goods, works or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
- (c) the quantities of any goods to be supplied and the

required time and place of delivery, any requirements for such goods;

- (d) in the case of works, bills of quantities, the location and the required time for their completion;
- (e) in the case of services, a list of targets to be achieved by a service provider, list of specific tasks or duties to be performed, a schedule of deliverables or outputs against which the achievements of the services shall be measured, the duration of the services and method of measuring the performance of services delivered;
- (f) whether any alternatives to the required specifications or characteristics of the goods, works, services or to other contractual conditions, are to be permitted;
- (g) Information of any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges customs duties and taxes, that are to be included in the price;
- (h) the criteria for evaluation of quotations or tenders including any weighting factors that may be applied to technical, price or other factors;
- (i) the period, generally forty five days, during which the quotations are to remain valid;
- (j) the form of contract or Local Purchase Order, to include all conditions and terms of payment; a statement of the currency in which the successful supplier or contractor will be paid, if different from the quoted price;
- (k) a statement that the procuring entity does not bind itself to accept any quotation and may reject all quotations;
- (l) notice of the tenderers right to review pursuant to Part VIII of the Act;
- (m) the manner in which the quotations shall be submitted; and
- (n) the place, date and time for the submission and opening of quotations.

(8) 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.

(9) Each supplier, contractor or service provider 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, service provider or supplier with respect to a tender, proposal, offer or quotation submitted by the supplier, service provider or contractor.

(10) The procurement contract shall be awarded to the supplier, contractor or service provider that gave the lowest-priced quotation meeting the needs of the procuring entity.

Single –
source
procurement
for goods or
services

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

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

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

(2) For the purposes of these Regulations, standardization 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 sub-regulation (1) a procuring entity may procure the goods or services, by soliciting proposal or price quotation from a single supplier.

(4) Subject to approval by the appropriate tender board a procuring entity may engage in single-source procurement when procurement from a particular supplier or services is necessary provided that in such a case, the letter of invitation to the selected supplier or service provider 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 or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;

- (d) the quantities of any goods, or the desired results of any service to be supplied or provided and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods or management and reporting requirements of a service provider;
- (e) whether any alternatives to the required specifications or characteristics of the goods or services, or to other contractual conditions, are to be permitted;
- (f) the period during which the quotation is to remain valid;
- (g) the form of contract or Local Purchase Order, to include all conditions and terms of payment;
- (h) a statement of the currency in which the supplier or service provider will be paid;
- (i) 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 or services 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 or services in order to achieve cost savings.

(7) The justification for single source procurement further to sub-regulations (1) to (5) must be shown in the record of procurement proceedings made further to Regulation 19.

Direct
contracti-ng
for works

70.-(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 reasonably expect to undertake the required works; or
- (c) there are advantages to a procuring entity in using a particular contractor who has undertaken or is undertaking similar works or who may have already been mobilised with plant, equipment and staff in the vicinity or any other resources as may be appropriate;
- (d) where works already and satisfactorily under execution are to be extended, and the corresponding contract had been awarded following national or international competitive tendering satisfactory to the tender board 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 prescribed in the 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 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 sub-regulation (1) must be shown in the record of procurement proceedings made further to Regulation 19.

Minor value
procure-
ment

71. A procuring entity may procure goods, services or minor works directly from a supplier, service provider or contractor, where:

- (a) the value does not exceed the limit for minor value prescribed in the Second 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 or by using other methods of procurement;
- (d) the contract for the provision of such goods, services or works may be a Local Purchase Order.

Turnkey
contracts

72.-(1) A procuring entity may issue a tender for a turnkey contract involving 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, procured using international or national

competitive methods of procurement as approved by the

appropriate tender board.

(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.

Force
Account

73.-(1) Force account 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.

(2) The use of force account or direct labour may be justified where:

- (a) required works are small and scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable prices;
- (b) work is required to be carried out without disrupting ongoing operations;
- (c) risks of unavoidable work interruption are better borne by a procuring entity or public authority than by a contractor; or
- (d) there are emergencies needing prompt attention.

Procure-
ment under
public
private
partnership
and other
private
sector
participat-
ion arrange-

74.-(1) Public Private Partnerships shall include the following forms or combinations of them; service contract, management contract, leasing, joint ventures, partnerships, Build Operate Transfer, Build Own Operate , Design Build Operate Finance and concessions.

ments

(2) Services for which there are no governmental, legal or operational limitations that dictate they must be performed by public sector employees, may be outsourced under the private sector participation arrangement.

(3) As soon as the procuring entity identifies a project that may be concluded as a public private partnership, it must:

- (a) ensure that it has the expertise within that procuring entity to proceed with a public private partnership;
- (b) appoint a project officer from within or outside the procuring entity; and
- (c) appoint a transaction advisor.

(4) For public private partnership project, the procuring entity shall undertake a feasibility study in order:

- (a) to confirm affordability of the project for the procuring entity if it will incur any financial commitments;
- (b) to establish factors that will determine value for money;
- (c) to assess the potential of a public private partnership to deliver value for money;
- (d) to identify the form(s) of public private partnership most likely to deliver for value for money;
- (e) to establish the optimum scope of the public private partnership;
- (f) to identify the parameters to be used to assess value for money at the procurement stage;
- (g) to provide a sound basis for the procuring entity to decide on procurement approach;
- (h) to set out the proposed allocation of financial and technical risks between the procuring entity and the private party; and
- (i) to explain the capacity of the procuring entity to procure, implement, manage, enforce, and monitor the public private partnership project.

(5) Feasibility study for private sector participation in delivery of public services shall recommend service areas within the procuring entity which could, or should be offered to the private sector by:

- (a) describing the current procuring entity's organisation, service areas and associated costs;

- (b) presenting an analysis of the suitability of contracting out current service areas within the procuring entity to the private sector;
- (c) identifying important issues that must be addressed before services are contracted out such as, but not limited to:
 - (i) service packaging;
 - (ii) contract length and pricing mechanisms;
 - (iii) treatment of government assets;
 - (iv) tender selection procedures;
 - (v) personnel issues;

(d) highlighting important areas where private sector participation policy issues remain to be resolved; and

(e) presenting a risk management plan;

(6) The procuring entity shall not proceed with the procurement phase of a public private partnership or private sector participation project if the feasibility study indicates that the proposed project will not provide value for money or improve the quality of the public service.

(7) The procuring entity shall advertise the request for qualification in the form of the specific procurement notice in at least one newspaper of wide and general circulation in the United Republic of Tanzania, in any international newspaper as may be directed by the appropriate tender board, and may additionally advertise in well known technical magazines or trade publications.

(8) The notification of the request for qualification shall be done at the same time as the advertisement in the local newspapers, and shall be given in sufficient time to enable prospective tenderers to obtain request for qualification documents, prepare and submit their responses.

(9) The notification of the request for qualification shall contain the following -

- (a) A brief description of the intention of the government to undertake the project;
- (b) A high level definition of the project;
- (c) Identification of the specific location where interested parties may obtain a copy of the request for qualification, the dates and times during which the request for qualification will be available, including any costs for obtaining a copy;

- (d) A declaration reciting the date, time and place where the request for qualification submissions must be filed with the government sponsor.
- (e) A statement of where and how the submissions will be evaluated and a timeframe after which those making submissions will be notified as to the results of the evaluation.

(10) Selection of a preferred tenderer shall be done in accordance with the guidelines issued by the Authority.

(11) Selection of the service provider under the private sector participation arrangement shall be done according to these Regulations or Public Procurement (Selection and Employment of Consultants) Regulations, 2005 depending on the nature of services to be provided.

Community participation in procurement

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

- (a) call for the participation of local communities or farmer groups;
- 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 as to reflect such considerations.

(2) The beneficiary community shall be responsible for the procurement activities under the project component.

(3) The project authorities shall have the responsibility to provide the necessary training and simple standardised documents to the community to enable it carry out the procurement function in a manner acceptable to the Authority.

(4) The Authority shall issue relevant guidelines for community participation in procurement proceedings.

Procurement of commodities

76.-(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 so 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 is 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, then standard contract conditions consistent with market practices may be used.

Procurement
agents

77.-(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 entity shall procure services of a procurement agent by competitive selection in accordance with the Public Procurement (Selection and Employment of Consultants) Regulations, 2005.

(3) A procuring entity shall:

- (a) be responsible for instructing any procurement agent that may be appointed further to Regulation to observe the relevant provisions of the Act and of these Regulations, and
- (b) only authorise a procurement agent to act on its behalf and shall ensure that any procurement shall be reviewed and authorised by the appropriate approving authority before any contract is placed.

(4) The procurement agent shall on behalf of the procuring entity strictly follow all the procurement procedures outlined in these Regulations including use of standard tender documents and documentation issued by the Authority.

Inspection
agents

78.-(1) Where agents have been appointed by the Government to undertake pre-shipment inspection and certification of imports, the Minister responsible 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 responsible.

PART VII TENDERING PROCEEDINGS

Section 1: Solicitation of Tenders and of Applications to Pre-qualify

Competitive tendering for goods, works, and services, and for disposal of assets by tender

Invitation to tender and advertising

79. A procuring entity wishing to commence competitive tendering shall provide all eligible prospective suppliers, contractors, service providers or asset buyers with timely and adequate notification of the procuring entity's requirements and an equal opportunity to tender for the required goods, works or services, or for assets to be disposed of.

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

(2) A procuring entity wishing to commence competitive tendering proceedings shall prepare a tender notice inviting suppliers, contractors, service providers or asset buyers to submit priced offers for the supply of the goods, for undertaking the works, for provision of services required, or for buying assets to be disposed of.

(3) A procurement management unit shall table, in good time before the planned issue of the tender, the draft text of the invitation, 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, contractors, service providers, or asset buyers.

(6) A tender notice shall be published in sufficient time, to enable prospective tenderers to obtain tender documents, 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.

Contents of
invitation to
tender

81. 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 description of the asset to be disposed of, the location of the asset and the arrangements for a potential tenderer to inspect the asset, including a statement that the asset is sold on “as is, where is” basis;
- (c) the desired or required time for the supply of the goods or for the completion of the works or the timetable for the provision of the services;
- (d) a declaration which shall not later be altered to the effect that contractors, suppliers or service providers, or asset buyers may participate in the procurement or disposal 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.

Issue of solicitation documents

82.-(1) The procuring entity shall provide the solicitation documents immediately after first publication of the tender notice to all suppliers, contractors, service providers or asset buyers who respond to the tender notice in accordance with the procedures and requirements specified in the invitation to tender.

(2) If prequalification proceedings have been engaged in, the procuring entity shall provide a set of the solicitation documents to each supplier, service provider or contractor that has been pre-qualified and that pays the price, if any, charged for those documents.

(3) Solicitation documents may be sold in order to recover costs but the price shall be calculated to cover only those costs related to printing, copying and distribution and shall not include any element of profit.

(4) The price of solicitation documents shall be approved by the tender board prior to issue of bid notice.

(5) The Authority shall issue guidelines for setting fees for solicitation documents.

Contents of solicitation documents

83.-(1) The solicitation documents shall include instruction to tenderers with at a minimum, the following information:

- (a) the criteria and procedures, in conformity with the provisions of Regulation 14, relative to the evaluation of the qualifications of contractors, suppliers, service providers or asset buyers and relative to the further demonstration of qualification pursuant to Regulation 90(18);
- (b) the requirements as to documentary evidence or other information that must be submitted by suppliers, contractors, service providers or asset buyers to demonstrate their qualifications;
- (c) the nature and required technical and quality characteristics, in conformity with Regulation 22 of the goods, works 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; the description of the assets, their locations and conditions for sale, responsibilities for the risk and cost for dismantling and removing and asset;

- (d) 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 90(15) and the relative weight of such criteria;
- (e) the terms and conditions of the procurement or disposal contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
- (f) if alternatives to the characteristic of the goods, works, 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;
- (g) if contractors, suppliers, service providers, or asset buyers are permitted to submit tenders for only a portion of the goods, works, services to be procured, or assets to be disposed of, a description of the portion or portions for which tenders may be submitted;
- (h) the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes;
- (i) the currency or currencies in which the tender price is to be formulated and expressed;
- (j) the language or languages in conformity with Regulation 24 in which tenders are to be prepared;
- (k) 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,

- service providers, suppliers or asset buyers submitting tenders, and any such requirements for any security for the performance of the procurement contract to be provided by the contractor service providers, suppliers or asset buyers that enters into the procurement or disposal contract, including securities such as labour and materials bonds;
- (l) if a supplier, contractor, service provider, or asset buyer may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
 - (m) the manner, place and deadline for the submission of tenders, in conformity with Regulation 86;
 - (n) the means by which, contractors service providers, suppliers or asset buyers may seek clarification of the solicitation documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of contractors, suppliers, service providers or asset buyers;
 - (o) the period of time during which tenders shall be in effect, in conformity with Regulation 87;
 - (p) the place, date and time for the opening of tenders, in conformity with Regulation 86;
 - (q) the procedures to be followed for opening and examining tenders;
 - (r) the currency that will be used for the purpose of evaluating and comparing tenders pursuant to Regulation 90(19) 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;
 - (s) references to the Public Procurement Act, the Regulations and other written laws and regulations directly pertinent to the procurement or disposal proceedings, provided, however, that the omission of any such reference shall not constitute grounds for review under Section 79 of the Act or give rise to liability on the part of the procuring entity;
 - (t) 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, contractors, service providers or asset buyers in connection with the procurement or disposal proceedings, without the intervention of an intermediary;
- (u) any commitments to be made by the supplier, contractor or service provider outside of the procurement contract, such as commitments relating to counter trade or to the transfer of technology;
 - (v) notice of the right provided under Section 79 of the Act to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement or disposal proceedings;
 - (w) if the procuring entity reserves the right to reject all tenders pursuant to Regulation 20, a statement to that effect;
 - (x) any formalities that will be required once a tender has been accepted for a procurement or disposal contract to enter into force, including, where applicable, the execution of a written procurement or disposal contract pursuant to Regulation 97, 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;
 - (y) any other requirements established by the procuring entity in conformity with the Act and the procurement or disposal regulations relating to the preparation and submission of tenders and to other aspects of the procurement or disposal 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, works or services to be provided or executed, or assets to be disposed of.

(3) A procuring entity shall use the appropriate standard tender documents issued by the Authority with minimum changes, acceptable to the Authority, 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 Standard Tender Documents. 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 Authority.

(5) The procurement management unit shall table in good time before the planned issue of the tender documents, the draft text of the tender documents to the tender board 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.

Tender
period

84.-(1) Time allowed for preparation of tenders shall depend on the magnitude and complexity of the procurement sought, however, tender boards will require the minimum times prescribed in the Third Schedule to these Regulations:

(2) The tender period shall be approved by the appropriate tender board and 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 collected the tender documents.

Clarification
and
modification
s of
solicitation
documents

85.-(1) A supplier, contractor, service provider or an asset buyer may request a clarification of the solicitation documents from the procuring entity.

(2) The procuring entity shall respond to any request by a supplier, service provider, contractor or asset buyer for clarification of the solicitation documents that is received by the procuring entity at least two weeks prior to the deadline for the submission of tenders.

(3) The procuring entity shall respond within three working days of receipt of the query so as to enable the supplier, service provider, contractor, or asset buyer to take into account the clarification received in the preparation of its tender, without identifying the source of the request, communicate the clarification to all suppliers, service providers, contractors or asset buyers 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, service provider, contractor or asset buyer, modify the solicitation documents by issuing an addendum.

(5) The addendum shall be communicated promptly to all suppliers, service providers, contractors or asset buyers to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers, service providers, contractors, or asset buyers provided that the procuring entity shall extend the tender period if deemed necessary.

(6) If the procuring entity convenes a meeting of suppliers, contractors, service providers, or asset buyers, 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 within three working days to all suppliers, contractors, service providers or asset buyers to which the procuring entity provided the solicitation documents, so as to enable those suppliers, contractors, service providers or asset buyers to take the minutes into account in preparing their tenders.

(8) If it is decided to extend the submission date, the notice of any extension of the deadline shall be given promptly to supplier, contractor, service provider or asset buyer to which the procuring entity provided the solicitation documents.

Section II: Submission of tender

Submission
of tenders

86.-(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) 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 sub regulation a tender shall be submitted in writing, signed and in a sealed envelope;
- (b) without prejudice to the right of a supplier, contractor, service provider or an asset buyer 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 provides 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, contractor, service provider or asset buyer a receipt showing the date and time when its tender was received.

(4) Where requirements for tender security or other securities have been 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.

(5) Only tenders received within the time limit announced in the invitation to tender shall be eligible for consideration.

(6) 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, contractor, service provider or asset buyer that submitted it.

Period of effectiveness of tender, modification and withdrawal of tenders

87.-(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, contractors, service providers or asset buyers to extend the period for an additional specified period of time.

(5) A supplier, contractor, service provider or asset buyer 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, contractors, service providers or asset buyers 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, contractor, service provider or asset buyer 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 88 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, contractor, service provider or asset buyer may modify, or withdraw the tender prior to the deadline for the submission of tenders without forfeiting its tender security.

(11) The modification or notice of withdrawal shall be effective if it is received by the procuring entity prior to the deadline for submission of tenders.

Tender
Securities

88.-(1) When the procuring entity requires suppliers, contractors, service providers or asset buyers submitting tenders to provide a tender security:

- (a) the requirement shall apply to all such suppliers, contractors, service providers or asset buyers;
- (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 sub-paragraph (b) of this 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 laws of Tanzania;
- (d) prior to submitting a tender, a supplier, contractor, service provider or asset buyer 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 credit worthiness.

(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 supplier, contractor, service provider or asset buyer submitting the tender shall not relate to 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 or disposal contract if required by the procuring entity to do so;

(d) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement or disposal 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, a bank guarantee from a reputable bank, an insurance bond from a reputable insurance firm.

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

(5) The tender security shall remain valid for a period of not less than twenty eight days (28) 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 thirty (30) days after the expiration of the tender validity period, as extended where appropriate in accordance with Regulation 80(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

Receipt of
tenders and
tender
opening

89.-(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 or in a secure office space.

(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) On receipt of the tenders, the envelopes shall be entered in a special register in the order in which they arrive.

(5) 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 sub-regulations (8) and (9).

(6) 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.

(7) The time for the tender opening shall be the same as the time set for the deadline for receipt of tenders or promptly thereafter and shall be announced, together with the place for the tender opening, in the invitation to tender.

(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 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, contractors, service providers or asset buyers 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.

(13) 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.

(14) 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.

(15) 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 sub-regulation (10).

(16) 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 evaluation committee for evaluation.

(17) 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.

(18) 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 is be made in writing.

(19) 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.

Examination
, evaluation
and
comparison
of tenders

90.(1) A procuring entity shall establish a tender evaluation committee comprising not less than three and not more than five members.

(2) If the evaluation of tenders is part of a consultancy contract or agreement, the respective consultant shall discharge the duties of the tender evaluation committee and shall be responsible for preparing the evaluation report and award recommendations.

(3) The tender evaluation committee shall evaluate on a common basis opened tenders in order to determine the cost or price to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs or prices.

(4) 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 cost for procurement of goods, works or services or the highest evaluated price for disposal of asset by tender.

(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 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 procurement management unit and the approving authority.

(10) The procuring entity may ask suppliers, contractors, service providers or asset buyers for clarification of their tenders in order to assist in the examination, evaluation and comparison of tenders but no advantage shall be sought, offered or permitted to change any matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive.

(11) a) Notwithstanding sub-regulation (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, contractor, service provider or asset buyer that submitted the tender;

(b) a procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the tender;

(c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

(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 shall be expressed as a monetary addition to the tender price which may include the cost of making good deficiencies in compliance with the tender specifications.

(14) Any procedure under which tenders above or below a pre-determined 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.

(17) A procuring entity shall not accept a tender:

- (a) if the supplier, contractor, service provider or asset buyer that submitted the tender is not qualified or eligible;
- (b) if the supplier, contractor, service provider or asset buyer that submitted the tender does not accept a correction of an arithmetical error made pursuant to sub-regulation (11);
- (c) if the tender is not responsive;
- (d) if the tender is not accompanied by an appropriate tender security, if required;
- (e) if the circumstances referred to in Regulation 93 applies.

(18) (a) 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.

- (b) The successful tender shall be:
 - (i) the tender with the lowest evaluated tender price in case of goods, works or services, or the highest evaluated tender price in case of disposal of assets, but not necessarily the lowest or highest submitted price, subject to any margin of preference applied;
 - (ii) if the procuring entity has so stipulated in the solicitation documents, the lowest or highest evaluated tender ascertained on the basis of criteria specified in the solicitation documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms;
- (c) in determining the lowest evaluated tender, the procuring entity may consider 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;
- (d) in determining the highest evaluated tender for disposal of asset the preferred evaluation method shall be the evaluation based on price only unless other factors, such as end-user or export restrictions, or a need to attach conditions to a sale are taken into consideration, and stated clearly in the solicitation documents.
- (e) in evaluating and comparing tenders, a procuring entity may grant a margin of preference for the benefit of tenders for works by Tanzanian contractors, for the benefit of tenders for domestically produced goods, for benefit of Tanzanian service providers, or for benefit of Tanzanian asset buyers provided that the margin of preference shall be calculated in accordance with Regulations 91 to 96 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, contractor, service provider or asset buyer 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 post-qualification shall be set forth in the solicitation documents in accordance with Section 48 of the Act.

(23) Where post-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(24) If the supplier, contractor, service provider or asset buyer submitting the successful tender is requested to demonstrate again its qualifications but fails to do so, the procuring entity shall reject that tender and shall select a successful tender in accordance with this Regulation from among the remaining tenders subject to the right of the procuring entity to reject all remaining tenders.

(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 or highest evaluated price tender is based, shall be prepared by the evaluation committee and addressed to the approving authority for approval.

Evaluation
with margin
of
preference
for goods

91.-(1) Where a procuring entity has allowed a margin of preference in accordance with Regulation 25, the procedure set out below shall be followed in the evaluation and comparison of tenders.

(2) For the purposes of comparison in case where a margin of preference for goods manufactured, grown, mined or extracted in the United Republic of Tanzania, 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 per cent 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 sub-regulation (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) fifteen per cent of the CIF or CIP tender price of such goods if the said duties and charges exceed fifteen per cent of such price, shall be added to the evaluated tender price of the imported goods offered in each Group C tender.

(9) 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 sub-regulation (7) shall be selected.

Goods
forming part
of a contract
package

92.-(1) In the case of tenders for the supply and installation of goods, turnkey contracts or any other form of procurement contract in which a number of discrete items of equipment is grouped into one contract package, a margin of preference shall not be applied to the whole package, but only to goods manufactured in Tanzania, as defined in Regulation 91(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 of tenders, 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) fifteen per cent whichever is less.

(4) If duties vary from item to item within a package, the appropriate tariff for each goods or piece of equipment shall apply but no preference shall be applied for any associated services or works included in the package.

Evaluation
with
preference
for works or
non
consultant
service
contracts

93.-(1) Where a procuring entity has allowed a margin of preference in accordance with Regulation 25, domestic contractors or service providers, 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, service provider, a group of contractors, or a group of service providers is qualified for domestic preference.

(2) The tender documents shall clearly indicate that a margin of domestic preference will be granted and the method that will be followed in the evaluation and comparison of tenders to give effect to such preference.

(3) After tenders 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 or service providers eligible for the preference;

(b) **Group B:** tenders offered associations between domestic and foreign contractors or service providers eligible for the preference

(c) **Group C:** tenders offered by foreign contractors or service providers.

(4) The procuring entity shall first evaluate and compare all responsive tenders so as to determine the lowest evaluated tender within each group.

(5) 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 sub-regulation (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 purpose of evaluation and comparison of tenders, an amount equal to the specified margin of preference shall be added to tenders received from contractors or service providers in Group C and B.

Post-qualification and denial of award in a case of limited resources

94.-(1) Where appropriate, post-qualification may be undertaken to determine whether the lowest evaluated tender has the capability and resources to carry out the contract.

(2) The criteria for post-qualification shall be set out in the solicitation documents and may include:

- (a) experience and past performance on similar contracts;
- (b) knowledge of local working conditions
- (c) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
- (d) financial capability to perform the contract;
- (e) current commitments;
- (f) litigation record; or
- (g) any other relevant criteria.

(3) A procuring entity may seek independent references from a tenderer and the results of reference checks may be used in determining award of contract.

(4) The criteria for post-qualification shall be limited to that which is necessary for performance of the intended contract and shall not be unduly restrictive.

(5) Post-qualification shall be undertaken for the lowest evaluated tenderer only.

(6) Where the lowest evaluated tenderer does not meet the qualification criteria:

(a) the tender shall be rejected; and

(b) a post-qualification shall be conducted for the next lowest evaluated tenderer.

(7) The procurement management unit shall obtain approval from the tender board prior to rejecting any tender or undertaking an additional post-qualification on any other tenderer.

(8) Where a tenderer has been pre-qualified, a full post-qualification may not be necessary, but the pre-qualification information submitted shall be verified and an award may be denied to the lowest evaluated tenderer if he is judged to no longer meet the pre-qualification requirements and criteria.

(9) The procuring entity shall consider:

(a) any material change in circumstances since submission of the pre-qualification information; and

(b) any information which has become available since the pre-qualification submission, which, in the procuring entity's judgement, materially affects the capacity of the tenderer to perform the contract.

(10) A procuring entity may seek to limit the number or total value of awards made to any one supplier, contractor or service provider in cases where that supplier's, service provider's, contractor's or asset buyer's resources are known to be, or are likely to be insufficient for the additional commitments that would result from the proposed contract.

(11) In the cases specified in sub-regulation (10), a procuring entity may recommend that an award be denied to a supplier, service provider, contractor or asset buyer that is considered no longer to have the capability or resources to perform the contract successfully.

Negotiations
with
suppliers,
contractors,
service
providers, or
asset buyers

95.-(1) Negotiations may be undertaken with the lowest evaluated bidder relating to the following areas:

- (a) a minor alteration to the technical details of the statement of requirements;
- (b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;
- (c) a minor amendment to the special conditions of contract;
- (d) finalising payment arrangements;
- (e) mobilisation arrangements;
- (f) agreeing final delivery or work schedule to accommodate any changes required by the procuring entity;
- (g) the methodology or staffing; or
- (h) clarifying details that were not apparent or could not be finalised at the time of bidding.

(2) Negotiations shall not be conducted

- (a) to substantially change the specification or details of the requirement, including tasks or responsibilities of the tenderer;
- (b) to materially alter the terms and conditions of contract stated in the solicitation document;
- (c) primarily for the purpose of reducing prices in case of procurement of goods, works or services,
- (d) purely for the purpose of increasing prices in case of disposal of assets; or
- (e) to substantially alter anything which formed a crucial or deciding factor in the evaluation of tender.

(3) Notwithstanding subregulations (1) and (2), where a competitive procurement method was used, but only a single tender was received, negotiations may relate to other areas of the tender including the price offered.

(4) Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee's recommendation:

- (a) of the lowest evaluated tenderer and the need to hold negotiations in the case of competitive method for procurement of goods, works or services;
- (b) of the highest evaluated tenderer in case of disposal of assets; or
- (c) that the single tenderer should be considered for contract award in the case of single source procurement.

(5) Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee's recommendations:

- (a) of the lowest evaluated tenderer in case of goods, works or services, or highest evaluated tenderer in case of disposal of assets, and the need to hold negotiations; or
- (b) that a single or sole tenderer should be considered for contract award, subject to negotiations in the case of single-, sole source procurement of goods or services, or direct contracting for works;

(6) Negotiations shall only be held with the lowest evaluated tenderer for goods, services or works, or the highest evaluated tenderer for disposal of assets.

(7) Procurement management unit shall recommend membership of a negotiation team based on appropriate seniority and experience depending on the value and complexity of the procurement or disposal requirement and the membership shall be approved by the appropriate tender board.

(8) The number of members of the negotiation team shall depend on the value and complexity of the procurement or disposal requirement, but shall in all cases be a minimum of three, and may include members of the original evaluation committee or different officers.

(9) The negotiation team shall include members with relevant mix of skills and experience, including:

- (a) knowledge of end-user requirements;
- (b) negotiation skills;
- (c) procurement and contracting skills;

- (d) financial management skills; or
- (e) technical skills relevant to the subject of the procurement or disposal.

(10) Where the required skill or experience is not available within the procuring entity or where there is a conflict of interest, a member of negotiation team may be external to the procuring entity.

(11) Members of the negotiation team shall select a chairman from among their number who shall be responsible for.

- (a) ensuring all arrangements for negotiation meetings are made;
- (b) chairing all negotiations;
- (c) ensuring the negotiations are conducted in accordance with all legal requirements;
- (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
- (e) ensuring all members have a common understanding of the process of negotiations and objectives to be achieved;
- (f) ensuring members understand their own role in the negotiations and the standard approach of the team;
- (g) managing communications between the negotiation team and the bidder or any other body;
- (h) ensuring that the negotiation team has access to adequate resources; and
- (i) preparing the final report on the negotiation or ensuring that it is prepared.

(12) The negotiation committee shall prepare a negotiations plan which shall specify the issues to be negotiated and the objectives to be achieved and whenever possible, quantify the objectives and set maximum and minimum negotiating parameters for the negotiation team.

(13) The appropriate tender board shall approve the negotiations plan prior to any negotiations taking place.

(14) Prior to confirming any agreement reached, the procurement management unit shall seek approval of the tender board.

(15) The negotiation team shall produce minutes of the meeting and shall obtain the tenderer's written agreement that it is a true and accurate record of the negotiations held and submit the minutes to the procurement management unit;

(16) The procurement management unit shall submit the recommendations of the negotiation team to the tender board to:

- (a) proceed with contract award to the recommended tenderer, incorporating the agreements reached during negotiations;
- (b) revise the negotiation objectives and hold further negotiations, or
- (c) terminate the negotiation and reject the tenderer.

(17) Where the negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend inviting the next ranked tenderer for negotiations in the case of competitive methods of procurement or a new tenderer to submit a tender in the case of direct procurement.

(18) The tender board may:

- (a) approve the recommendations;
- (b) request further negotiations on specific points;
- (c) reject the recommendations with reasons; or
- (d) cancel the negotiations in their entirety.

(19) The results of any approved negotiations shall be specified in a letter of tender acceptance and incorporated into the contract document.

(20) Where negotiations are commenced with the next ranked tenderer or a new tenderer is invited, the procuring entity shall not reopen earlier negotiations; and the original tenderer shall be informed in writing of the reasons for termination of the negotiations.

Approval of
award of
contract

96.-(1) Tender board will proceed in accordance with Section 68 of the Act to approve and award contract.

(2) The Secretary of the tender board shall send a copy of the decision of the tender board to the Chief Executive Officer of the Authority, the Controller and Auditor General, the Attorney General and the Technical Audit Unit of the Ministry of Finance.

(3) The award shall be made, within the period of tender validity to the tenderer whose tender has been determined to be the lowest evaluated and meets the appropriate standards of capability and financial resources.

(4) 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.

Acceptance
of tender and
entry into
force of
procurement
or disposal
contract

97.-(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, service provider, contractor, or asset buyer submitting the tender after all necessary in-country and outside the country approvals, required, have been obtained.

(2) Notwithstanding the provisions of sub-regulation (4), the solicitation documents may require the supplier, service provider, contractor, or asset buyer whose tender has been accepted to sign a written procurement or disposal contract conforming to the tender and in such cases, the procuring entity (the requesting public authority) and the supplier, service provider, contractor or asset buyer shall sign the procurement or disposal contract within 28 calendar days after the notice referred to in sub-regulation (1) has been dispatched to the supplier, service provider, contractor or asset buyer;

(3) Subject to sub-regulation (4), where a written procurement contract is required to be signed pursuant to sub-regulation (1) of this Regulation, the procurement or disposal contract enters into force when the contract is signed by the supplier, service provider, contractor or asset buyer and by the procuring entity.

(4) Between the time when the notice referred to in sub-regulation (1) was dispatched to the contractor, service provider, supplier or asset buyer and the entry into force of the procurement or disposal contract, neither the procuring entity nor the contractor, service provider, supplier or asset buyer shall take any action that interferes with the entry into force of the procurement or disposal contract, or its performance.

(5) Where the solicitation documents stipulate that the procurement or disposal contract is subject to approval by a higher authority or a financing agency, the procurement or disposal 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 sub-regulations (3), (4) and (5), a procurement or disposal contract made in accordance with 'the terms and conditions' of the accepted tender shall enter into force when the notice referred to in sub-regulation (1) has been dispatched to the supplier, service provider, contractor or asset buyer 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, service provider, contractor or asset buyer, or conveyed to an appropriate authority for transmission to the supplier, service provider, contractor or asset buyer, by a mode authorized by Regulation 17.

(9) If the supplier, service provider, contractor, or asset buyer whose tender has been accepted fails to sign a written procurement or disposal contract, if required to do so, or fails to provide any required security for the performance of the contract, the procuring entity shall, on the prior written approval of the 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 sub-regulation (1) shall be given to the supplier, service provider, contractor or asset buyer that submitted that tender.

(11) Upon the entry into force of the procurement or disposal contract and, if required, the provision by the supplier, service provider, contractor or asset buyer of a security for the performance of the contract, notice of the procurement or disposal contract shall be given to other supplier, service provider, contractor or asset buyer, specifying the name and address of the supplier, service provider, contractor or asset buyer that has entered into the contract and the contract price.

(12) The results of tender award shall be published in the Authority's Website and Journal, Government Gazette and in at least two newspapers of wide circulation and or any other appropriate information media on regular basis.

(13) To enable information on tender award 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 Authority. Copies must be posted to the Authority within three days of sending an acceptance notice to the supplier, service provider, contractor or asset buyer;

(14) 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 to be linked to the tender prices;
- (b) in advising unsuccessful tenderers of the price submitted by the successful tenderer pursuant to sub-regulation (11) in no circumstances is any part of a tenderer's schedule to be disclosed;
- (c) 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;
- (d) 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.
- (e) 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;

- (f) 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;
- (g) 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.

Tendering
procedures
for selected
subcontracto
rs and
suppliers
for
provisional
and prime
cost sums in
works
contracts

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

(2) When work is to be carried out as a selected subcontract and the value is such that competitive tenders would be obtained, tenders shall close with the appropriate tender board which approved the head contract regardless of the value involved and regardless of whether it is the supplier, service provider, contractor or the procuring entity which calls tenders.

(3) Tenders shall be invited in the name of the head contractor or service provider who may be consulted in regard to any special arrangements he may wish to have incorporated in tendering documents for the subcontract.

(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.

(5) The tender selected by the procuring entity is first to be referred to the head supplier, contractor or service provider for his perusal before instructions to accept it as a subcontract are issued.

(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.

Process to be
confidential

99.-(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, service providers, contractors, asset buyers or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

(2) Any effort by a tenderer to influence the procuring entity's or approving authority with a view to processing of tenders or award decisions may result in the rejection of his tender.

PART VIII PROHIBITION

Fraud and
corruption

100. (1) Procuring entities and approving authorities as well as consultants under public financed contracts shall proceed in a transparent and accountable manner during the selection and execution of such contracts as required by Section 72 to 75 of the Act.

(2) A procuring entity, approving authority and a consultant shall, in any request for proposal for public contracts include an undertaking of the consultant to observe the country's laws against fraud and corruption including bribery in competing for and executing a contract as per Memorandum provided in the Sixth Schedule to these Regulations

Improper
inducement

101.-(1) 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 or disposal contract is received directly or indirectly by or for the benefit of a public officer with decision making responsibility or influence or of their relatives or business associates.

(2) 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 transactions are not used as a device to channel payments or other benefits directly or indirectly to or for the personal benefit of public officers with decision making responsibility or influence, or of their relatives or business associates.

(3) 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.

(4) 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.

(5) A procuring entity shall not include in any tender document any condition or specification such as to favour any one supplier, service provider, contractor or asset buyer.

(6) Any member of an approving authority or a member of staff thereof or of a procuring entity or member of staff shall declare any interest that they may have in any supplier, service provider, contractor, or asset buyer and shall take no part in, nor seek to influence in any way, procurement or disposal proceedings in which that supplier, service provider, contractor or asset buyer is involved or liable to become involved.

(7) 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, the provision of any non consultant service, the execution of any work, the acquisition of any public asset by tender or any other contract in which such member or his firm has any financial interest.

(8) Any tender proved to have been awarded on the basis of inducement as described in the preceding subsections shall be revoked forth rightly and the same shall be reported to Authority and the relevant professional body for ethical proceedings.

(9) A supplier, service provider, contractor or asset buyer 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 or disposal proceeding during the ten years following the date of the notice of such rejection or revocation.

(10) Any rejection or revocation on the grounds of inducement or corrupt practices shall be notified to the Authority who shall in turn take effect to notify all public authorities and approving authorities for the sake of effecting the contents of sub-regulation (9).

(11) 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.

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

102.-(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 76 of the Act unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

Pecuniary interests for purposes of Regulation 102

103.-(1) For the purposes of Regulation 102 and subject to sub-regulations (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) Sub-regulation (1) shall not apply to membership of or employment under any public body and a member of a company or other body shall not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.

(3) In the case of married persons living together, the interest of one spouse shall, if known to the other, be deemed for the purposes of Regulation 102 to be also an interest of the other.

General notices and recording of disclosure for the purposes of Regulation 102

104.-(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 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 95 and of any notice given under this Regulations, and the book shall be open at all reasonable houses to the inspection of any member of the public.

Prohibition of running contracts

105.-(1) A procuring entity shall not invite, accept or place a running contract for the supply of goods, for provision of services or for the execution of works, without prior approval of the Authority. 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, services or works obtained through request for submission of unit rates which are applied over an extended period of time and which offer the procuring entity to engage such suppliers or contractors without further competitive tenders.

Non anticipation of tenders

106. 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.

Tampering with submitted tenders

107.-(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.

Institution of
criminal
proceedings,
CAP 16 Act
No. 3 of
1971

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

PART IX
REVIEW OF PROCUREMENT OR DISPOSAL DECISIONS AND DISPUTES
SETTLEMENT

Right to
review

109. A supplier, service provider, contractor or asset buyer who claims to have suffered or that may suffer any loss or injury as a result of breach of a duty imposed on a procuring entity or an approving authority by the Act or these Regulations may seek a review in accordance with Section 79 of the Act.

Time limit on
review

110. The supplier, service provider, contractor or asset buyer shall submit an application for review within twenty eight days of the supplier, service provider, contractor or asset buyer becoming or should have become aware of the circumstances giving rise to the complaint or dispute.

Submission
of
applications
for review

111.-(1) Any application for administrative review shall be submitted in writing to the accounting officer of a procuring entity and a copy given to the Authority.

(2) The application for administrative review shall include:

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

(3) The application for administrative review shall be accompanied by a payment of a fee prescribed in the Fifth Schedule to these Regulations.

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

Administrative review by accounting officer

112.-(1) An accounting officer shall immediately, upon receipt of an application for administrative review, suspend the procurement or disposal proceedings where a continuation of the proceedings might result in an incorrect contract award decision or making worse any damage already done.

(2) An accounting officer shall institute an investigation to consider:

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring entity;
- (c) information provided by staff of a procuring entity;
- (d) information provided by other suppliers, contractors, service providers or asset buyers; and
- (e) any other relevant information.

(3) An accounting officer shall, within thirty days after receipt of the complaint or dispute, deliver a written decision which shall indicate:

- (a) whether the application is upheld in whole, in part or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken;

(4) The accounting officer shall submit a copy of the decision to the Authority.

(5) Where the accounting officer does not issue a decision within the time specified in sub-regulation (3), the supplier, contractor, service provider or asset buyer submitting the complaint or dispute or the procuring entity shall be entitled immediately thereafter to institute proceedings under Regulation 112 and upon instituting such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

Administrative review by the Authority

113.-(1) A supplier, contractor, service provider or asset buyer may submit an application for review by the Authority where the head of a procuring entity or of approving authority does not issue a decision within the time specified in Regulation 112(3) or the tenderer is not satisfied with the decision by the head of a procuring entity or of approving authority.

(2) The application to the Authority for administrative review shall be submitted within fourteen working days from the date of communication of the decision by the accounting officer.

(3) The application to the Authority for administrative review shall be copied to the respective accounting officer or chief executive officer and shall include:

- (a) a copy of the original application to an accounting officer and the supporting documents;
- (b) a copy of relevant correspondence to and from an accounting officer;
- (c) a statement by the tenderer that an accounting officer failed to issue a decision and the relevant dates, where applicable; and
- (d) an explanation of why the tenderer is not satisfied with the decision of the accounting officer, where applicable.

(4) The Authority shall, upon receipt of an application, immediately:

- (a) give notice of the application to the procuring entity;
- (b) instruct the procuring entity to suspend any further action on the procurement or disposal requirement, where the Authority considers a suspension necessary;
- (c) notify all tenderers of the application and invite them to submit any relevant information prior to a given deadline; and
- (d) institute an investigation.

(5) The Authority shall investigate the application for administrative review by considering, where appropriate, the following:

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

(6) The Authority shall within thirty days after receipt of a application for administrative review deliver a written decision which shall indicate:

- (a) whether the application is upheld in whole, in part or rejected;
- (b) the reasons for its decision; and
- (c) the corrective measures to be undertaken

(7) The decision of the Authority shall be final unless an action is commenced under Section 82 of the Act.

Review by the
Public
Procurement
Appeals
Authority

114. Complaints or disputes not amicably settled by the Authority shall be referred to the Public Procurement Appeals Authority for which its Rules and procedures shall apply.

PART X MISCELLANEOUS PROVISIONS

Procedure
for
amendment
of standard
contract

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

(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 Authority 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 Authority and the Attorney General's Chambers.

Submission
of contract
documents

116. The head of the procuring entity concerned shall ensure that copies of all contracts are sent to the Authority, 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 as the case may be, and the Tanzania Revenue Authority within thirty days from the date of contract signature.

Amendment
s after
signature

117. 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, service provider 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, service provider 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) 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.

(7) 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.

(8) 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, services to be provided or work to be performed by a supplier, service provider 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).

(9) 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.

(10) 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 to be regarded as covering the difference between the price to be paid for the prime cost items or provisional sum items and the allowance included for such items in the contract price.

Time
extension
orders

118.-(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, service provider or contractor it must be submitted in accordance with the conditions of contract.

(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, service provider 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, service provider 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, service provider 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.

Liquidated
damages

119.-(1) Liquidated damages rates per day to be imposed on the supplier, service provider or contractor for undelivered materials or goods, undelivered or delayed service, 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 per cent of the contract value of undelivered materials/goods, up to a sum equivalent to the amount of the performance guarantee.
- (b) in cases of procurement of works, the liquidated damages shall be imposed at 0.10 up to 0.15 per cent 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.

Liquidated
damages for
person
abandoning
works or
services

120.-(1) Where a successful supplier, service provider 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 or service, the name of such person shall be forwarded by the procuring entity to the Authority 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 sub-regulation (1) except with the prior written approval of the Authority.

Management
of contracts

121.-(1) A procuring entity shall be responsible for the effective management of any procurement of goods, services or works which it is undertaking and shall, to that end:

- (a) monitor;
 - (i) the timely delivery of goods and services 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 is fully discharged.

(2) The accounting officer of a procuring entity shall appoint a contracts manager for contracts under the private sector participation outsourcing and the public private partnership arrangements.

(3) The accounting officer of the procuring entity shall approve, prior to execution of the public private partnership or private sector participation agreement, of a contract management plan that demonstrates resources of the procuring entity, technical, financial and human, to undertake the implementation of the contract for its anticipated duration.

Management
of goods
contracts

122.-(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 promptly 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.

Management
of services
and works
contracts

123.-(1) In the case of contracts for non consultant services or works, a procuring entity shall monitor the service provider or contractor's performance against the statement of requirements or schedule of works stated in the contract, by means of daily, weekly or monthly reports from the procuring entity's supervisor responsible for the services or works.

(2) Provided that the service provider's or 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 service provider's or contractor's performance does not meet the requirements stated in the contract, the procuring entity shall draw the service provider's or 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 service provider or contractor so as to remedy the situation, the procuring entity shall notify the service provider or 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 service provider or contractor fails to provide services at the required standard, to remedy faults or to complete the works to the satisfaction of the procuring entity, that procuring entity may either:

- (a) withhold payment of any moneys retained;
- (b) call any performance security if such has been furnished by the service provider or 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 services or works that are considered to be necessary by the procuring entity.

(7) When the services have been provided or works have been completed to the satisfaction of the procuring entity, and after any period provided in the contract has elapsed, the procuring entity shall promptly authorise final payment to be made to the service provider or contractor on his application, and release the service provider or contractor from any performance guarantee provided the service provider or contractor has made good all the defects identified therein.

Reporting to
approving
authority

124. 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.

Monitoring
by Authority

125.-(1) The Authority 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 Authority shall not be concerned with the operation of the “supply management” system.

Inspection
and
acceptance
of goods

126.-(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.

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.

Procedure
for
Inspection of
Goods

127.The Accounting Officer shall appoint a goods inspection and acceptance committee which 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 sub-paragraph (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 the head of the procuring entity agrees with acceptance of delivery, the committee shall proceed in accordance with subparagraphs (c) and (d);
- (h) The inspection and acceptance of the goods shall be completed within the time specified in the contract.

Appointment
of a works
supervisor

128.-(1) For any contracted work(s) which the head of the procuring entity considers necessary to have a supervisor appointed 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.

Amendment
of the
regulations

129. 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.

Repeal and
savings

130. Public Procurement Goods and Works Regulations GN. No. 138 is hereby revoked.

FIRST SCHEDULE

AUTHORISED PROCUREMENT LIMITS FOR ACCOUNTING OFFICERS AND
CHIEF EXECUTIVE OFFICERS

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

Method of procurement	Maximum procurement value per annum subject to the limit of Tshs 10,000,000 per contract for the Accounting Officer and Tshs 3,000,000 per contract for the Head of Department.	
	Heads of Department	Accounting Officers
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000

Notes:

For the procurement to be approved by the Head of Department or Accounting Officer, 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.

(b) Authorised Parastatal Organizations Procurement Limits for Chief Executive Officers

Method of procurement	Maximum procurement value per annum subject to the limit of Tshs 7,500,000 per contract for the Chief Executive and Tshs. 3,000,000/= for Head of Department	
	Head of Department	Accounting Officer
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000

NOTES:

For the procurement to be approved by the Chief Executive or Head of Department,, 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 Organisation Tender Board.

(c) Authorised TanRoads Procurement Limits (in Tshs.)

Method of procurement	Regional Manager	Chief Executive	
		Maximum Per Contract	Maximum Per annum
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	TO BE FIXED BY TANROADS HEADQUARTERS BASED ON POWERS GIVEN TO DELEGATE	50,000,000	300,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources		10,000,000	50,000,000

NOTES

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

SECOND SCHEDULE

METHODS OF SELECTION AND LIMIT OF APPLICATION

Method of tendering	Goods	Works	Non Consultancy MServices	Disposal of Assets
International competitive tendering	No limit	No limit	No limit	No limit
National competitive tendering	Up to Tshs 800,000,000	Up to Tshs 3,000,000,000	Up to Tshs 500,000,000	Up to Tshs 3,000,000,000
Restricted tendering	Up to Tshs 400,000,000	Up to Tshs 1,500,000,000	Up to Tshs 200,000,000	Up to Tshs 100,000,000
Competitive quotations	Up to Tshs 80,000,000	Up to Tshs 100,000,000	Up to Tshs 50,000,000	Not applicable
Single source procurement	Up to Tshs. 500,000,000/-	Up to Tshs 800,000,000	Up to Tshs. 100,000,000	Not applicable
Minor value procurement	Up to 10,000,000	Up to 20,000,000	Up to 10,000,000	Not applicable

THIRD SCHEDULE

STANDARD PROCUREMENT PROCESSING TIME

(a) National Competitive Tendering for Procuring Entities

S/No	Activity	Period (calendar days)
1	Preparation of prequalification documents	7
2	Advertise and issue pre-qualification documents	7
3	Evaluation of pre-qualification documents and preparation of shortlist and approval of the same	14
4	Preparation of tender documents	14
5	Review and approval of tender documents by the tender board	30
6	Advertise and issue tender documents	14
7	Evaluation of tenders and notification of award and obtaining necessary approvals	30
8	Award of contract	7

(b) International Competitive Tendering for Procuring Entities

S/No	Activity	Period (calendar days)
1	Preparation of prequalification documents	7
2	Advertise and issue prequalification documents	14
3	Evaluation of prequalification documents and preparation of shortlist and approval of the same	14
4	Preparation of tender documents	14
5	Review and approval of tender documents by the tender board or approval committee	30
6	Advertise and issue tender documents	14
7	Evaluation of tenders and notification of award and obtaining necessary approvals	30
8	Award of contract	7

(c) Minimum Time for Preparation and Submission of Prequalification Documents and Tenders for Tenderers

Serial Number	Method of procurement	Period (calendar days)
PREQUALIFICATION STAGE		
1	International competitive bidding	30
2	National competitive bidding	21

Serial Number	Method of procurement	Period (calendar days)
TENDERING STAGE		
3.	National competitive bidding	30
4.	International competitive bidding	45
5.	Restricted national competitive bidding	21
6.	Restricted international competitive bidding	30
7.	National shopping	7
8.	International shopping	14
9.	Where large works are involved	90

FOURTH SCHEDULE

NATIONAL AND EXCLUSIVE PREFERENCE

- (a) Margin of Preference for National and International competitive for domestic contractors and service providers

Input of National firm in the association	Preference (%)
20-40%	4
40-60%	6
60-80%	8
80-100%	10

- (b) Margin of Preference for Goods mined or manufactured in Tanzania

up to 15%

- (c) Project value below which Exclusive Preference will be applied

Procurement type	Value (Tshs)
Works	1,000,000,000
Goods	200,000,000
Non-Consultant Services	250,000,000
Disposal by tender	Not applicable

Notes:

The exclusive preference is applicable for National Firms and Association of National and Foreign firms in which the contribution of the national firm to the association is more than 75%

(c) Project value below which Exclusive Preference will be applied

Procurement type	Value (Tshs)
Works	1,000,000,000
Goods	200,000,000
Non-Consultant Services	250,000,000
Disposal by tender	Not applicable

Notes:

The exclusive preference is applicable for National Firms and Association of National and Foreign firms in which the contribution of the national firm to the association is more than 75%

FIFTH SCHEDULE

FEEES FOR ADMINISTRATIVE REVIEW BY THE AUTHORITY

Fees payable to the Authority on lodging an application for Administrative Review	Tshs. 10,000/-
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SIXTH SCHEDULE

**Anti-Bribery Policy/Code of Conduct and a Compliance Program
MEMORANDUM**

**Government of the United Republic of Tanzania
Procedures for tendering for public sector contracts**

The following procedures will apply to the letting of contracts for the public sector in addition to the standard legal and projects. These procedures are administrative requirements; they will form part of the terms and conditions of inch 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 paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
- i) Cancellation of the contract,
 - ii) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages), unsuccessful tenderer would present their claims under international arbitration,
 - iii) Forfeiture of the tender security, and
 - iv) Debarment by the Government of the United Republic of Tanzania from tendering for further public contracts for a period of ten years and as the Government may deem appropriate.
- (6) Tenderers shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their - general or project - specific - Compliance Program.
- (7) The Government of the United Republic of Tanzania has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by tenderers for this contract, and to which in turn all tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a tenderer may be disclosed to another tenderer or to the public).

Dar es Salaam
12th April, 2005

BASIL P.MRAMBA
Minister for Finance