

**THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF FINANCE AND PLANNING
PUBLIC PROCUREMENT REGULATORY AUTHORITY**



**Guidelines
for**

Securities in Public Procurement

Made under Section 9 (1) (f) of Public Procurement Act, 2011

Further information may be obtained from www.ppra.go.tz

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PART I: INTRODUCTION	
1. Background	<p>1.1 Section 9 (1) (f) of Public Procurement Act, 2011 and its Regulations, mandates the Public Procurement Regulatory Authority (PPRA) to issue guidelines under the Act for proper carrying out of procurement activities in Tanzania. In addition, Section 58(4) of the Act directs the Authority to issue guideline on Securities.</p> <p>1.2 These Guidelines are therefore issued to Procuring Entities for use when determining, issuing and administering Securities in tendering processes and during contract management.</p>
2. Scope	<p>2.1 These Guidelines shall apply to the following securities:</p> <p>(a) Tender Security/Tender Securing Declaration;</p> <p>(b) Performance Security/Performance Securing Declaration; and</p> <p>(c) Advance Payment Guarantee.</p>
3. Short Title	<p>3.1 These Guidelines may be cited as Guideline for Securities in Public Procurement.</p>
4. Application	<p>4.1 These Guidelines shall come into force from the date they are issued to the Public by the Authority and they may be amended from time to time when needs arise.</p> <p>4.2 The Guidelines shall be used by all Procuring Entities during tendering process and contract management.</p> <p>4.3 Where the interpretation of any provision of these Guidelines conveys meaning contrary to Public Procurement Act and its Regulations, the provisions of such Act and its Regulations shall prevail and its interpretation shall be final and conclusive.</p>
5. Definitions	<p>5.1 In these Guidelines, unless the context requires otherwise:</p> <p>“Accounting Officer” Means “a government officer appointed in accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention”.</p> <p>“Advance Payment Guarantee” is a form of protection that makes it possible for a buyer to recover any advance payments extended to a seller, service provider or contractor in the event that the seller fails to abide by the terms and conditions that govern receipt, usage and repayment of such advance payment in the procurement of goods, services or works.</p> <p>“Authority” means “the Public Procurement Regulatory Authority”.</p> <p>“Performance Security” means a guarantee or a bond from a successful Tenderer’s Bank or an Insurance Company, which should be provided by the successful tenderer to the Procuring Entity with the aim of compensation for any loss resulting from the Tenderer’s failure to complete its obligations under the contract.</p> <p>“Performance Securing Declaration” means a security by way of declaration provided by the successful Tenderer to the Procuring Entity with the aim of guaranteeing faithful performance of contractual</p>

	<p>obligations, whose violation resulting from the Tenderer's failure to complete its obligations or breach of contractual terms under the contract shall be subjected to debarment procedures by the Authority as provided for under Section 62 of Public Procurement Act, 2011.</p> <p>“Tender Security” means a guarantee or bond from a Tenderer's Bank or an Insurance Company, which should be provided by the tenderer as part of its tender with the aim of protecting the Procuring Entity against the risk of Tenderer's conduct including premature withdraw of Tender during the Tender Validity Period which would warrant the security's forfeiture or otherwise returned to the Tenderer after tender process.</p> <p>“Tender Securing Declaration” means a security by way of declaration provided by the Tenderer when the procurement is within the exclusive preference limits; provided under the Ninth and Thirteenth Schedules to Public Procurement Regulation, 2013 (as amended) for Goods, Works, Non-Consultant Services and Consultant Services respectively;</p> <p>“Securities” means bond or guarantee or declaration submitted by the Tenderer to the Procuring Entity for the purpose of safeguarding a Procuring Entity against any defined or identified risks in a procurement process. Securities may, where it is justified that the Tenderer is in breach or failed to honour its terms, be subjected to forfeiture by a Procuring Entity or execution by relevant authorities in accordance with terms and conditions attached to such security.</p>
<p>6. Purpose of the Guidelines</p>	<p>6.1 General Purpose</p> <p>To guide Procuring Entities (PEs) in a proper use of securities in the tendering processing and contract management.</p> <p>6.2 Specific Purpose</p> <p>Specific purposes of these Guidelines are:</p> <p>a) To guide Procuring Entities on how and when to use tender security and tender securing declaration during tendering process; and</p> <p>b) To guide Procuring Entities on how to administer Performance Security, Performance Securing Declaration and Advance Payment Guarantee.</p>
<p>7. Importance of the Guidelines</p>	<p>7.1 These Guidelines will provide effective use of securities in procurement process and in managing contracts.</p>
<p>PART II: Tender Security and Tender Securing Declaration</p>	
<p>8. Submission of securities</p>	<p>8.1 The requirement for submission of securities shall be provided by the PEs in the solicitation documents, and such requirement shall apply to all tenderers.</p> <p>8.2 Tender Security or Tender Securing Declaration should be part of submissions during tender submission by tenderer before closing date and time.</p>

	<p>8.3 Procuring Entity shall specify amount of Tender Security ranging from 1.0 percent to 3.0 percent of the estimated contract value. The lower the estimated contract value the higher the percentage to be used and the vice versa. The Procuring Entity shall not use percentages when requiring Tender Security from Tenderers in the Tendering Documents.</p> <p>8.4 The solicitation documents shall stipulate that the issuer of the Tender Security and the confirmer, if any, of the Tender Security, and the form and terms of the tender security, have to be acceptable to the Procuring Entity.</p> <p>8.5 A scanned copy of Tender Security or Tender Securing Declaration shall be submitted through TANEPS together with Tenderers' Tender before closing date and time.</p> <p>8.6 Tenderers shall submit original Tender Security or Tender Securing Declaration on or before the tender closing date and time.</p> <p>8.7 Where electronic Tender Security can be obtained directly from the issuer (e.g., a commercial Bank), such Security may be acceptable by the Procuring Entity as a true and original copy. The responsibility for the submission of the electronic Tender Security before the closing date and time rests with the respective Tenderer.</p> <p>8.8 When submitting original Tender Security or Tender Securing Declaration, the outer envelope shall not bear Tenderer's name and address, to remain anonymous until on the tender opening date.</p> <p>8.9 Procuring Entities are required to confirm validity and authenticity of the security with the issuing entity/firm soon after the opening of tenders.</p> <p>8.10 The confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the Procuring Entity from rejecting the Tender Security on the grounds that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks credit worthiness.</p>
<p>9. Forms and application of Tender Security</p>	<p>9.1 Procuring Entities shall require the tenderers to submit together with their tenders, Tender Security amount or Tender Securing Declaration.</p> <p>9.2 Tender Security shall be in the form of Bank Guarantee issued by a reputable Bank or Insurance Bond issued by a reputable insurance company.</p> <p>9.3 The Tender Security shall state its validity period as required in the solicitation documents. Before its expiration, the validity of the Tender Security may be extended upon request by a Procuring Entity.</p> <p>9.4 Tender Security or Tender Securing Declaration safeguards the Procuring Entity from pre-mature withdrawal of the Tenderers from a particular tendering proceeding.</p> <p>9.5 Tender Securing Declaration shall apply for procurement the value of which does not exceed the threshold for exclusive preference as provided in the Ninth and Thirteenth Schedules to the Public Procurement Regulations of 2013 (as amended).</p> <p>9.6 Tender Security shall apply in all tenders and selection invited</p>

	<p>through international competitive; national competitive; restricted tenders; single source; procurement direct from manufacturers, dealers or service providers; and all tenders which are above the threshold of exclusive preference stated in 9.5 above.</p>
10. Claim by Procuring Entity to the Tender Security Amount	<p>10.1 The Tender Security or Tender Securing Declaration shall remain valid for a period of not less than twenty-eight (28) days beyond the validity period of the tender, in order to provide the Procuring Entity time to act if the Security is called for.</p> <p>10.2 Where a Tenderer chooses to withdraw from the tendering proceedings prematurely before entry in force of the procurement contract, its Tender Security shall be confiscated.</p> <p>10.3 Where Tender Securing Declaration was submitted, the Tenderer shall be liable to measures provided under such declaration including debarment from participating in tenders floated by the Government for a period as will be determined by the Authority in accordance with Section 62 of the Public Procurement Act, 2011.</p> <p>10.4 The Procuring Entity shall make no claim to the amount of the Tender Security, and shall promptly return, or procure the return of the tender security document, after whichever of the following that occurs earliest:</p> <ul style="list-style-type: none"> (a) expiration 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 Public Procurement Regulations, 2013 (as amended); or (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.
Part III: Performance Security or Performance Securing Declaration	
11. Submission of Performance Security or Performance Securing Declaration	<p>11.1 Within a period prescribed in the tender documents, the successful tenderer shall, after receipt of the notice of acceptance, furnish the Procuring Entity with the Performance Security in accordance with conditions of contract and in the form prescribed in the tender documents.</p> <p>11.2 Performance Security shall be submitted prior to contract signing. A Procuring Entity shall ensure that Performance Security or Performance Securing Declaration is submitted by the Tenderer before a contract is signed. Any person within a Procuring Entity, who contravenes this requirement, shall be liable to a penalty in accordance with Section 104 of Public Procurement Act, 2011.</p> <p>11.3 The amount of Performance Security shall be equal to ten (10) percent of the tender amount for Bank Guarantee, and fifteen (15) percent for Insurance Bond.</p> <p>11.4 Tenderer who fails to submit its Performance Security within specified</p>

	<p>period of time, shall be disqualified for contract signature, and another next ranked tenderer shall be invited. The disqualification shall go hand in hand with confiscation of its Tender Security amount or measures taken in accordance with terms and conditions stipulated under Tender Securing Declaration form submitted by the tenderer.</p>
<p>12. Forms of Security</p>	<p>12.1 The Performance Security shall be in any of the following forms:</p> <p>(a) irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the letter shall be confirmed or authenticated by a reputable local bank;</p> <p>(b) Bank Guarantee confirmed by a reputable local bank or, in the case of a successful foreign Tenderer, bonded by a foreign bank; or</p> <p>(c) Surety Bond issued by any reputable surety or Insurance company</p> <p>12.2 The Performance Securing Declaration shall be submitted in a format annexed (Annex 1) to this Guideline without alteration to its wording.</p>
<p>13. Function and Application of performance security</p>	<p>13.1 Performance Security shall be applied in all tenders whose budget is above the threshold for Regional Exclusive Preference stipulated in the Nineth Schedule and the Thirteenth Schedule to Public Procurement Regulations, 2013 (as amended).</p> <p>13.2 Performance Securing Declaration shall apply in all tenders which fall within the threshold of Regional Exclusive Preferences.</p> <p>13.3 Upon PE's determination that a supplier, contractor or service provider has performed to the dissatisfaction of the PE, or a tenderer or a consultant who fails to satisfactorily execute to completion of the services required under the contract within the specified period, inclusive of duly granted time extensions, if any; shall be liable in accordance with terms and conditions of such Performance Securing Declaration.</p> <p>13.4 Performance Security and Performance Securing Declaration shall be used to safeguard a Procuring Entity to guarantee performance of the contract by the supplier, contractor or service provider during implementation.</p> <p>13.5 Performance Security and Performance Securing Declaration shall not be used as a substitute to indemnify professional liability resulting from professional negligence, neither shall professional indemnity be used in place of performance security in procurement of consultant services.</p> <p>13.6 Performance Security shall be used as a threshold for charging liquidated damages by a Procuring Entity, for delayed goods, services or works.</p> <p>13.7 The rate of liquidated damages shall be between 0.10 to 0.20 percent of the cost of undelivered goods for every day of delay. For non - consultant services, the Service Provider shall be required pay to the Procuring Entity in an amount equal to 0.10 to 0.20 percent of the</p>

	<p>contract sum; and for works, the Contractor shall pay in an amount equal to 0.10 to 0.15 percent of Contract sum for every day of delay. In the case of consultancy services, the consultant shall be required to pay 0.1 percent of the unperformed services every day of delay up to the maximum of performance security.</p> <p>13.8 In no case shall the sum of liquidated damages exceed the amount of Performance Security</p> <p>13.9 In the case where the Performance Securing Declaration has been used, the rate of liquidated damages shall be between 0.10 to 0.20 percent of the cost of undelivered goods, contract sum for works or services for every day of delay to a maximum of 10% of the contract sum.</p>
14. Claim by Procuring Entity	14.1 Where the contractor or service provider fails to perform to the required standard or fails to fulfil its obligations as agreed, a Procuring Entity shall demand Performance Security from the bank or insurance company within a time in accordance with terms and conditions stipulated therein; and in the case of Performance Securing Declaration, the Procuring Entity shall initiate the debarment procedures as stipulated in the Public Procurement Act and its Regulations.
Part IV: Advance Payment Guarantee	
15. Submission	<p>15.1 If so required and stated in the Procurement Contract and after signing of the contract, the contractor shall submit to the Procuring Entity a request for advance payments in the format provided provided in the tendering documents.</p> <p>15.2 The Advance Payment amount shall not be above that which is prescribed in the Contract.</p> <p>15.3 Advance payment shall only be granted by the Procuring Entity upon receipt of Advance Payment Bank Guarantee from a reputable bank.</p>
16. Function	<p>16.1 The Advance Payment shall be used to cover initial costs of the project and shall be limited to mobilization of resources or acquisition of initial resources of a project as the case may be as provided for under the contract.</p> <p>16.2 Contractor shall not use the advance payment amount for other activities other than those specified under the contract, as such is justifiable ground to demand payment from the guarantor by the Procuring Entity.</p>
17. Recovery of the Amount	<p>17.1 The amount of the Advance Payment Bank Guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor and the Procuring Entity shall ensure that the amount has fully been recovered when the contract reaches eighty percent of its implementation or payments.</p> <p>17.2 Other terms and conditions of the guarantee shall be as provided in the Advance Payment Guarantee Form provided in the respective Standard Tendering Documents.</p>

PERFORMANCE SECURING DECLARATION¹

Date: *[insert date (as day, month and year)]*
Contract No.: *[insert Contract number]*

To: *[insert complete name of Procuring Entity]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, to guarantee the faithful performance of the Contract by the Supplier/Contractor/Service Provider of its obligations under the Contract, I/we shall submit a Performance Securing Declaration within a maximum period of fourteen (14) calendar days from the date of receipt of the Letter of Acceptance prior to the signing of the Contract.
2. I/We accept that: I/we will be disqualified from tendering for any procurement contract with any procuring entity for the period of time determined by the Public Procurement Regulatory Authority if I/We have violated my/our obligations under the Contract in accordance with the debarment procedures stipulated under the Public Procurement Act and Public Procurement Regulations;

I/We understand that this Performance Securing Declaration shall cease to be valid upon satisfactory performance and final acceptance of the goods by the Purchaser.

Signed: *[insert signature of person whose name and capacity are shown]* in the capacity of *[insert legal capacity of person signing the Performance Securing Declaration]*

Name: *[insert complete name of person signing the Performance Securing Declaration]*

Duly authorized to sign the Contract for and on behalf of: *[insert complete name of Supplier]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Corporate Seal (where appropriate)

¹ Used as an alternative performance security for Contracts falling under Regional exclusive Preference. It shall be submitted within fourteen (14) days after receiving the Letter of Acceptance.