

THE PUBLIC PROCUREMENT ACT, 2011

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY PROVISIONS

<i>Section</i>	<i>Title</i>
1.	Short title and commencement.
2.	Application.
3.	Interpretation.
4.	International obligation.

PART II PUBLIC PROCUREMENT POLICY DIVISION

5. Establishment of Public Procurement Policy Division.
6. Functions of the Public Procurement Policy Division.

PART III THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

7. Establishment of the Authority.
8. Objectives of the Authority.
9. Functions of the Authority.
10. Scope of investigations by the Authority.
11. Initiation of investigation.
12. Procedure in respect of investigation.
13. Evidence.
14. Restriction of disclosure of certain matters.
15. Procedure after investigation.

16. Disciplinary action against public officers.
17. Proceedings of the Authority.
18. Powers of the Authority.
19. Cancellation of procurement proceedings.
20. Action on recommendation of the Authority.
21. Establishment and Composition of the Board of Directors.
22. Committees of the Board of Directors.
23. Appointment of Chief Executive.
24. Directors, consultants and other staff of the Authority.
25. Funds of the Authority.
26. Books of account.
27. Audit of Accounts.
28. Annual Management Plan and budget.
29. Annual Report.
30. Internal Audits and Periodic Audit Reports.

PART IV

INSTITUTIONAL ARRANGEMENTS

31. Tender boards.
32. Notification to the Authority of composition of tender board.
33. Functions of tender boards and budget approving authority.
34. Powers of tender board.
35. Award of contracts.
36. Functions and Powers of Accounting officer.
37. Establishment and composition of Procurement Management Unit.
38. Functions of a Procurement Management Unit.
39. User Department.
40. Evaluation Committee.
41. Independence of functions and powers.
42. Delegation of powers by the Accounting officer.
43. Third party procurement.
44. Procurement procedures for the Authority and the Appeals Authority.
45. Disagreements in decisions.
46. Confidentiality of documents.

PART V
PUBLIC PROCUREMENT PRINCIPLES

47. Standards of equity.
48. Duties of procuring entities.
49. Approval of the Annual Procurement plan.
50. Procurement of common use items and services.
51. Qualifications of suppliers, contractors and consultants.
52. Pre-qualification proceedings.
53. Post-qualification.
54. National preferences.
55. Exclusive preference to local persons or firms.
56. Procurement from the Agency.
57. Language.
58. Tender securities.
59. Rejection of tenders or proposals.
60. Acceptance of tender and entry into force of a procurement contract.
61. Records, information and notices.
62. Blacklisting.

PART VI
METHODS OF PROCUREMENT AND PROCESSES

63. Application of the basic principles of procurement and disposal.
64. Selection of methods of procurement.
65. Emergency procurement.
66. Procurement of used railway machinery, aircrafts and ships.
67. Competitive tendering.
68. Invitation to tender and advertising.
69. Issue of tender documents.
70. Content of tender document.
71. Validity of tenders and tender security.
72. Evaluation criteria.

73. Receipt of tenders and tender opening.
74. Evaluation and comparison of tenders.
75. Approval of award of contract.
76. Negotiation and award of contracts.
77. Alteration and amendments.
78. Selection of consultants.

PART VII

PUBLIC PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIP

79. Scope applicability and approval.
80. Unsolicited public Private Partnership proposal.
81. Selection of Transaction Advisor or Manager.
82. Selection of a Private Party and choice of procurement.

PART VIII

PROHIBITIONS

83. Fraud and corruption.
84. Conducts influencing Public Officers.
85. Disclosure of payment made by way of commission etc.
86. Conduct of directors, servants or agents.
87. Institution of criminal proceedings.

PART IX

DISPUTES SETTLEMENT

88. Establishment of the Appeals Authority.
89. Appointment of Executive Secretary.
90. Employees of the Appeals Authority.
91. Funds of the Appeals Authority.
92. Audit of Accounts.
93. Management Plan and Budget
94. Annual statement and report.
95. Right to review.

- 96. Settlement of complaints or disputes by accounting officers.
- 97. Review by the Appeals Authority
- 98. Extension of time for submission of complaints or appeals.
- 99. Certain rules applicable to review proceedings.
- 100. Suspension of procurement proceedings.
- 101. Judicial review.

PART X
GENERAL PROVISIONS

- 102. Codes of Conduct.
- 103. Protection from personal liability.
- 104. Offences.
- 105. Regulations.
- 106. Guidelines.
- 107. Repeal and savings.
- 108. Transitional provisions.

SCHEDULES

THE UNITED REPUBLIC OF TANZANIA



NO. 7 OF 2011

I ASSENT,

Jassayon Kikwete
.....
President

13 December, 2011
.....

An Act to make better provisions for the regulation of public procurement, to provide for repeal of the Public Procurement Act, 2004 and re-enact the Public Procurement Act and consequential matters and to provide for other related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commence-
ment

1. This Act may be cited as the Public Procurement Act, 2011 and shall come into operation on such a date as the Minister may, by notice in the *Gazette*, appoint.

Application

2.-(1) This Act shall apply to-

- (a) all procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- (b) non Government entities, for procurement financed from specific public finances; and
- (c) Public Private Partnership projects, in their relevant stages.

(2) The Defence and National Security Organs shall comply with this Act subject to subsections (3) and (4).

(3) The defence and national security organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively.

(4) The Defence and National Security Organs shall agree annually with the Authority on the category of items to be included in the restricted list and on restricted procurement methods set out in this Act or regulations made under this Act which applies to each category of item on the restricted list.

(5) Subject to section 4(1), the extent to which this Act, regulations and rules made under it conflict with other laws, regulations or rules on matters relating to public procurement and disposal of public assets by tender, the provisions of this Act, regulations and rules made under it shall prevail.

Interpretation

Cap.348

3. In this Act unless the context otherwise requires -
 “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;
 “Agency” means Government Procurement Services Agency;

“an associate” means a person who -

- (a) is in partnership with the public officer; or
- (b) in the case of a body corporate is a controller of the body corporate or the public officer and any person who is in association with him;

“Appeals Authority” means the Appeals Authority established under section 88;

“approving authority” means an accounting officer or tender board of a public body;

“Authority” means the Public Procurement Regulatory Authority;

“Board” means the Board of Directors of the Public Procurement Regulatory Authority established under section 21;

“coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;

“competent authority” means a person, body of person, organs or an agency competent to take actions as may be referred to or directed to it by the Authority under this Act;

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

“collusive practices” means impairing or harming, or threatening to impair or harm directly or indirectly, any part or the property of the Party for the purpose of influencing improperly the action or a part or in connection with public procurement or government contracting or in furtherance of a corrupt practice or a Fraudulent Practice;

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

“consultant” means a firm, company, corporation, organisation, partnership or an 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 services, and who is, according to the context, a potential party or the party to a contract with the procuring entity;

“consultancy services” means activities of an intellectual and advisory nature that do not lead to a measurable physical output and includes design, supervision, training, advisory, auditing, software development and similar services;

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

“contractor” means a firm, company, corporation, organisation, partnership or an individual person engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovation, and who is, according to the context, a potential party or the part to a procurement contract with the procuring entity;

- “corrupt practice means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;
- “defence and national security organs” means the Tanzania Peoples Defence Forces, the Tanzania National Service, Tanzania Police Force, Tanzania Prisons Service, Tanzania Intelligence Security Services, the National Security Council and the Prevention and Combating of Corruption Bureau;
- “Department” in relation to a Ministry of the Government or other public authority or public body, includes any division or unit by whatever name known of that ministry, authority or other body;
- “digital signature” means an electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and parameters such that the identity of the signer and the integrity of the data can be verified;
- “disposal” means the divestiture of public assets including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means, including sale, hire - purchase, licences, tenancies, rental, lease, franchise, auction or any combination however classified other than those regulated by the Public Corporation Act;
- “disposal process” means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from tenderers, examination and evaluation of those offers and award of contract;
- “e-procurement” means the use of information and communication technology by the Government in conducting procurement functions;
- “emergency procurement” means procurement of goods, works or services essentially to meet an emergency situation which cannot be done through normal procurement process;

- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;
- “goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to the supply of the goods provided that the value of the services does not exceed the value of the goods themselves;
- “government” means the Government of the United Republic of Tanzania;
- “guidelines” means directives issued by the Public Procurement Regulatory Authority under this Act;
- “false representation” means a misrepresentation of fact made by one party to another with intent to deceive and with the knowledge that it is false;
- “highest evaluated price” means the price offered by a tenderer for revenue collection services or for the asset to be disposed of, that is found to be the highest after considering relevant factors specified in the tender documents and apportioning weight for such factors;
- “Independent Government Department” means a Department of the Government that is not under the direct control of the parent Ministry;
- “local government authority” means a local government authority established under the Local Government (District Authority) Act or local government authority established under the Local Government (Urban Authority) Act;
- “lowest evaluated cost” means the price offered by a tenderer that is found to be the lowest price after consideration of all relevant factors and the calculation of any weighing for these factors, provided that such factors have been specified in the tender documents;

“Minister” means the Minister for the time being responsible for finance;

“non consultancy services” means any object of procurement other than goods, works and consultancy services;

“obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;

“parastatal organisation” means -

Cap.212

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

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

(iii) any company, management, board, association or statutory body in which the Government has a

Cap.245

majority or controlling interest and includes a government agency established under the Executive Agencies Act;

Cap 348

“Paymaster General” has the meaning ascribed to it under the Public Finance Act;

“person” includes any association of persons whether incorporated or not;

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

- “pre-qualification” means a formal procedure whereby suppliers, contractors or consultants are invited to submit details of their resources, and capabilities which are screened prior to invitation to tender on the basis of meeting the minimum criteria on experience, resources, capacity and financial standing;
- “procuring entity” means a public body and any other body, or unit established and mandated by government to carry out public functions;
- “procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation and award of contracts;
- “procurement contract” means any licence, permit, or other concession or authority issued by a public body or entered into between a public body and a supplier, contractor or consultant, resulting from procurement proceedings for carrying out construction or other related works or for the supply of any goods or services;
- “procurement expert or specialist” means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement and has been certified or registered by the Procurement Supplies Professional and Technician Board;
- “Procurement Management Unit” means a division or department in each procuring entity responsible for the execution of the procurement functions;
- “procurement proceedings” means the proceedings to be followed by a procuring entity or any approving authority when engaging in procurement;

"procurement process" means the successive stages in the procurement cycle, including planning, choice of procedures, measures to solicit offers from tenderers, examination and evaluation of those offers, award of contract and contract management;

"Procurement Professional Body" means the Procurement and Supplies Professionals and Technicians Board;

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

"public body or public authority" means -

- (i) any Ministry, Department or Agency of the Government;
- (ii) any body corporate or statutory body or authority established by the Government;
- (iii) any company registered under the Companies Act being a company in which the Government or an agency of the Government, is in the position to influence the policy of the company; or
- (iv) any local government authority;

"public funds" means monetary resources appropriated to procuring entities through budgetary processes, including the Consolidated Fund, grants, loans and credits put at the disposal of the procuring entities by local or foreign donors and revenues generated by the procuring entities;

"public officer" or "officer" means:-

- (i) any person holding or acting in an office of emolument in the public service;
- (ii) a person holding or acting in the office of a Minister in the Government;
- (iii) an employee of any body corporate referred to in the definition of public body or public authority;
- (iv) a person who has been a public officer;

Cap. 103

“Public Private Partnership” shall have a meaning ascribed to it under the Public Private Partnership Act, 2010;

“services” means both consultancy and non consultancy services;

“solicited private Partnership Projects” means proposals for Public Private Partnership Projects that are initiated by public bodies and represent Government’s priority programs;

“specification” means a description of any commodity or works by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics or to any substance or material of, or with which, or the manner in which, any commodity or works may be manufactured, produced, processed, treated, built or installed;

“successful tender” means a tender evaluated and selected by the procuring entity as-

- (i) offering the lowest evaluated cost and has the capacity and capability to execute the contract, in case the method of procurement used was competitive tendering; or
- (ii) being the most responsive to the needs of the procuring entity if procurement used was competitive quotations, single source procurement, competitive selection or where goods or services of minor value were procured;
- (iii) the highest evaluated price;

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

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

Cap. 103

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- (ii) being the most responsive to the needs of the procuring entity if procurement used was competitive quotations, single source procurement, competitive selection or where goods or services of minor value were procured;
- (iii) the highest evaluated price;

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

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

“tender document” means a written or electronic document or request for proposal inviting tenderers to participate in procuring or disposal by tender proceeding and includes document inviting potential tenderer for pre-qualification;

“tenderer” means any natural or legal person or group of such persons participating or intending to participate in procurement proceeding with a view to submitting a tender in order to conclude a contract and includes a supplier, contractor service provider or asset buyer;

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

“unsolicited Private Partnership Projects” means a proposals that are initiated by a private sector party to a public institution for consideration as Public Private Partnership Project;

“works” means -

- (i) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;
- (ii) any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing; and
- (iii) service which is tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations:

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

International
obligation

4.-(1) To the extent that this Act conflicts with an obligation of the United Republic under or arising out of -

- (a) any treaty or other form of agreement to which the Government is a party with one or more other states or political sub-divisions of such states; or
- (b) any grant agreement entered into by the Government with an inter-governmental or international financing institution in which the Government is the beneficiary,

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

(2) Where the Government enters into any treaty or other form of agreement which favours an external beneficiary, then -

- (a) procurement made through contributions made by the Government shall be undertaken in the United Republic through national suppliers, contractors or consultants;
- (b) all relevant insurances shall be placed with companies registered in the United Republic;
- (c) supplies shall be transported in carriers registered in the United Republic.

(3) Where, for reasons of limitations of capacity, national suppliers, contractors or consultants are unable to satisfy wholly or in part, the specific procurement requirements, they shall be offered a preferential opportunity to participate in the procurement or disposal by tender process of the beneficiary entity (in conjunction with firms in that country) and where applicable to offer such requirements from third sources.

(4) A derogation from the application of subsections (1) and (2) may be applied to the Authority by the competent agency responsible for the procurement or disposal in question with supporting documentation and justification.

PART II
PUBLIC PROCUREMENT POLICY DIVISION

Establish-
ment of
Public
Procurement Policy
division

5.-(1) There shall be established, under the Ministry responsible for Finance a Public Procurement Policy Division.

(2) The Public Procurement Policy Division shall be headed by a person with appropriate academic and professional qualifications and experience of not less than ten years in procurement related functions.

Functions
of the
Public
Procurement
Policy
Division

6.-(1) The functions of the Public Procurement Policy Division shall be to-

- (a)** develop a National Procurement Policy;
- (b)** review procurement policies, regulations, circulars and other related directives with a view of updating the same;
- (c)** monitor the implementation of Public Procurement Policies;
- (d)** advise the Central Government, local governments and statutory bodies on issues related to procurement policies; and
- (e)** develop and manage procurement cadre.

(2) For the purpose of subsection (1), the Public Procurement Policy Division shall -

- (a)** design and implement public procurement advisory mechanisms;
- (b)** monitor, evaluate and review public procurement systems;
- (c)** study and mainstream best public procurement systems;
- (d)** analyse public procurement issues and challenges, advise, provide guidance and follow-up on their implementation;

- (e) develop, implement, monitor and evaluate mechanisms for involvement of small and medium scale enterprises in public procurement markets;
- (f) conduct research and other studies on public procurement and advise,
- (g) harmonize public procurement systems in the country and monitor their implementation;
- (h) advise on applications for retrospective approval;
- (i) monitor and evaluate performance of public procurement institutions;
- (j) develop public procurement and supplies cadre;
- (k) develop capacity structure, human resources and succession plans for procurement and supplies staff;
- (l) build capacity of procurement and supplies staff;
- (m) develop and maintain database for procurement and supplies staff;
- (n) provide inputs and advise for the development of public procurement and supplies curricula;
- (o) facilitate appointments of heads of procurement management units and transfer of procurement and supplies staff;
- (p) manage the establishment of Procurement Management Units;
- (q) liaise with training institutions on issues related to capacity building of procurement staff;
- (r) link the Government with stakeholders on issues related to Public Sector Procurement; and
- (s) liaise with procurement professional bodies on matters related to professionalization of the procurement cadre.

PART III
THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Establishment
of the
Authority

7.-(1) There is established an authority to be known as the Public Procurement Regulatory Authority.

(2) The Authority shall have all the powers necessary or expedient for the performance of its functions and shall-

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, be capable of
 - (i) suing and be sued;
 - (ii) holding, purchasing and otherwise acquiring and disposing of movable or immovable property;
 - (iii) entering into any contract or other transactions; and
- (c) exercise the powers and perform the functions conferred upon it by or under this Act; and
- (d) do or suffer to do all acts and things, which a body corporate may lawfully perform, do or suffer to be done.

(3) The application of the common seal of the Authority on any document shall be authenticated by the signature of the Chief Executive Officer.

(4) A document purporting to be an instrument issued by the Authority sealed with the seal of the Authority and authenticated in accordance with subsection (3), shall be deemed to be an instrument of the Authority and shall be received as evidence without further proof.

(5) Notwithstanding the preceding provisions of this section, and the Authority having the status of a body corporate, the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Authority.

Cap.5 (6) Where the Attorney General intervenes in any matter in pursuance of subsection (5), the provisions of the Government Proceedings Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Objectives of
the
Authority

8. The objectives of the Authority shall be to-
- (a) ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement standards and practices;
 - (b) set standards for the public procurement systems in the United Republic of Tanzania;
 - (c) monitor compliance of procuring entities; and
 - (d) build, in collaboration with Public Procurement Policy Division and other relevant professional bodies, procurement capacity in the United Republic.

Functions of
the Authority

- 9.-(1) The functions of the Authority shall be to-
- (a) advise Government, local government authorities and statutory bodies on procurement principles and practices;
 - (b) monitor and report on the performance of the public procurement systems in the United Republic of Tanzania and advise on desirable changes;
 - (c) prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other attendant documents to procuring entities;

- (d) ensure in collaboration with relevant professional bodies, that any deviation from the use of the standardized tendering documents, procedural forms and any other attendant documents is effected only after prior written approval of the Authority;
- (e) issue guidelines under this Act;
- (f) organize and maintain a system for the publication of data on public procurement opportunities, awards and any other information of public interest as may be determined by the Authority;
- (g) conduct periodic inspections of the records and proceedings of the procuring entities to ensure full and correct application of this Act;
- (h) monitor the award and implementation of public contracts with a view to ensuring that:
 - (i) such contracts are awarded impartially and on merit;
 - (ii) the circumstances in which each contract is awarded or terminated, do not involve impropriety or irregularity;
 - (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each contract conforms to the terms thereof.;
- (i) institute:
 - (i) procurement audits during the tender preparatory process;
 - (ii) contract audits in the course of execution of an awarded tender; and
 - (iii) performance audit after the completion of the contract in respect of any procurement as may be required;

- (j) determine, develop, introduce, maintain and update related system to support public procurement by means of information and communication technologies including the use of public electronic procurement;
 - (k) agree on a list, which shall be reviewed annually, of services and supplies in common use by more than one procuring entity which may be subject to common procurement;
 - (l) administer and enforce compliance with the provisions of this Act, regulations and guidelines issued under this Act;
 - (m) undertake research and surveys nationally and internationally on procurement matters; and
 - (n) undertake any activity that may be necessary for the execution of its functions.
- (2) For the purposes of discharging its functions under this Act, the Authority shall be entitled:
- (a) to be advised of the award and the variation of any public contract by the procuring entity responsible for such contract;
 - (b) subject to section 12 to have access to all books, records, documents, or other property belonging to the procuring entity, tenderer whether in the possession of any officer of a procuring entity or a tenderer.
 - (c) to have access to any premises or location where work on a public contract has been or is being or is to be carried out;

