

## THE UNITED REPUBLIC OF TANZANIA



NO. 21 OF 2004

## I ASSENT

BENJAMIN W. MKAPA

*President*8<sup>th</sup> February, 2005

**An Act to repeal the Public Procurement Act, 2001 with a view to make better provisions for the regulation of Public Procurement in the Government of the United Republic and to provide for other related matters**

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

**PART I  
PRELIMINARY PROVISIONS**

Short title  
and  
commence-  
ment  
Application

**1.** This Act may be cited as the Public Procurement Act, 2004 and shall come into operation on the date of publication in the *Gazette*.

**2.-(1)** This Act shall apply:

- (a) to all procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;
- (b) to entities, not of Government, for procurement financed from specific public finances.

(2) The Defence and National Security Organs shall comply with this Act subject to paragraphs (a) and (b) of this subsection:

- (a) 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; and

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

Inter-  
pretation

3.-(1) In this Act unless the context requires otherwise -

“Accounting Officer” means a Government officer appointed in accordance with the provisions of Public Finance Act, 2004 to hold a vote and account for all monies expended from that vote;

“Approving Authority” means an Accounting Officer or Chief Executive, a Ministry tender board, a regional tender board, a district tender Board, a local Government tender board, or a parastatal tender board;

“Board” means Board of Directors of the Public Procurement Regulatory Authority;

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

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

“consultant” means a 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 services, and who is, according to the context, a potential party or the party to a contract with the procuring entity;

- “contractor” means a firm, company, corporation, organisation, partnership or individual person engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovation, and who is, according to the context, a potential party or the part to a procurement contract with the procuring entity;
- “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of public officer in the procurement process or contract execution;
- “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 of Corruption Bureau;
- “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;
- "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 1992;
- "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;
- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government and includes collusive practices among tenderers (prior to or after submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;
- “goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible 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 Section 87 of this Act;

“Independent Government Department” means a Department of the Government that is not under the direct control of the parent Ministry;

"Local government" means local government authority established under the Local Government Authority Act No. 7 of 1982 or Local Government Authority established under the Local Government Authority Act No. 8 of 1982;

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

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

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

“parastatal organisation” means -

Cap.212

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

(ii) 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

- (iii) any company, management, board, association or statutory body in which the Government has a majority or controlling interest and includes a government agency established under the Executive Agencies Act, 1997;

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

“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;

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

"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 spending public funds on behalf of a ministry, department or regional administration of the Government or public body and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, 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 professional body;

"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 a body established to oversee procurement professional development in the United Republic of Tanzania including training standards, professional certification or registration and professional practices and code of conduct.

"public body or public authority" means -

Cap 212,

- (i) any ministry, department or agency of government;
- (ii) any body corporate or statutory body or authority established for the purposes of the Government;
- (iii) any company registered under the Companies Ordinance being a company in which the Government or an agency of Government, is in the position to influence the policy of the company;
- (iv) any local government authority;
- (v) any parastatal organization.

"public finances" 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 services of the Government;
- (ii) a person holding or acting in the office of Minister in the Government;
- (iii) an employee of any body corporate such as is referred to in the definition of public body or public authority;

- (iv) any person conducting negotiations, for or in relation to a public contract, or a prospective public contract on behalf of a public body or public authority; or
- (v) a person who is a consultant to a public body or public authority.

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

"solicitation documents" means tendering documents or any other documents inviting tenderers to participate in procuring or disposal by tender proceedings and includes documents inviting potential tenderers to pre-qualify, and standard tendering documents.

“successful tender” means the tender selected by the procuring entity as;

- (i) offering the lowest evaluated cost, 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;

“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;

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

“works” means -

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

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

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

- (a) in the case of a public officer, that person is the public officer’s husband, wife or relative, or a husband or wife of the relative of the public officer;
- (b) that person is in partnership with the public officer; or
- (c) in the case of a body corporate, the public officer is a controller of the body corporate or the public officer and the persons who are his associates together are controllers of it.

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