

PART 11
THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Establish-
ment
of the
Authority

5.-(1) There is hereby established within the Ministry of Finance an authority to be known as the Public Procurement Regulatory Authority" in this Act referred to as the "Authority"

(2) The Authority shall:

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and be sued;
- (c) for and in connection with the purposes of this Act, be capable of holding, purchasing and otherwise acquiring and disposing of movable or immovable property;
- (d) exercise the powers and perform the functions conferred upon it by or under this Act;
- (e) enter into any contract or other transaction, and do or suffer to do all such other 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) Every 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 in 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.

(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.

Act No.16
of 1967

Objectives
of the
Authority

6.-(1) 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) harmonize the procurement policies, systems and practices of the Central Government, local governments and statutory bodies;
- (c) set standards for the public procurement systems in the United Republic of Tanzania,
- (d) monitor compliance of procuring entities; and
- (e) in collaboration with relevant professional bodies build procurement capacity in the United Republic of Tanzania.

Functions
of the
Authority

7.-(1) The functions of the Authority shall be to:

- (a) advise central Government, local governments and statutory bodies on all procurement policies, 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) set training standards, competence levels, certification requirements and professional development paths for procurement experts in consultation with relevant professional bodies and any other competent authorities;
- (d) prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other attendant documents to procuring entities;
- (e) in collaboration with relevant professional bodies, ensure 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;

- (t) issue guidelines under Section 89 of this Act;
- (g) 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;
- (h) conduct periodic inspections of the records and proceedings of the procuring entities to ensure full and correct application of this Act;
- (i) 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 as the case may be, terminated, do not involve impropriety or irregularity;
 - (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof.;
- G) institute:
 - (i) procurement audits during the tender preparatory process;
 - (ii) contract audits in the course of the execution of an awarded tender; and
 - (iii) performance audit after the completion of the contract in respect of any procurement as may be required;
- (k) determine, develop, introduce, maintain and update related system - wide data -bases and technology;
- (l) develop policies and maintain an operational plan on capacity building, both for institutional and human resource development;
- (m) agree on a list, which shall be reviewed annually of works, services and supplies in common use by more than one procuring entity which may be subject to common procurement;
- (n) establish and maintain institutional linkages with entities with professional and related interest in public procurement;
- (o) facilitate the resolution of procurement complaints
- (P) undertake any activity that may be necessary for the execution of its functions,

- (q) administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act; and
- (r) undertake research and surveys nationally and internationally on procurement matters;

(2) For the purposes of the discharge of its functions under this Act, the Authority shall be entitled:

- (a) to be advised of the award and, where applicable, the variation of any public contract by the procuring entity responsible for such contract;
- (b) subject to Section 12 of this Act, to have access to all books, records, documents, or other property belonging to the procuring entity or a contractor or a supplier or a consultant, whether in the possession of any officer of a procuring entity or a contractor, supplier, consultant or any other person;
- (c) to have access to any premises or location where work on a public contract has been or is being or is to be carried out;
- (d) in relation to any matter which is the subject of investigation by the Authority, to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person.
- (e) have access to any premises or location where it has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;
- (f) within reasonable hours to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as it considers necessary to any matter being investigated by it; and
- (g) subject to the provisions of Sections 11 and 12, to retain any such document, record or other property referred to in paragraph (f).

(3) Where

(a) the Authority has authorized a member of staff of the Authority to enter premises; and

(b) the authorized officer is refused or prevented from gaining entry to the premise,

a magistrate may on application, be empowered to issue a warrant authorizing any police officer to forcibly enter the premises to conduct the search and make copies or take extracts of documents therein.

(4) For the purposes of subsection (2), the Authority shall have power to enquire any procuring entity to furnish the Authority information with regard to the award of any public contract and such other information in relation thereto as the Authority considers desirable.

(5) For the purposes of paragraphs (d) and (e) of subsection (2), the Authority shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Authority, information with regard to the grant, issue, suspension or revocation of any prescribed license and such other information in relation thereto as the Authority considers desirable.

Scope of investigations by the Authority

8.-(1) Subject to Subsection (2), the Authority may, if it considers necessary or desirable, conduct an investigation into any or all of the following matters:

- (a) the registration of contractors, suppliers or consultants in relation to the specific procurement;
- (b) tender procedures relating to contracts awarded by the public bodies;
- (c) the award of any public contract;
- (d) the implementation of the terms of any public contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed license,
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of any prescribed license.

(2) The Authority shall with a prior written direction of the Pennant Secretary of the Ministry of Finance investigate:

- (a) any public contract or any matters concerning any such contract entered into for the purposes of defense or for the supply of equipment to the security forces;
- (b) the grant or issue of any prescribed license for the purposes of defense or for the supply of equipment to the security forces,

and any report or comment thereon by the Authority shall be made only to the Pennant Secretary of the Ministry of Finance and, or the Minister.

Initiation
of invest-
igation

9. Any investigation pursuant to Section 8 may be undertaken by the Authority on its own initiative or as a result of representations made to it, if in its opinion, such investigation is warranted.

Procedure
in respect
of investi-
gation

10. The Authority may adopt whatever procedure it considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such person or persons and in such manner and make such enquiries as it thinks fit.

Evidence

11.-(1) Subject to the provisions of subsection (3) and Section 12(1), the Authority may at any time require any officer or member of a public body or any other person who, in its opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document under the control of that officer, member or other person.

(2) The Authority may summon before it:

- (a) any person who has made representations to it; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Authority is able to furnish information relating to the investigation.

(3) No person shall, for the purposes of an investigation, be compelled to give any evidence, or produce any document or thing, which he could not be compelled to give or produce in proceedings in any court of law.

Restriction
of
disclosure
of certain
matters

12.-(1) Where the Permanent Secretary of the Ministry of Finance, acting on his own initiative or acting at the direction of the Minister

(a) gives notice that the disclosure by the Authority or its employees of any document or information specified in the notice, or any class of document or information so specified, would:

(i) involve the disclosure of the deliberations or decision of the Government or the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest, or

(ii) prejudice the relations of the United Republic with the government of any other country or with any international organization; or

(iii) prejudice the detection of offences,
the Authority or its employees or any member of its staff shall not communicate to any person for any purpose any document or information specified in the notice or any documents or information of a class so specified,

b) certifies that the giving of any information or the answering of any question or production of any document would prejudice the security or defense of the United Republic, the Authority or its employees or staff shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided for in subsection (1), no regulation which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Authority or its staff.

Procedure
after
investiga-
tion

13.-(1) After conducting investigation under this Act the Authority shall, in writing inform the accounting officer or chief executive officer of the public body concerned of the result of that investigation and make such recommendations as it considers necessary in respect of the matter on which investigation was conducted.

(2) If any report of the Authority reflects adversely upon any person, the Chief Executive Officer of the Authority shall, so far as practicable, inform that person of the substance of the report.

Disciplinary
action
against
public
officers

14.-(1) If the Authority finds, during the course of its investigation or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer, or member of a public body, it shall refer the matter to the competent authority.

(2) The Authority shall refer the matter to the person or persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all such cases shall submit a special report to the Minister.

Proceed-
ings of
Authority

15. The proceedings of the Authority or its committees shall not be rendered void for want of form.

Powers of
the
Authority

16.-(1) In the exercise of its regulatory functions, the Authority shall have the power to

- (a) require any information, documents, records and reports in respect of any aspect of the public procurement process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any procuring entity or supplier, contractor or consultant;
- (b) summon witnesses, call for the production of books of accounts, plans, documents and examine witnesses and parties concerned on oath;
- (c) commission or undertake investigations and institute procurement contract and performance audits;
- (d) cause to be inspected any procurement transaction to ensure compliance with a tender award by a procuring entity;
- (e) act upon complaints by procuring entities, suppliers, contractors or consultants and any other entity or person in respect of any party to a procurement proceedings in accordance with the procedure set out in Part VI of this Act;

- (f) commission any studies relevant to the determination of award of contracts; and
 - (g) request any professional or technical assistance from any appropriate body or person in Tanzania or elsewhere.
- (2) The Public Procurement Regulatory Authority may:
- (a) require the chairman of a tender board, accounting officer or chief executive officer of a public body:
 - (i) to furnish any information or produce any records or other documents relating to a contract;
 - (ii) to answer all relevant questions;
 - (b) examine such records or other documents and take copies or extracts there from.

Action on
recommen-
dation
of the
Authority

17.-(1) The Authority may recommend to the competent authority, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act

- (a) the suspension of officers concerned with the procurement process in issue;
- (b) the replacement of the head of a Procurement Management Unit, the Chairman, or any member of a Tender Board, as the case may be;
- (c) the disciplining of the accounting officer or chief executive officer; or
- (d) the temporary transfer of the procurement functions of a procuring entity to a third party procurement agent.

(2) The competent authority shall respond in writing to the Authority's recommendations within a period prescribed by Regulations made under this Act.

(3) Where the competent authority rejects the Authority's recommendations under subsection (1), the Authority shall:

- (a) Communicate its recommendations and all related supporting documentation to the relevant law enforcement and oversight agencies for their action, and
- (b) Request for any other appropriate action within the power of the competent authority.

(4) The competent authority shall respond in writing to the Authority's recommendation within a period to be specified in the regulations made under this Act, on the precise action taken on the Authority's recommendations, or give an explanation if no action is deemed necessary.

(5) The Authority shall, in its Annual Performance Evaluation Report include:

- (a) its audited findings and complaints investigated;
- (b) its recommended corrective measures in each case; the
- (c) response of the:
 - (i) respective competent authority; and (ii) relevant law enforcement and oversight agencies;
- (d) any remedial measures taken.

Establishment and Composition of the Board of Directors

18.-(1) There is hereby established a Board to be known as the Board of Directors of the Public Procurement Regulatory Authority.

(2) The Board shall be the governing body of the Authority.

(3) The First Schedule to this Act shall have effect regarding the composition, appointment and procedures of the Board of Directors of the Public Procurement Regulatory Authority.

(4) Members of the Board shall be appointed by the Minister from among persons of good standing and recognized for their high levels of professionalism, competence and integrity.

Committees of the Board of Directors

19.-(1) The Board may establish

- (a) a Complaints Review Committee which shall handle complaints from bidders and any other interested parties arising out of the execution of the procurement function by the procuring entities;

- (b) an advisory committee which shall review the performance of the Authority, the procuring entities and the Complaints Review Committee; and
- (c) any other committee that may be necessary for the better carrying out of the functions of the Authority.

(2) The Board shall determine the terms of reference of the committees, their composition and, in consultation with the Minister, their terms and conditions of service.

Appoint-
ment of
Chief
Executive

20.-(1) There shall be Chief Executive Officer of the Authority who shall be appointed by the President on such terms and conditions as he determines on contract for four years, renewable for only one further term.

(2) The Chief Executive Officer shall be appointed from among the registered professionals who has at least ten years of experience in either engineering, architecture, law, materials management, quantity surveying, business administration, economic development planning or in any related fields and who have had substantial academic qualifications and experience in such fields including proven record of procurement experience.

(3) Subject to the general supervision and direction of the Board, the Chief Executive Officer shall be responsible for the:

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) administration, organization and control of the officers and staff of the Authority; and
- (d) promoting training and disciplining of the officers and staff of the Authority in accordance with their terms and conditions of appointment.

(4) The Chief Executive Officer shall be the accounting officer of the Authority and shall not engage in any business, profession, occupation or paid employment elsewhere.

Directors,
consultants
and other
staff of the
Authority

21.-(1) There shall be employed by the Authority Directors, who shall be principal assistants to the Chief Executive Officer.

(2) There shall be employed by the Authority such other officers, staff, employees of the Authority of such number and titles as may be necessary for the efficient discharge of the functions of the Authority on such terms and conditions as may be determined by the Board.

(3) The Authority may appoint consultants and experts of the Authority in various disciplines on such terms and conditions as the Authority may from time to time decide or determine.

(4) The Authority shall establish a competitive selection procedure for the appointment of all employees, consultants and experts.

(5) The Authority shall, comply with the competitive selection procedure established under Subsection (4), whenever it appoints employees, consultants or experts unless, because of the urgency of the appointment or other special circumstances, the procedure is not reasonably practical in any particular case.

(6) A person who was chairman or member of the Board, the Chief Executive Officer as well as an employee of the Authority shall not, during a period of eighteen months after the expiration or termination of the term of office with the Authority

- (a) enter into any contract of employment or supply of services to any person or organization who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority;
- (b) acquire or hold any financial interest, whether as an employee, partner, shareholder, officer or joint venture, in any business or organization supplying services to any person or organization who was subject of a contract with the Authority at the time when such person was the member, Chairman, Chief Executive Officer or employee of the Authority.

Funds
of the
Authority

22.-(1) The funds of the Authority shall consist of:

- (a) money appropriated by Parliament for the purposes of the Authority;
- (b) loans or grants received by the Authority for its activities;
- (c) revenues collected from goods or services that are rendered by the Authority;
- (d) any such other money received or made available to the Authority for the purposes of its functions.

(2) The Authority may:

- (a) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the performance of its functions.
- (b) charge and collect fees on documents.

(3) There shall be paid from the funds of the Authority

- (a) the salaries, allowances and loans of the staff of the Authority,
- (b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Authority when engaged on the business of the Authority, at such rates as the Minister may determine; and
- (c) any other expenses incurred by the Authority in the performance of its functions.

(4) The Authority may, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

(5) The Authority shall open and maintain bank accounts in banks approved by the Board.

Books of
accounts

23.-(1) The Authority shall, maintain proper books of accounts and other records relating to its accounts and prepare an annual statement of accounts including the income and expenditure account and the balance sheet in such form and manner as may be prescribed by the Accountant General.

(2) Such books of accounts and other records shall be open for inspection by the Minister or any person duly authorized by him in that behalf.

Audit of
accounts

24.-(1) The accounts of the Authority shall be audited by the Controller and Auditor General.

(2) The Controller and Auditor General and any other person appointed by him in connection with the auditing of the accounts of the Authority under this Act shall have the same rights and privileges and authorities in connection with such audit as the Controller and Auditor General in connection with the auditing of Government accounts.

(3) For the performance of his duties under subsection (1), the auditor to the Authority shall have access at all reasonable times to all books of accounts, records, returns, reports and other documents relating to the Authority accounts.

(4) In respect of each financial year, the auditor to the Authority shall certify whether or not:

- (a) he has received all the explanations and other information necessary for the performance of his duties;;
- (b) the accounts of the Authority have been properly kept; and
- (c) according to the explanations and other information received, and the books of account, records, returns, reports and other documents relating to the Authority accounts produced to him, the accounts of the Authority reflect a true and accurate financial position of the Authority.

(5) The accounts of the Authority as certified by the Controller and Auditor General or any other person appointed by him on his behalf together with the audit report, shall be forwarded annually to the Board of Directors and the Minister.

(6) The Minister shall cause the accounts and the audit report received under subsection (5) to be laid, as soon as they are received, before Parliament.

Annual
Management
Plan and
budget

25.-(1) The Chief Executive Officer shall not later than three months before the end of each financial year, prepare and submit to the Board of Directors an Annual Management Plan which shall include a budget for its approval for the next financial year.

(2) The Chief Executive Officer may at any time before the end of a financial year prepare and submit to the Board for approval any estimates supplementary to the budget of the current financial year.

(3) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the fiscal year in which the expenditure is to be incurred, or in the supplementary budget for that year.

Annual
Report

26.-(1) The Authority shall, within three months after the end of each financial year, submit to:

- (a) the Minister, an Annual Performance Evaluation Report in respect of that year's activities consisting of:
 - (i) financial statements and the Annual Management Plan;
 - (ii) an evaluation of the operations of the Authority and the procuring entities;
 - (iii) any other information the Board may direct; and
- (b) the Controller and Auditor-General the accounts of the Authority for the financial year; and
- (c) the Annual Performance Evaluation Report referred to in paragraph (a).

(2) The Minister shall lay before the National Assembly the Annual Performance Evaluation Report within two months from the date of his receiving the report, or at the next sitting of Parliament, whichever comes first.

(3) The Controller and Auditor General shall submit the Audited Report to Parliament within four months from the date of receiving the accounts.

Internal
Audits and
Periodic
Audit
Reports

27.-(1) In addition to any other function assigned to him by the Chief Executive Officer, the Head of Internal Audit shall be responsible for the internal auditing of the Authority's accounts and shall submit to the Chief Executive Officer a report in respect of every three months' period of a financial year.

(2) The Chief Executive Officer shall submit every report referred to in sub-section (1) to the Board for its consideration.