

PART IV
PUBLIC PROCUREMENT PRINCIPLES

Duties of
procuring
entities

44.-(1) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods, works or services, it shall be the duty

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of 2001

- (a) in respect of a head of expenditure, the Accounting Officer designated as such for that head of expenditure under the Public Finance Act, 2001; and
- (b) in respect of a head of expenditure the Accounting Officer designated as such for that head of expenditure under the Local government (Finances) act, 1982;

(c) in respect of a parastatal body, the chief executive officer of that parastatal body, to ensure that such procurement of goods, works or services is in accordance with the procedures prescribed by or under this Act or Regulations.

(2) The auditor of every public body shall, in his annual report, state whether or not section 44(1) of this Act has been complied with.

(3) Subject to the provisions of subsection (4) of this section, every Accounting Officer or chief executive officer shall be accountable for failing to comply with the provisions of subsection (1).

(4) Where an Accounting Officer or chief executive officer satisfies the Authority that he had, in accordance with the provisions of any rules or Regulations made under this Act, delegated his functions under subsection (1) to any other person or committee, then such other person or every member of such committee shall also be accountable for the failure to comply with the provisions of subsection (1).

(5) Where an Accounting Officer or chief executive officer satisfies the Authority that he is, under the provisions of any written law, subject to the control or direction of any other person, board, committee or other body and that it was such control or direction of such other person, board, committee or other body which caused the failure to comply with the provisions of subsection (1), then such other person or every member of such board, committee or other body shall also be accountable for such failure to comply.

(6) In respect of any failure to comply with the provisions of subsection (1), the respective tender board shall take such appropriate corrective or punitive measures as it may consider necessary.

Procurement
Planning

45. A procuring entity shall plan its procurement in a rational manner and in particular shall:

- (a) avoid emergency procurement wherever possible;
- (b) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;

- (c) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;
- (d) avoid splitting of procurement to defeat the use of appropriate procurement methods unless such splitting is to enable wider participation of local consultants, suppliers or contractors in which case the Authority shall determine such an undertaking; and
- (e) integrate its procurement budget with its expenditure programme.

Qualifications of suppliers, contractors and consultants

46.-(1) In order to participate in procurement proceedings, suppliers, contractors and consultants shall have to qualify by meeting appropriate criteria set out by the procuring entity and, where appropriate, by the approving authority for those particular procurement proceedings.

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

(3) Foreign suppliers, contractors or consultants wishing to participate in the proceedings are exempted from the requirement under subsection (2), but where as a result of the procurement proceedings, any foreign supplier, contractor or consultant is selected as having submitted the lowest evaluated responsive tender or the best ranked proposal, such a supplier, contractor or consultant shall register with the appropriate professional statutory body and shall be required to submit evidence of registration as an approved supplier, contractor or consultant in Tanzania.

(4) Any qualification criteria shall be made known to, and shall apply equally to all suppliers, contractors or consultants and a procuring entity shall impose no discriminatory criteria, requirement or procedure with respect to the qualifications of any supplier, contractor or consultant.

Pre-qualification proceedings

47. A procuring entity may engage in pre-qualification proceedings with a view to identifying suppliers, contractors or consultants either prior to inviting tenders for the procurement of goods, works or services, or after taking part in any other procurement proceedings.

Post-qualification

48.-(1) If tenderers have not been pre-qualified, the procuring entity and the tender board shall determine whether the tenderer whose tender or proposal has been determined to offer the lowest evaluated tender, in the case of procurement or the highest evaluated tender in the case of disposal of public assets by tender, has the capability and resources to carry out effectively the contract as offered in the tender.

(2) The criteria to be met shall be set out in the tendering documents and if the tenderer does not meet any of these criteria, the tender shall be rejected and the procuring entity and tender board shall make a similar determination for the next lowest evaluated tenderer, in the case of procurement or the next highest evaluated tender, in the case of disposal of public assets by tender.

(3) A procuring entity and tender board may require a tenderer which has submitted a lowest evaluated tender in the case of procurement or highest evaluated tender in the case of disposal by tender to demonstrate again its qualifications before the award of contract is confirmed.

(4) The criteria and procedures to be used in subsection (3) shall be the same as those used in the pre-qualification proceedings set out in Section 47 of this Act and shall be specified in the tendering documents prepared by the procuring entity.

(5) If tenderer with the lowest or highest evaluated tender fails to post-qualify, the procuring entity and tender board shall reject its tender and shall select the next lowest or highest evaluated tender from the remaining tenders, subject to the right of the procuring entity to reject all remaining tenders.

National preferences

49.-(1) Suppliers, contractors or consultants are allowed to participate in procurement proceedings without regard to their nationality, except where the procuring entity has limited participation in procurement proceedings on the basis of nationality in accordance with this Act, the Regulations, or any other provisions of any written law.

(2) The procuring entity shall, when procuring goods, works or services by means of international or national tendering, or when evaluating and comparing tenders, grant a margin of preference for the benefit of tenders for certain goods manufactured, mined, extracted or grown in the United Republic, for works by Tanzania contractors or services provided by Tanzania consultants, provided that this is clearly stated in the tender documents subject to the provisions prescribed in the Regulations.

(3) Tanzania Contractors or consultants shall be eligible to be granted a margin of preference as provided for in subsection (2) of this section only if they meet the following criteria, namely

- (a) for individual companies
 - (i) they are incorporated or registered in the United Republic of Tanzania;
 - (ii) at least fifty percent of the authorised capital of the company is owned either by the Government or by citizens of Tanzania;
 - (iii) they do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign contractors or consultants provided that the domestic company is qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the domestic company, fees and expenses paid to the domestic company;
 - (iv) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic company will accrue or be paid to persons not citizens of Tanzania or to companies which would not be eligible under this section.
- (b) for joint ventures of local companies
 - (i) individual member companies are incorporated or registered in the United Republic of Tanzania;
 - (ii) at least fifty percent of the ownership of the individual companies are held by citizens of Tanzania;

- (iii) the joint venture itself is registered in Tanzania;
 - (iv) do not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, provided that the domestic partner or partners are qualified to carry out the contract in accordance with the qualification criteria, including any services provided by the partners and fees and expenses paid to the partners;
 - (v) do not have arrangement whereby any major part of the net profits will accrue or be paid to persons not citizens of Tanzania or to companies which would not be eligible under this section;
- (c) for partners or individual persons trading as contractors or consultants
- (i) the majority of capital shares are held by citizens of Tanzania;
 - (ii) the partners or individual persons shall not subcontract more than ten percent of the contract price, excluding provisional sums, to foreign firms, partners or individual persons.

(4) For all procurement under international and national competitive tendering, incentives set out in the Regulations made under this Act, shall be used to encourage foreign firms to team up with Tanzanian contractors, suppliers or consultants in the form of joint ventureship or subcontracting arrangements in the tender process and in the execution of the contract.

Exclusive preference to local persons or firms

50.-(1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement of works goods or services that has a value not exceeding a threshold specified in the Regulations shall be reserved exclusively for local persons or firms.

(2) Where the procuring entity does not proceed with the local person or firm set-aside under subsection (1), and procures on unrestricted basis, the procuring entity shall include in the procurement file the reason or reasons for the unrestricted procurement.

(3) In the case where procurement entity receives only one acceptable offer from a responsible local person or firm in response to procurement set-aside, the procuring entity may consider to make an award to that person or firm.

(4) If the procuring entity receives no acceptable offers from responsible local persons or firms, the set-aside procurement shall be withdrawn and if the requirements are still valid, new offers shall be re solicited on unrestricted basis.

Procurement
from
government
Stores
Department

51. Where financial resources are exclusively provided by a Tanzanian public body, a procuring entity may procure from the Government stores following a procedure to be prescribed in the regulations made under this Act.

Language

52.-(1) Except as provided for in sub-section (2) of this section, pre-qualification documents and tender documents shall be written in English and tenders shall be invited in that language.

(2) In case a procuring entity has limited participation in the procurement to Tanzania nationals in addition to sub-section (1) of section 22, tender documents may be written in either Kiswahili or English and tenders may be requested to tender in either language.

Tender
securities

53.-(1) Where the procuring entity requires suppliers, contractors or consultants who are submitting tenders to provide any form of tender security, or any form of guarantee or bond against satisfactory performance of the contract, such requirement shall apply equally to all suppliers, contractors or consultants.

(2) The Authority shall issue guidelines, which shall be updated from time to time, on the minimum values and modalities for provision of tender security and other forms of guarantees or bonds.

Rejection
of all
tenders or
all
proposals

54.-(1) Tender documents and request for proposals may provide that procuring entities may reject all tenders or all proposals.

(2) The rejection of all tenders or all proposals under this section shall only be justified where:

- (a) there is lack of effective competition;
- (b) tenders or proposals are not substantially responsive to the tender dossier or to the request for proposals and terms of reference;
- (c) the economic or technical data of the project have been altered; or
- (d) tenders or proposals involve costs substantially higher than the original budget or estimates.

(3) Lack of competition shall not be determined solely on the basis of the number of tenderers or persons who made proposals, and where all tenders or proposals are rejected, the procuring entity shall review the causes justifying the rejection and shall consider

- (a) making revision to the conditions of contract, design and specifications, scope of the contract, or a combination of these before inviting new tenders; or
- (b) revising the request for proposals (including the short list) and the budget.

(4) Where the rejection of all tenders or all proposals is due to lack of competition, wider advertising shall be considered and where the rejection is due to most of the tenders or proposals being non-responsive, new tenders or new proposals may be invited from the initially pre-qualified firms, or with the prior agreement of the appropriate tender board, from only those who submitted tenders or proposals in the first instance.

(5) The appropriate tender board's prior approval shall be sought before rejecting all tenders or all proposals, soliciting new tenders or proposals or entering into negotiations with the lowest evaluated tenderer.

Acceptance
of tender and
entry into
force of a
procurement
contract

55.-(1) Subject to the provisions of section 54, the tender or proposal that has been ascertain to be the successful tender or proposal pursuant to section 68(a) and 71(1) of this Act shall be accepted.

(2) The procuring entity on whose behalf the tenders, offers or proposals were invited shall be notified by the tender board of the tender board's acceptance of the tender, offer or proposal and the notice of acceptance of the tender shall be given by the procuring entity promptly to the supplier, contractor or consultant who submitted the tender, offer or proposal.

(3) The notifications referred to in subsection (2) of this section shall be in writing and signed by authorised officers.

(4) Where a tender, offer or proposal has been accepted by the tender board, the procuring entity on whose behalf the invitation for tender, offer or proposal was issued and the person whose tender, offer or proposal has been accepted shall enter into a formal contract for the supply of goods, services of the undertaking of works, as the case may be.

(5) A formal contract shall be in such form and shall contain such terms, conditions and provisions as contained in the solicitation documents, request for proposals or tender dossiers.

(6) Any formal contract arising out of the acceptance of a tender, offer or proposal under this Act shall be ratified by the competent State Attorney before being signed by the parties.

(7) The procurement contract shall enter into force when a written acceptance of a tender has been communicated to the successful supplier, contractor or consultant.

(8) The Procuring Entity shall notify the Authority, within the time set out in the Regulations made under this Act, the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made.

Records,
information
and notices

56.-(1) Each procuring entity and each approving authority shall maintain a record of procurement proceedings in which each is involved, including decisions taken and the reasons for it and such record shall be kept for a period of not less than five years from the date of completion of the contract and be made available within a reasonable time during that period to the Minister and the Controller and Auditor-General or any other officer authorized by accounting authority.

(2) The record referred to in subsection (1), may under special circumstances be kept beyond the period specified in that subsection.

(3) A list of those submitting tenders and the prices tendered, as read out at the time of opening the tenders in public, may be made available to tenderers and to the general public.

(4) The manner and specific duration of keeping different kind or records shall be prescribed in the Regulations made under this Act.

Blacklisting
of suppliers,
contractors
and
consultants

57.-(1) The Authority shall have power to blacklist and bar a supplier, contractor or consultant for a specified time from participating in public procurement proceedings and shall notify all procuring entities on such actions

(2) A supplier, contractor or consultant shall be blacklisted and barred from participating in public procurement proceedings for a period of time where:

(a) a supplier, contractor or consultant has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign institutions on grounds of fraud or corruption

(i) shall automatically be blacklisted and barred from participating in public procurement in the United Republic for such period as is barred by that foreign country, international organisation or foreign institution

(ii) plus a further period to a total maximum of ten years;

(b) a supplier, contractor or consultant has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign institutions on grounds other than fraud or corruption

(i) shall automatically be blacklisted and barred from participating in public procurement in the United Republic for such period as is barred by that foreign country, international organisation or foreign institution

(ii) plus a further period to a total maximum of five years.

(3) A supplier, contractor or consultant blacklisted under subsection (2) shall not be permitted to start a new supplies, contracting or consulting firm during that period.

(4) Procuring entities and tender boards shall not procure from, contract with or engage a person, firm, supplier, contractor or consultant who has been blacklisted and barred from participating in public procurement proceedings pursuant to this section".