

PART VIII
MISCELLANEOUS PROVISIONS

Codes of
Conduct

86.-(1) Public officers as well as experts engaged to deliver specific services under this Act shall sign the Code of Ethical Conduct.

(2) All suppliers, contractors or consultants shall be required to sign a declaration of compliance with those Codes of Conduct determined by the Authority from time to time.

Offences

87.-(1) A person commits an offence who:

- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons issued under this Act;
- (b) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under paragraph (a)(ii) of subsection (2) of section 32;
- (c) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required by paragraph (a) of subsection of (2) of section 32;
- (d) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or procuring entity or member of tender board in the performance of his functions or in the exercise of his her power under this Act;
- (e) connives or colludes to commit a fraudulent act of corrupt act defined in section 3;
- (f) contravenes or fails to comply with a provision of this Act and Regulations made under this Act,

and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

(2) where a procuring entity consistently contravenes this Act, it shall, on the recommendation of the Authority and on the approval of the Minister, have its procurement function transferred to a third party procurement agency appointed by the Authority until the Authority is satisfied that the causes of the contravention have been rectified.

Regula-
tions

88.-(1) The Minister may make regulations and rules for the better carrying out of the provisions of this Act, and such Regulations shall include yearly review of the limits of authority for Accounting Officers and Chief Executives.

(2) All Regulations, rules and directions made in connection with this Act shall be published in the *Gazette*.

Guidelines

89.-(1) The Authority shall issue guidelines from time to time for the better carrying out of the objectives or any functions under this Act.

Repeal and
savings Act
No.3 of2001

90.-(1) The Public Procurement Act, 2001 is hereby repealed.

(2) Notwithstanding subsection (1), every order, direction or appointment which was issued, given, or made pursuant to the provisions of the Public Procurement Act, 2001 and every office which was created in pursuance thereof shall remain valid until otherwise cancelled, revoked or varied under the provisions of this Act.

(3) Upon the coming into operation of this Act, all laws, regulations or rules relating to public procurement shall cease to have any effect, power, function, authority or duty in relation to any matter connected with procurement of goods, service or works.

Transi-
tional
provisions

91.-(1) All property, except that property the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Central Tender Board on the date of commencement of this Act shall immediately vest in the Authority subject to all interests, liabilities, charges and trusts affecting that property.

(2) All legal obligations, proceedings and claims pending in respect of the Central Tender Board shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.

FIRST SCHEDULE

(Under section 18)

COMPOSITION, APPOINTMENT AND PROCEDURES OF THE AUTHORITY

Interpre- tation	<p>1. In this Schedule "Appointing Authority" means:</p> <p>(a) in the case of the Chairman of the Authority, the President of the United Republic of Tanzania; and</p> <p>(b) in the case of Members of the Authority, the Minister for the time being responsible for finance;</p>
Composi- tion and appoint- ment of the Authority	<p>2. The Board of Directors shall consist of the following members</p> <p>(a) a non-executive Chairman who shall be appointed by the President;</p> <p>(b) six members at least three of whom are experts or specialists in procurement, law, management, engineering, commerce, etc, who shall be appointed by the Minister,</p> <p>(c) the Chief Executive Officer who shall be appointed by the President</p>
Tenure of office	<p>3.-(1) The Chairman and members of the Board shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.</p> <p>(2) Under exceptional circumstances, the Appointing Authority may extend the tenure of the Board member or members for a period not exceeding six months from the date of expiry of the initial period of appointment.</p> <p>(3) The Appointing Authority may determine the appointment of the Chairman, members and Chief executive of the Board at any time for.</p> <p>(a) abuse of office;</p> <p>(b) corruption;</p> <p>(c) incompetence;</p> <p>(d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;</p> <p>(e) failure to attend three consecutive meetings of the Board meetings without reasonable grounds;</p> <p>(f) conviction of an offence involving moral turpitude; and being adjudged bankrupt by a court of law.</p> <p>(g)</p> <p>(4) Any member of the Board may resign upon giving one month's notice in writing to the Appointing Authority.</p> <p>(5) If any member is absent from three consecutive meetings of the Board without providing reasonable excuse, the Board shall advise the appointing authority to terminate the appointment of that member and appoint another member in his place.</p>

- Attendance by non-members 4. The Board may invite Government officers of ministries or departments whose procurement is under consideration or any other person with a legitimate interest in the procurement being reviewed to attend its meetings for the purpose of assisting the Board, but such persons shall have no vote.
- Meetings 5.-(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Chief Executive Officer, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the Board shall meet at such times and such places being not less than once in a month as the Chairman may determine.
- (2) The Chairman, or in his absence or inability to act, the Chief Executive Officer, shall convene a special meeting of the Board upon receipt of a request in writing signed by no fewer than three members of the Board, save that such requests shall not be made without justifiable cause.
- Quorum 6.-(1) One half of the members of the Board shall form a quorum for a meeting of the Board.
- (2) In the absence of the Chairman, the members present at a meeting of the Board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman.
- (3) At any meeting of the Board, a decision of the majority of the members present shall be recorded as a decision of the Board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting.
- Minutes 7. Minutes of each meeting of the Board shall be recorded by the Secretary in a proper form and shall be confirmed by the Board and signed by the Chairman and the Secretary at the next following ordinary meeting of the Board and filed at the offices of the Authority.
- Notification of decisions 8. Notification of decisions made by the Board and all other communications sent on its behalf shall be signed by the Chief Executive Officer, or by an officer of the Secretariat of the Board who has been authorised in writing by the Secretary to act on his behalf and the Secretary shall communicate the decisions, including any refusal and the grounds for the refusal, to the Accounting Officer or Chief Executive Officer within seven days from the date of the meeting when such a decision was made.
- Regulation of proceedings 9. The Board shall have power to regulate its own proceedings.
- Subcommittees 10. The Board may establish subcommittees and appoint as members, of such subcommittees, persons who are or are not, members of the Board for the purposes of advising the Board on any specific matter.

Fees and allow-
ances 11. The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the Authority.

SECOND SCHEDULE

(under section 28(2))

COMPOSITION, APPOINTMENT AND PROCEDURES OF TENDER BOARDS

Interpre- tation	1.-(1) In this Schedule, "the board" means the Tender Board for the Ministry, Independent Department of Government, Region, District, and Parastatal Organisation...
Composi- tion and appoint- ment	<p>2. The board shall consist of</p> <p>(a) a Chairman, who shall be one of the heads of department or a person of similar standing and who shall be appointed by the Accounting Officer or Chief Executive as the case may be.</p> <p>(b) six members who are heads of department or persons of similar standing within the same procuring entity and who shall be appointed by the Accounting Officer or Chief Executive as the case may be.</p> <p>(c) the Secretary, shall be a procurement specialist, who shall be the head of the procurement management unit or department of that procuring entity and who shall be appointed by the Accounting Officer or Chief Executive as the case may be.</p>
Tenure of Appoint- ment	<p>3.-(1) The Chairman and members of the Board shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.</p> <p>(2) Under exceptional circumstances, the Accounting Officer or Chief Executive may extend the tenure of the Board member or members for a period not exceeding six months from the date of expiry of the initial period of appointment.</p> <p>(3) The Accounting Officer or Chief Executive may determine the appointment of the Chairman and members of the Board at any time for:</p> <p>(a) abuse of office;</p> <p>(b) corruption;</p> <p>(c) incompetence;</p> <p>(d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;</p> <p>(e) failure to attend three consecutive meetings of the Board meetings without reasonable grounds;</p>

- (f) conviction of an offence involving moral turpitude; and
- (g) being adjudged bankrupt by a court of law.
- (4) Any member of the Board may resign upon giving one month's notice in writing to the Accounting Officer or Chief Executive as the case may be.
- (5) If any member is absent from three consecutive meetings of the Board without providing reasonable excuse, the Board shall advise the Accounting Officer or Chief Executive to terminate the appointment of that member and appoint another member in his place.
- Attendanc
e by non-
members
4. The board may invite Government Officers from within the procuring authority or other public authority to attend its meetings for the purpose of assisting the board, but such person shall have no vote.
- Meetings
5. Meetings of the board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the board shall meet at such times and places, being not less than once in a month as, the Chairman may determine.
- Quorum
6. One half of the members of the board shall form a quorum for a meeting of the board.
- (2) In the absence of the Chairman, the members present at a meeting of the board shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman.
- (3) At any meeting of the board, a decision of the majority of the members present and voting shall be recorded as a decision of the board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.
- Minutes
7. Minutes of each meeting of the board shall be recorded by the Secretary in a proper form and shall be confirmed by the board and signed by the Chairman and the Secretary at the next following meeting of the board.
- Notifica-
tion of
decisions
8. Notification of decisions made by the board and all other communications sent on its behalf shall be signed by the Secretary or by the Permanent Secretary or Chief Executive as the case may be.
- Regula-
tion of
proceed-
ings
9. A board shall conduct its proceedings in accordance with the prescribed Regulations.
- Subcom-
mittees
10. A board may establish sub-committees and appoint as members, of such sub-committees, persons who are, or are not, members of the tender board for the purposes of advising the board on any specific matter.

Fees and allowances **11.** The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the board.

THIRD SCHEDULE

(under section 77(2))

COMPOSITION AND PROCEDURES OF THE PUBLIC
PROCUREMENT APPEALS AUTHORITY

Interpre-
tation

1. In this Schedule:

(a) "Appointing Authority" means

- (i) in the case of Chairman and Secretary of the Public Procurement Appeals Authority the President of the United Republic of Tanzania;
- (ii) in the case of Members of the Public Procurement Appeals Authority, the Minister for the time being responsible for finance

(b) "the Authority" means the Public Procurement Appeals Authority.

Composi-
tion and
appoint-
ment

2. The board shall consist of

- (a) a non-executive Chairman who shall be appointed by the President of the United Republic.
- (b) six other members, at least two of them drawn from private sector and from procurement professional body, appointed by the Minister with professional knowledge and experience in public procurement, finance, commerce, business, administration or law from among institutions having no direct vested interest in public procurement
- (c) a Secretary who shall be an expert in procurement with training in law or any other relevant discipline and who shall be appointed by the President of the United Republic of Tanzania on such terms and conditions as he determines on contract for four years, renewable for only one further term.

Tenure of
Appoint-
ment

3.-(1) The Chairman and members of the Authority shall be appointed for a period of three years and shall be eligible for re-appointment for a further period of three years.

(2) Under exceptional circumstances, the Appointing Authority may extend the tenure of a member for a period not exceeding six months from the date of expiry of the initial period of appointment.

(3) The Appointing Authority may determine the appointment of the Chairman, members and secretary at any time for

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive meetings of the Board meetings without reasonable grounds;
- (f) conviction of an offence involving moral turpitude; and
- (g) being adjudged bankrupt by a court of law.

(4) Any member of the Authority may resign upon giving one month's notice in writing to the Appointing Authority.

(5) If any member is absent from three consecutive meetings of the Authority without providing reasonable excuse, the Authority shall advise the Appointing Authority to terminate the appointment of that member and appoint another member in his place.

Meetings

4.-(1) An ordinary meeting of the Authority shall be convened by the Chairperson, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting.

(2) The Public Procurement Appeals Authority may act notwithstanding any vacancy in its membership.

(3) Where, by reason of illness, absence from the United Republic or other sufficient cause a person appointed Chairperson is unable to perform the functions of his office, he may appoint a member of his staff to perform those functions for a period not exceeding two months and shall forthwith inform the President of the United Republic of the appointment, but if the Chairperson is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period exceeding two months, the President of the United Republic, may appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

(4) No act or proceeding of the Authority shall be invalid by reason of any defect or irregularity in the appointment of any member or by reason that any person who purported bona fide to act as a member at the time of the act or proceeding was in fact disqualified or not entitled to act as a member

(5) In resolving disputes or complaints, the Authority shall conduct the dispute resolution under procedures acceptable for alternative dispute resolution mechanism by requiring exchange of documents between the parties concerned and may accept both oral and written communication between and from the parties.

Quorum

5.-(1) One half of the members of the Authority shall form a quorum for a meeting of the Authority.

(2) In the absence of the Chairnan, the members present at a meeting of the Authority shall elect one of the members to act as Chairnan for that meeting, and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairnan.

(3) At any meeting of the Authority, a decision of the majority of the members present shall be recorded as a decision of the Authority, save that a member who dissents from that decision shall be entitled to have his decision and the reasons thereof be re- corded in the minutes of that meeting.

Minutes

6. Minutes of each meeting of the Authority and all other communications sent on its behalf shall be signed by the Chairnan or by an officer of the Authority who has been authorised in writing by the Chairnan to act on his behalf.

Notificatio
nof
decisions

7. Notification of decision made by the Authority and all other communications sent on its behalf shall be signed by the Chairnan or by an officer of the Authority who has been authorised in writing by the Chairnan to act or her behalf

Fees and
allowances

8. The Minister may prescribe fees and allowances which may be payable to the Chairnan and members of the Authority.

Passed in the National Assembly on the 12th November, 2004

DAMIAN S SOKA,
Clerk of the National Assembly