



THE UNITED REPUBLIC OF TANZANIA

**THE PUBLIC PROCUREMENT
(SELECTION AND EMPLOYMENT OF
CONSULTANTS) REGULATIONS, 2005**

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OF CONSULTANTS) REGULATIONS, 2005**

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THE PUBLIC PROCUREMENT ACT, 2004
(NO. 21 OF 2004)

REGULATIONS

Made under Section 88

PUBLIC PROCUREMENT (SELECTION AND EMPLOYMENT OF
CONSULTANTS) REGULATIONS, 2005

PART I
PRELIMINARY PROVISIONS

- Citation **1.** These Regulations may be cited as the Public Procurement (Selection and Employment of Consultants) Regulations, 2005 and shall be deemed to have come into operation on the date of commencement of the Act.
- Application **2.**-(1) These Regulations shall apply to:
- (a) consultancy services which are required by a procuring entity in connection with public financed projects;
 - (b) acquisition of consultancy services undertaken within the framework of financing through other sources of funds managed by public bodies, except where the protocol of agreement between Tanzania and the sources of funds concerned requires a specific procedure; and
 - (c) consulting services of an intellectual and advisory nature.
- (2) These Regulations shall not apply to services in which the physical aspects of the activity predominate.
- Interpreta- **3.** In these Regulations, unless the context otherwise
tion requires:
- Act No. 6 “accounting officer” means a public officer appointed in
of 2001 accordance with the provisions of the Public Finance
 Act, 2001;

“Act” means the Public Procurement Act, 2004;

“appeals authority” means the accounting officer, Public Procurement Regulatory Authority, Public Procurement Appeals Authority or a court of competent jurisdiction when dealing with complaints and resolution of procurement disputes;

“approving authority” means an accounting officer or chief executive officer, a ministry tender board, a regional tender board, a district tender board, or a parastatal tender board;

“Authority” means the Public Procurement Regulatory Authority by section 5 of the Act;

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

“consultant” means a firm, company, corporation, organisation, partnership or individual person registered or capable of being registered by the relevant professional regulatory body engaged in or able to be engaged in the business of providing services in architecture, economics, engineering, surveying, accountancy, auditing, taxation, management or any field of professional activity including technical assistance, and who is, according to the context, a potential party or the party to a contract with the procuring entity;

“consultancy service” means a service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field or profession and includes, but not limited, to engineering design or supervision, architecture, quantity surveying, accountancy, auditing, financial services, procurement services, training and capacity building services, management services, policy studies, and advice and assistance with institutional reforms;

“contract” means an agreement made between a procuring entity and a consultant or provider of services as a result of procurement proceedings for the provision of service;

“corrupt practice” means the offering, giving, receiving, or soliciting anything of value in order to influence in the procurement process or contract execution;

"day" means calendar day;

“department” in relation to a ministry of Government or other public authority or public body, means and include any division or unit by whatever name known of that ministry, authority or other body;

“foreign consultant” means either an individual consultant whose nationality is that of a foreign country or a consulting firm whose majority of its share capital, as far as the ownership thereof is or can be publicly known, is owned by citizens of foreign countries;

“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 procuring entity and includes collusive practices among consultants or providers of services (prior to or after proposal submission) designed to establish proposals at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;

“Gazette” means the official periodic bulletin published with the authority of the Government;

“limit of authority” means the maximum value of any single contract that may be approved by the accounting officer or chief executive officer without prior approval of tender board as set out in the First Schedule to these Regulations;

“majority share” means share capital of more than fifty percent;

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

“minor value” means limit for the procurement of services specified in the Second Schedule to these Regulations or as may be determined by the Minister;

“national consultant” means an individual consultant whose nationality is that of Tanzania or consulting firm whose majority share capital, as far as the ownership thereof is or can be publicly known, is owned by citizens of Tanzania;

“parastatals organization” means:

- Cap 212
- (a) any body corporate established by any written law other than the Companies Ordinance; or
 - (b) 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
- (c) 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;

“procurement” means buying, purchasing, renting, leasing or otherwise acquiring services by a procuring entity and includes all functions that pertain to the obtaining of any services including description of requirements, selection and invitation of tenders or proposals, preparation and award of contracts;

“procurement agent” means a person specialised in procurement business and acts for another called the principal in dealing with third parties in matters relating to procurement;

“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 or contractor resulting from procurement proceedings for carrying out construction or other related works or for the supply of any goods or services;

“procuring entity” means a public body or any other body, or unit established and mandated by the government to carry out public functions;

“proposal” includes documents or things submitted together with the proposal and which are relevant to the proposal and which are in the possession of a tender board, evaluation committee, procuring entity or any person.

“public body or public authority” means:

- (a) any ministry, department or agency of Government;
- (b) any body corporate or statutory body or authority established for the purposes of the Government;
- Cap 212 (c) any company registered under the Companies Ordinance being a company in which the Government, whether by the holding of shares or by other financial input, is in the position to influence the policy of that company;
- (d) any local government authority; or
- (e) any parastatal organisation.

“public officer or officer” means:

- (a) any person holding or acting in an office of emolument in the services of the Government;
- (b) any person holding or acting in the office of Minister in the Government;
- (c) an employee of any body corporate such as is referred to in the definition of public body or public authority;
- (d) 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
- (e) a person who is a consultant to a public body or public authority;

“running contract” means a contract extending over a period of time for an estimated or variable quantity of services obtained through

request for submission of unit rates which are applied over an extended period of time and which offer the procuring entity to engage such consultants without further competitive selection.

“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 one work of any kind with or without the provision of drivers or technicians”

“solicitation for expression of interest” means the process whereby consultants are invited to submit details of their resources and capabilities so that a procuring entity can determine which consultants meet the minimum criteria necessary for being considered for competitive selection of consultants;

"tender board" means a Tender Board established under Section 28 of the Act; and

“terms of reference” means the statement issued by the procuring entity giving the definition of the objectives, goals and scope of the services

PART II GENERAL PROVISIONS

Procurement policy 4.-(1) The public procurement policies are based on the need to make the best possible use of public funds, whilst conducting all procurement with honesty and fairness.

(2) All public officers and members of tender boards who are undertaking or approving procurement shall be guided by the following basic considerations of the public procurement policy:

(a) the need for economy and efficiency in the use of public funds and in the implementation of projects including the provision of related goods and services;

- (b) the best interests of a public authority, in giving all eligible consultants equal opportunities to compete in providing consultancy services;
- (c) encouragement of national consulting industry; and
- (d) the importance of integrity, accountability, fairness and transparency in the procurement process.

Economy
and
efficiency

5. Public officers and members of tender boards when undertaking or approving procurement shall choose appropriate procedures and cause the procurement to be carried out diligently and efficiently, so that the prices paid represent the best value or net outcome that can reasonably be obtained for the funds applied, provided that:

- (a) the consultancy services procured are of satisfactory quality;
- (b) the consultancy services are appropriate to the public authority requirements and, where necessary are compatible with any similar consultancy services already applied to a particular project;
- (c) the consultancy service provided is completed in a timely fashion in accordance with the public authority's priorities.

Probity
and ethics
in selection
proceedings

6.-(1) All public officers concerned with selection of consultants and members of tender boards must be scrupulously honest in all their dealings with consultants, members of the public and with the public authority itself.

(2) Procuring entities and members of tender boards must conduct Selection of consultants proceedings with complete probity and in such a manner that public authority is respected and trusted as a client or a customer whilst maintaining good reputation with consultants

(3) A procuring entity shall reject the proposal of a consultant who gives or agrees to give, directly or indirectly, to any public officer or other public authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or omission or decision of, or procedure followed by, the procuring entity or the approving authority in connection with proposal or any other proposal.

(4) Selection of a consultant shall not be made from a public officer acting in a private capacity, either alone or as a partner in a partnership or as an officer of a company.

(5) A procuring entity shall not include in any solicitation document any condition or description of services such as to favour any one consultant.

(6) Any procuring entity, approving authority or a member of the staff or any committee of a tender board or of a procuring entity thereof shall declare any interest that they may have in any consultant and shall take no part in, nor seek to influence in any way, procurement proceedings in which that consultant is involved or liable to become involved.

(7) The disclosure of interest made under these Regulations shall be recorded in the minutes of the meeting at which it is made.

Equality
of
participation

7. To ensure the widest possible participation by consultants on equal terms in invitations to provide consultancy services, as appropriate, procuring entities and approving authorities shall take the necessary measures to:

- (a) ensure publication of invitations to submit expression of interest or proposal in the Authority's journal and website as well as local newspapers of wide circulation and any other appropriate information media of wide circulation;
- (b) eliminate discriminatory practices or description of services which might stand in the way of widespread participation on equal terms;
- (c) ensure that all the criteria are specified in the prequalification and request for proposal; and
- (d) ensure that the proposal selected conforms to the requirements of the request for proposal and meets the selection criteria stated therein.

Transparency
and fairness

8.-(1) Procuring entities and tender boards shall maintain adequate written records of all procurement proceedings in which they are involved, including any procurement conducted other than by competitive selection. Such records shall show which consultants responded to advertisements or were approached to submit expression of interest or proposal, who was selected, and reasons thereof.

(2) A procuring entity shall ensure that payments due to consultants are made properly and promptly in accordance with the terms of each procurement contract entered into, so as to maintain the credibility and creditworthiness of a public authority and the procuring entity shall ensure that commitments are recorded against voted funds before any contract is signed.

Donor
Funding
for procu-
rement

9.-(1) In dealing with donor funded procurement, the procuring entity shall observe the provisions of Section 4(1) of the Act.

(2) A procuring entity shall not seek clearance of solicitation documents or award recommendations from an external government, agency or institution that extended a loan, credit or grant before obtaining internal clearance of the same from an appropriate approving authority or tender board.

(3) To the extent that the clearance or approval of the appropriate internal approving authority conflict with the external clearance or approval of an external approving authority arising out of the loan or credit or grant agreement, the clearance or approval of the external approving authority shall prevail, but in all other respects, the internal clearance or approval shall prevail.

Language

10. The request for expression of interest and the request for proposals and other documents for solicitation of proposals shall be formulated in English language except where:

- (a) the selection is limited solely to domestic consultants pursuant to Regulation 11 (2), in which case Kiswahili language may be used; or

- (b) the procuring entity decides, in view of the low value of the services to be procured, that only domestic consultants are likely to be interested in which case Kiswahili language may be used.

Eligibility
of
consultants

11.-(1) Consultants are permitted to participate in the selection proceedings without regard to nationality, except in cases where the procuring entity decides, on grounds specified in these Regulations or according to the provisions of any written law, to limit participation in selection proceedings on the basis of nationality.

(2) Foreign consultants shall be eligible if:

- (a) they are registered or if selected are capable of being registered by the relevant professional registration board or any other relevant authorities; and
- (b) they have entered into a voluntary joint venture or association with a local consultant or if selected are capable of forming or entering into voluntary joint venture or association with a local consultant.

(3) A procuring entity that limits participation on the basis of nationality pursuant to sub-regulation (1) shall include in the record of the selection proceedings a statement of the grounds and circumstances on which it relied in making limitation.

(4) The procuring entity, when first soliciting the participation of consultants in the selection proceedings, shall declare to foreign consultants that they may participate in the selection proceedings regardless of nationality and such a declaration shall not later be altered but if it decides to limit participation pursuant to sub-regulation (2) it shall so declare to them.

(5) A consultant from a foreign country may be excluded if:

- (a) as a matter of law or official regulations, Tanzania prohibits commercial relations with that country;
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the

Charter of the United Nations, Tanzania prohibits any payments to persons or entities in that country; or

- (c) it is proved beyond reasonable doubt that, the consultant does not satisfy relevant regulations governing the provision of those services in Tanzania.
- (6) Natural persons, companies or firms shall not be eligible for the award of contracts where:
- (a) they are bankrupt;
 - (b) payments to them have been suspended in accordance with the judgement of a court other than a judgement declaring bankruptcy and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property;
 - (c) legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;
 - (d) they have been convicted, by a final decision of any crime or offence with respect to their professional conduct;
 - (e) they are guilty of serious misrepresentation with regard to information required for participation in an invitation to submit proposals;
 - (f) they are in breach of contract on another contract with a procuring entity; or
 - (g) has been blacklisted or ineligible in accordance with section 57 and 73(7) of the Act.

(7) To be eligible for participation in the invitation to submit proposals and the award of contract, a consultant shall provide evidence, satisfactory to the procuring entity, of proof of compliance with the necessary legal requirements. To this end, all proposals submitted shall include a document, dated less than 90 days previously, drawn up in accordance with the consultant's national law or practice certifying that none of the situations referred to in sub-regulation (6) applies to such consultant.

(8) Government owned enterprises may participate only if they can establish that they:

- (a) are legally and financially autonomous;
- (b) operate under commercial law; and
- (c) are registered by the relevant professional registration board or authorities to operate as consultants.

(9) No dependent agency of Government or public organisation or their employees shall be permitted to submit or participate in a proposal for the provision of consulting services under public financed projects except as provided for under Regulation 70.

Associations
between
consultants

12.-(1) Consultants may associate with each other to complement their respective areas of expertise, or for other reasons in which case such association may be for the long term independent of any particular assignment or for a specific assignment and such association may take the form of a joint venture or of a sub-consultancy.

(2) In case of a joint venture, all members of the joint venture shall sign the contract and be jointly and severally liable for the entire assignment.

(3) Once the short list is finalized and request for proposals issued, any association in the form of joint venture or sub-consultancy among short listed firms shall be permissible only with the prior approval of the appropriate tender board.

(4) Procuring entities shall not require consultants to form mandatory associations with any specific firm or group of firms.

Conflict
of
interest

13.-(1) Consultants are required to provide professional, objective and impartial advice and at all times to hold the clients' interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

(2) Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to their clients, or that may place them in a position of not being able to carry out the assignment in the best interests of the procuring entity.

(3) Without limitation to the generality of the sub-regulation (1) and (2) of this Regulation, a consultant shall be hired in the following circumstances, namely:

- (a) a firm or an individual who has been engaged by the procuring entity to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;
- (b) a firm or an individual who has been hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment other than a continuation of the firm's earlier consulting services for the same project;
- (c) the provisions of sub-paragraph (b) does not apply to the various firms (consultants, contractors or suppliers) that together are performing the contractor's obligations under a turnkey or design and build contract;
- (d) Consultants or any of their affiliates shall not be hired for any assignment which by its nature, may be in conflict with another assignment of the consultants.

National
preferences

14.-(1) A procuring entity may, when procuring services by means of international or national competitive tendering, or when evaluating and comparing tenders, grant a margin of preference for National

Consultants or association between national consultants or between national and foreign consultants provided that this is clearly stated in the request for proposal documents.

(2) National consultants, associations between national consultants, or associations between national and foreign consultants shall be eligible to be granted a margin of preference as provided for in sub-regulation (1) only if they meet the criteria provided in Section 49 of the Act.

(3) For contracts for consultancy services to be awarded on the basis of international and national competitive selection a procuring entity may grant a margin of preference to national consultants and associations between foreign and national consultants as provided in the Fourth Schedule of these Regulations.

(4) The margin of preference shall only be applied to the financial proposal and the conditions and methods of calculating the margin of preference in the course of evaluating tenders shall be as set out in Regulation 62(6).

(5) The use of margin of preference shall be restricted to combined quality and cost and least cost selection methods.

Exclusive preference to national consultants firms

15.-(1) Procurement of services not exceeding the value prescribed in the Fourth Schedule of these Regulations shall be reserved exclusively for national consultants firms who meet the requirements of Section 49 of the Act.

(2) The exclusive preference will also be granted to joint ventures or associations between foreign and national consultants in which the contribution of the national consultant in the association is greater than the figure provided in the Fourth Schedule of these Regulations.

(3) In applying exclusive preference to local persons or firms, the procuring entity shall have the responsibility of ensuring that selected persons or firms are capable of providing quality of services.

Registration for purposes of exclusive preference

16.-(1) Wherever a procuring entity decides that a margin of preference or exclusive preference may be granted, it shall make use of the Authority's register of national consultants to determine whether a consultants or group of consultants is qualified for margin of preference or exclusive preference.

(2) The Authority shall establish and maintain a register of consultants for the purpose of offering to a procuring entity:

- (a) reliable and up-to-date information on the competencies of existing consultants in the market, and the structure of the market for various specialities; and
- (b) a record of current and past contracts and performance by a consultant.

(3) In order to avoid duplication of efforts, where a particular group of consultants is already being registered by a professional body, the Authority shall work closely with such a professional body to obtain the necessary information required to establish eligibility for the preference scheme.

(4) The Authority shall request all necessary details as it deems fit to establish eligibility for preference scheme for consultants who are not being registered by any professional body.

(5) A consultant shall not be required to register with the Authority as a condition of participation in any procurement except where a consultant wishes to benefit from a preference scheme pursuant to Regulations 14 and 15.

(6) Registration shall be open to all consultants.

Form of communication

17.-(1) Communication between a consultant and the procuring entity shall be in a form that provides a record of the content of the communication.

(2) The procuring entity shall not discriminate against or among consultants on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications.

(3) All communications to a tender board shall be addressed to the secretary of the board through the postal or physical address of the appropriate tender board.

Address to which proposals must be sent or submitted

18. Every proposal shall be delivered or sent by registered mail to the secretary of the appropriate tender board through the address of the tender board or personally deposited and acknowledged by the secretary of the appropriate tender board or his authorised representative.

Rules concerning documentary evidence provided by consultants

19. Where a procuring entity requires the legalization of documentary evidence provided by consultants to demonstrate qualifications in procurement proceedings, the procuring entity shall not impose any requirements as to the legalization of the documentary evidence other than those provided for in the written laws of Tanzania relating to the legalization of documents of the type in question.

Records of proceedings

20.-(1) When procuring services, a procuring entity shall maintain a record of the selection proceedings containing, at a minimum the following information:

- (a) a brief description of the services to be procured, or of the procurement need for which the procuring entity requested proposals;
- (b) a record of the procedures used in the shortlisting of consultants;
- (c) the names and addresses of consultants that were shortlisted and were requested to submit proposals;
- (d) the names and addresses of consultants that submitted proposals, and the name and address of the consultants with whom the procurement contract is entered into and the contract price;
- (e) information related to the qualifications, or lack thereof, of consultants that submitted proposals;
- (f) the price, or the basis for determining the price, and a summary of the other principal

- terms and conditions of each proposal, and of the procurement contract, where these are known to the procuring entity;
- (g) a summary of the evaluation and comparison of proposals;
 - (h) if all proposals, were rejected pursuant to Regulation 21, a statement to that effect and the grounds thereof;
 - (i) if, in selection proceedings involving methods of procurement other than competitive selection, those proceedings did not result in a procurement contract, a statement to that effect and of the grounds thereof ;
 - (j) the information required by Regulation 96, if proposal was rejected pursuant to that provision;
 - (k) method of selection used and justification, if other than competitive selection process;
 - (l) in selection proceedings in which a procuring entity, in accordance with Regulation 11(1), limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation; and
 - (m) a summary of any requests for clarification of the request for expression of interest or request for proposals, the responses thereto, as well as a summary of any modification of those documents.

(2) The portion of the record referred to in subparagraphs (a) and (c) of sub-regulation (1) of this Regulation shall, on request, be made available to any person after a proposal has been accepted or after selection proceedings have been terminated without resulting in a procurement contract.

(3) The portion of the record referred to in subparagraphs (d) to (i) of sub-regulation (1) of this Regulation shall, on request, be made

available to a consultant who submitted proposals, after a proposal has been accepted or selection proceedings have been terminated without resulting in a procurement contract.

(4) Disclosure of the portion of the record referred to in subparagraphs (d) to (f) of sub-regulation (1) may be ordered at an earlier stage by the Authority, Public Procurement Appeals Authority or a court of law.

(5) Except when ordered to do so by the Authority, the Public Procurement Appeals Authority or by a court, and subject to the conditions of such an order, the procuring entity shall not disclose:

- (a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition;
- (b) information relating to the examination, evaluation and comparison of proposals, other than the summary referred to in sub-regulation (1) (g).

(6) The procuring entity shall not be liable to consultants for damages owing solely to a failure to maintain a record of the selection proceedings in accordance with these Regulations.

Rejection
of all
proposals

21.-(1) Subject to approval by the appropriate tender board and if specified in the request for proposals or other documents for solicitation of proposals, the procuring entity may prior to awarding the contract and notwithstanding the stage reached in the proceedings leading to the conclusion of the contract:

- (a) either decide to reject all proposals at any time and to annul the selection proceedings in accordance with sub-regulation 2; or
- (b) order that the proceedings be recommenced, if necessary, using another method.

(2) The annulment of a selection proceeding may take place in the following cases:

- (a) if no proposal is responsive to the request for proposals;

- (b) if no proposal satisfies the criteria for the award of the contract as set out in Regulation 67;
- (c) if the economic or technical data of the project have been altered;
- (d) if exceptional circumstances render normal performance of the contract impossible;
- (e) if every proposal received exceeds the financial resources ear marked for the contract;
- (f) if the proposals received contain serious irregularities resulting in interference with the normal play of market forces;
- (g) if funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available; or
- (h) if there has been no competition.

(3) In the event of annulment of any selection proceedings, all consultants who submitted proposals shall be notified thereof by the procuring entity.

(4) The procuring entity shall incur no liability solely by virtue of its invoking sub-regulation (1) and (2) towards consultants that submitted proposals.

(5) When the annulment of the selection proceedings is caused by circumstances which do not necessitate the opening of proposals, the unopened and sealed envelopes containing the price proposals, where appropriate, and in any event, the other elements of the proposal shall be returned to the consultants.

(6) Where all proposals are rejected pursuant to this Regulation:

- (a) the procuring entity shall review the causes justifying the rejection and consider whether revision of the terms of reference or modification in the project or both are required before inviting new proposals;

- (b) new proposals shall be requested from at least all who were invited to submit proposals in the first instance as well as new ones where necessary and a reasonable amount of time shall be allowed for the submission of the new proposals;
- (c) and where the approving entity considers it advisable it may require that the whole selection proceeding be repeated;

Public notice
of contract
awards

22.-(1) Where an award of contract is made, the secretary to the tender board shall notify the Chief Executive Officer of the Authority, the Controller and Auditor General, the Attorney General and the Technical Audit Unit of the Ministry of Finance stating who has been awarded the contract, the contract amount and the date when the award was made.

(2) After completion of contract, the accounting officer or chief executive officer of the procuring entity shall notify the Chief Executive Officer of the Authority, the Controller and Auditor General, the Attorney General and the Technical Audit Unit of the Ministry of Finance, the name of the consultant who executed the contract, the original contract period, the final contract period, original approved contract sum and the final contract amount paid to the consultant

(3) The Authority shall publish in the *Gazette*, local newspapers of wide circulation in the United Republic of Tanzania, and in its journal and website the names of those who have been awarded the contract, the contract amount, the date when the award was made, contract period, and the final contract amount paid to the consultant.

Rules
concerning
description
of services

23.-(1) Any terms, specifications, plans, drawings and designs setting forth the technical or quality characteristics of the services to be procured, and requirements concerning testing and test methods, or conformity certification, and symbols and terminology, or description of services that create obstacles to participation, including obstacles based on nationality, by consultant in the procurement proceedings shall not be included or used in the pre-qualification documents, solicitation documents or other documents for solicitation of proposals, offers or quotations.

(2) To the extent possible, any terms, specifications, plans, drawings, designs and requirements or descriptions of services shall be based on the relevant objective, technical and quality characteristics of the services to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the services to be procured and provided that words such as "or equivalent" are included.

(3) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the services to be procured shall be used, where available, in formulating any statement of requirements, specifications, plans, drawings and designs to be included in the solicitation documents or other documents for solicitation of proposals;

General
procurement
notice

24.-(1) A procuring entity intending to procure services of consultants shall give a press release to the print media containing general project information. The same information will also be posted in the website and procurement journal of the Authority.

(2) A procuring entity shall publish a General Procurement Notice in the procurement journal and the Authority's website as well as newspapers of wide circulation within United Republic of Tanzania at least one month prior to any publication or notification of a request for the recruitment of consultants.

(3) The General Procurement Notice shall also be distributed by the procuring entity to embassies and foreign missions in Tanzania and a copy of the distribution shall be made part of the record to be kept on the procurement proceedings.

(4) The General Procurement Notice shall describe and define the nature of the services sought and indication of the process to be followed for acquiring such services as well as any restrictions attached thereto.

(5) The notice shall state the name, postal and telegraphic address, telex, e-mail, website, facsimile and telephone numbers of the executing agency where available.

Planning

25.-(1) A procuring entity shall forecast its requirements for services as accurately as is practicable with particular reference to services already programmed in the annual work plan and included in the annual estimates. Such forecast shall include an estimate of the optimum time to the nearest month of performance and completion of services.

(2) The cost of such requirements shall be estimated and compared with the likely availability of voted or donor funds so that priorities for procurement may be determined in accordance with available funds.

(3) A procuring entity shall draw up procurement plans for those requirements for which sufficient funds have been included in the approved budget in the current financial year or if payment will be due in a subsequent financial year, have been budgeted.

(4) In compiling plans, a procuring entity shall establish the appropriate method of procurement to be employed for each requirement and the time-scale for each procurement shall be calculated on the basis of the standard processing times prescribed in the Third Schedule to these Regulations, allowing any necessary margin for delays in transmission of documents or clarification of proposals.

(5) In the time-scale, the start dates and critical points in the procurement process shall be set out in the procurement plans.

Approval to proceed with procurement

26.-(1) Before the preparation of the request for proposals, there must be a genuine intention to proceed with the procurement.

(2) Approval of the accounting or chief executive officer must be held either by inclusion of the procurement in a procurement programme or by request as an individual item of procurement.

Aggregating requirements **27.** Where several services that are to be procured require co-ordination or collective responsibility of the service providers, a procuring entity shall group these services and seek to employ a single consultant for the performance of those services.

Prohibition of splitting contracts **28.-(1)** A procuring entity shall not divide its procurement into separate contracts for the purposes of avoiding competitive selection proceedings.

(2) Notwithstanding provisions of sub-regulation (1), a procuring entity shall be allowed, with prior approval of the Authority, to split contracts to enable participation of local firms or persons.

Appointment of consultants for procurement of goods or works **29.** Where the appointment of a consultant is considered necessary for the effective procurement of goods or works, a procuring entity must complete selection and enter into a contract with the selected consultant in accordance with these Regulations in sufficient time for that consultant to undertake all the tasks that are required of it without delay to that procurement, including review of any tender documents prior to being issued.

Commitment of funds **30.-(1)** A procuring entity shall ensure that funds have been voted or committed before commencing procurement proceedings.

(2) When the contract extends over several years an allocation of funds may be issued annually so that the total amount issued does not exceed the contract price plus a percentage for price and physical contingencies, unless specific approvals are obtained for additional services and cost price increased..

**PART III
METHODS FOR SELECTION**

Selection of a method of procurement **31.-(1)** A procuring entity shall procure consultant services using the methods described under Regulations 32, 33, 34, 35 respectively.

International competitive selection **32.**-(1) In international competitive Selection, a procuring entity shall invite consultants regardless of their nationality, by means of an expression of interest notice that shall be advertised nationally and internationally, or nationally only, to submit expression of interest for consultancy services.

(2) This method of selection shall be used in all cases where:

- (a) payment may be made in whole or in part in foreign currency;
- (b) the estimated cost of the services exceeds the threshold for such tenders prescribed in the Second Schedule to these Regulations, or;
- (c) it is desired to attract expression of interest from the widest range of consultants regardless of the estimated value of the services to be procured.

(3) Under the international competitive selection, the procuring entity shall advertise the Request for Expression of Interest in the form of the Specific Procurement Notice for any particular contract, in the Authority's Journal and website as well as in at least one newspaper of wide and general circulation in United Republic of Tanzania and in any international news paper and technical journals as may be directed by an appropriate tender board.

National competitive Selection **33.**-(1) In national competitive selection a procuring entity shall invite consultants regardless of their nationality, by means of an expression of interest notice advertised only in the United Republic of Tanzania, to submit expression of interest for the required services.

(2) Such method of selection may be used in cases where:

- (a) payment may be made wholly in Tanzanian shillings;
- (b) the services can be obtained locally at prices below the international market;
- (c) the estimated cost of the services does not exceed the threshold for national competitive selection specified in Second Schedule to these Regulations; or

(d) the advantages of international competitive selection are clearly outweighed by the administrative or financial burden involved.

(3) Tender documents may be in Kiswahili language.

Restricted
competitive
selection

34.-(1) A procuring entity may restrict the issue of request for proposal to a limited number of specified consultants when:

(a) such consultants have already pre-qualified further to Regulation 51 of these Regulations; or

(b) the services required are within the competence of a limited number of specialised consultants; or

(c) the estimated contract values are within the limit for restricted competitive selection prescribed in the Second Schedule to these Regulations; or

(d) there is an urgent need for the services such that there would be insufficient time for a procuring entity to engage in open national or international tendering, provided that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have not been caused by dilatory conduct on its part.

(2) The justification for restricting selection further to sub-regulation (1) must be shown in the record of selection proceedings made further to Regulation 20.

(3) Except where consultants have already been pre-qualified, a procuring entity using a restricted competitive selection shall seek proposals from a list of potential consultants broad enough to ensure competitive prices.

(5) In all respects other than advertisement and issue of the request for proposal, the procedures for competitive selection as set out in these Regulations shall apply.

Single
source
selection

35.-(1) The use for single-source selection method shall be examined in the context of the overall interests of a procuring entity and the project, and a tender board's responsibility to ensure economy and efficiency and provide opportunity to all consultants to the extent possible.

(2) Single-source selection may be appropriate only if it presents a clear advantage over competition in which case single source selection may be justified:

- (a) for tasks that represent a natural continuation of previous work carried out by the firm;
- (b) where a rapid selection is essential such as in an emergency operation;
- (c) for very small assignments; or
- (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

(3) When continuity for downstream work is essential, the initial request for proposals shall outline this prospect and, if practical, the factors used for the selection of the consultant shall take into account the likelihood of continuity for downstream work.

(4) Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment and for such downstream assignments, the procuring entity shall ask the initially selected consultant to prepare technical and financial proposals on the basis of terms of reference furnished by the procuring entity which shall then be negotiated.

(5) If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved selection or if the downstream assignment is substantially larger in value, a competitive process acceptable to the appropriate tender board shall

normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest and the appropriate tender board will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

**PART IV
SELECTION PROCEDURES AND CONDITIONS FOR
APPLICATION**

Selection procedures **36.-(1)** The selection procedure and evaluation criteria to be adopted shall be determined by the procuring entity in consultation with the relevant regulatory board prior to the invitation of consultants to submit proposals. Such criteria shall be considered by the appropriate tender board which will verify their suitability and make possible comments concerning them, and be included in the request for proposals.

(2) Four principal types of selection procedures shall be applied according to the characteristics of the services required namely:

- (a) selection procedure based solely on technical quality;
- (b) selection procedure based on technical quality with price consideration;
- (c) selection procedure based on the compatibility of technical proposal and least cost consideration; and
- (d) selection procedure based on quality and fixed budget.

(3) The adoption of any of the four principal types of selection procedures shall depend on the complexity of the assignment, the impact of the assignment on the resulting end product and the probability that the proposals will lead to comparable outputs.

Selection based on technical quality **37.-(1)** In the selection procedure based solely on technical quality, the firm which has submitted the best technically acceptable proposal shall be the first to be invited for negotiations in accordance with Regulation 66 of these Regulations.

(2) The envelope containing the financial proposal shall be opened in the firm's presence and its contents examined and where no agreement is reached, then the consultant whose technical proposal is ranked the second shall be invited for negotiations.

(3) The exercise may continue until an agreement is reached with one of the firms whose technical proposals are considered satisfactory and retained.

(4) The financial envelopes containing the proposals of firms not, invited for negotiations will be returned unopened to the offerers.

(5) Quality based selection is appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts such as feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies;.
- (c) assignments that can be carried out in substantially different ways, such those proposals will not be comparable such as management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis; and
- (d) architectural services obtained through architectural competition.

(6) In quality based selection, the request for proposals may request submission of a technical proposal only or request for submission of both technical and financial proposals at the same time, but in separate envelopes and the request for proposals shall not provide the estimated budget.

(7) If technical proposals alone were invited, after evaluating the technical proposals, the procuring entity shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal so that the procuring entity and the consultant shall then negotiate the financial proposal and the contract.

(8) If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection based on combined technical quality and price consideration

38.-(1) The selection procedure based on the technical quality with price consideration shall start with the evaluation of technical proposals.

(2) The technical proposals considered satisfactory and classified by order of merit shall have the corresponding financial proposals opened.

(3) After the necessary correction of arithmetic errors have been made, a score of 100% shall be given to the lowest financial proposal and the score given to each of the other financial proposals is proportionately reduced.

(4) The technical and financial proposals shall be weighted as specified in the request for proposal and the combined value of the two proposals shall be calculated for each firm.

(5) Negotiations shall be initiated with the firm with the highest combined score and shall be conducted in accordance with Regulation 66 of these Regulations, until an agreement is reached with one of the firms whose technical proposals are considered satisfactory and retained.

Selection based on compatibility of technical proposals and least cost consideration

39.-(1) This method may be used for selection of consultants for assignments of a standard or routine nature where well established practices and standards exist, and in which the contract amount is small.

(2) The procedure starts with the evaluation of the technical proposal. Firms whose technical proposals are retained shall be those who scored equal or above the minimum specified threshold.

(3) At the stage of examination of financial proposals, only the envelopes containing the financial proposals of consultants who scored equal or above the minimum specified threshold shall be opened. The necessary arithmetic corrections will then be made for the purposes of comparison and the consultant whose financial offer is considered the lowest shall be invited for negotiations in accordance with Regulation 66 of these Regulations.

(4) If an agreement is not reached, the consultant whose financial offer is ranked second lowest, shall in turn be invited to negotiate and so on until an agreement is reached with one of the best ranked consultants

Selection based on quality and fixed budget

40.-(1) This method may be used when the assignment is simple and can be precisely defined and when the budget is fixed.

(2) The request for proposals shall indicate the available budget and request the consultants to provide their technical and financial proposals in separate envelopes, within the budget.

(3) Terms of reference shall be prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks.

(4) Evaluation of all technical proposals shall be carried out first and the price envelopes of those scoring above the minimum threshold shall be opened in public.

(5) Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract in accordance with Regulation 66 of these Regulations.

Selection based on consultants qualification

41.-(1) This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified.

(2) In such cases, the procuring entity shall prepare the terms of reference, request expressions of interest and information on the consultants' experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references.

(3) The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

PART V
BASIC PRINCIPLES FOR SELECTION OF CONSULTANTS

Invitation
of
Proposals

42.-(1) The procuring entity shall invite proposals from five to ten qualified and experienced consultants, and through a suitable selection procedure choose the consultant most qualified for the assignment.

(2) The principal stages of the selection process shall be as follows:

- (a) preparation of the terms of reference;
- (b) preparation of cost estimate and the budget;
- (c) advertising the acquisition of services;
- (d) preparation of the short list of consultants;
- (e) determination of the selection procedures and criteria for selection;
- (f) preparation and issuance of the request for proposals;
- (g) inviting the consultants to submit proposals;
- (h) receipt of proposals;
- (i) evaluation of technical proposals;
- (j) evaluation of financial proposal;
- (k) final evaluation of quality and cost;
- (l) negotiations and award of the contract to the selected consultant; and
- (m) signing the contract.

Terms of reference 43.-(1) The procuring entity shall be fully responsible for preparing the terms of reference for the assignment so that the scope of the services described in the terms of reference shall be compatible with the available budget.

(2) The terms of reference shall provide:

- (a) a precise statement of the objectives and goals sought;
- (b) a clear description of the nature and scope of the services required and their context as well as the time interval in which they shall be provided;
- (c) a description of the duties and responsibilities of the consultant;
- (d) a description of the duties and responsibilities of the procuring entity;
- (e) information on any counterpart staff and its role;
- (f) information on training and the transfer of technology, where necessary;
- (g) a summary of the data, a list of all available studies and information on the assignment, facilities and services which the procuring entity will provide to the consultant.; and
- (h) a clear statement of the criteria to be used in the selection procedure.

(3) The terms of subcontract agreement between the coordinating consultant and the sub-consultant shall be part of the submission to the procuring entity.

Procuring entity's contributions 44.-(1) The contributions which the procuring entity is in a position to make to the consultant's assignment shall be defined in the terms of reference, indicated in the requests for proposals and finalized in the contract, as they may have a significant impact on the estimated budget for the assignment so that the nature and type of the contributions shall be reviewed during negotiations and shall therefore, not be included in the cost of the services.

(2) With the exception of a budgetary allocation to cover the entire or part of the local expenditure, these contributions include the following items:

- (a) office space with electricity, water, telephone, equipment, vehicles and maintenance;
- (b) housing;
- (c) support staff such as secretary, messenger, driver, administrative and technical service; and
- (d) information, documentation and all studies relating to the assignment.

(3) The value and type of the procuring entity's contributions shall be finally concluded during the negotiations.

Counter
-part
staff

45.-(1) In order to build in-house capacity, qualified counterpart staff employed by the procuring entity or its executing agency may be involved in the assignment. Ideally, in some types of assignments such as feasibility studies, it would be desirable to assign to each key expert of the consultant's team, a counterpart from the executing agency, if possible temporarily released from his functions.

(2) The number of counterparts shall be determined on an individual basis depending on the importance of the assignment, and the requirements of the executing agency or the procuring entity.

(3) The role of the counterpart staff may vary from assignment to assignment, but shall include the following responsibilities and elements:

- (a) through a day-to-day contact with the consultant's experts, benefit from a transfer of skills and thus receive on-the-job training; and
- (b) liaise between the organs of the procuring entity and the consultant and assist the latter with data collection, providing it with all available information documentation and studies on the assignment.

(4) Prior to any final decision regarding the level qualifications, number and responsibilities of each counterpart, discussions shall be held during the negotiations to determine:

- (a) the number and responsibilities of the counterpart staff co-operating with the consultant's team.
- (b) the extent to which counterpart staff are released from their normal duties;
- (c) the extent to which counterpart staff can fit into the consultants' proposed work schedule;
- (d) the arrangements made to cover field and travel expenses of the counterpart staff; and
- (e) the arrangements for replacement of unsuitable counter part staff.

Training
for
capacity
building

46.-(1) The strengthening of the national capabilities of agencies or agents in the procuring entities through a transfer of knowledge and skills to local professionals is of key concern to the Government.

(2) The training programmes which fall within the framework of the assignment whose principal objective may not necessarily be training and transfer of technology, but which meet requirements related to the principal project or its sector and the programmes may provide an opportunity for strengthening the capacity of the counterpart staff involved in the assignment to that of the national staff participating in a joint venture between foreign consultants.

(3) For the successful implementation of this programme, the procuring entity must be convinced of its necessity, and consequently select the necessary qualified professionals to participate in it, and release these professionals for the duration of the programme. The consultant shall accept the training function and its inclusion as an obligation which is separate and distinct from the other services and propose corresponding costs and an implementation time frame.

(4) The objectives of the programme shall be defined and included in the terms of reference sent to the consultants invited to submit proposals; it will be defined during the negotiations both with regard to trainers, trainees, the skills to be transferred both with regard to trainers and trainees and the time-frame.

Local
firms
participa
-tion

47.-(1) The Government shall insist that during the acquisition of consultancy services, local firms be involved in the assignment through joint venture and subcontract arrangements.

(2) The procuring entity shall therefore ensure that the inclusion of local firms in the assignments carried out by foreign consultants is achieved through apportioning proper weights in the criteria for evaluation to encourage such partnering of foreign and local firms.

Cost
estimate
and
budget

48.-(1) The cost estimate shall be made on the basis of the cost of the consulting assignment on the assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs .

(2) The cost estimate and budget shall be based on the terms of reference. The budget shall be as detailed and as accurate as possible and shall be broken down into foreign and local currency where applicable.

(3) The principal cost categories and characteristics on which the cost estimate may be based are the following:

- (a) the consultants' staff, time spent at headquarters and in the field, whose cost in person-months (or person-weeks, person-days) is based on the fixed rate of the cost of one person - month;
- (b) other professional and support staff;
- (c) direct costs such as travel, transport, per diem, etc;
- (d) the cost of physical inputs and materials such as equipment, vehicles, office supplies;

(e) other expenditure such as offices, communications, services; and

(f) costs for special services, if any.

(4) For the budget, an amount shall always be allocated over and above the basic costs to cover physical and price contingencies.

(5) Some items of the cost estimate in foreign currency or local currency may be reimbursable and as such, shall be clearly identified to include costs covering travel, vehicles, equipment purchased especially for the assignment and special investigation.

(6) Any taxes and customs duties component of the cost estimate shall also be identified and appropriately handled by the procuring entity, especially where the project is financed by external sources which do not finance local taxes.

Advertis
ing

49.-(1) To obtain expressions of interest, the procuring entity shall include a list of expected consulting assignments in the General Procurement Notice which shall be updated annually for all outstanding procurement and shall also advertise all contracts in the Authority's journal and website, and national newspapers of wide circulation.

(2) A copy of the advertisement shall be sent to those who expressed interest in response to the General Procurement Notice, embassies and international organisations where necessary.

(3) (a) A copy of the advertisement shall be posted on the notice board of the procuring entity and on the notice board of the appropriate tender board.

(b) For procurement whose value exceeds Tanzania Shillings 100 million, a copy of the advertisement shall be sent to the Authority within the time limit set in Section 31(3) of the Act.

(4) (a) The advert shall request minimum but adequate information to make a judgement on the firm's suitability and may not be so complex as to discourage consultants from expressing interest.

(b) A minimum period prescribed in the Third Schedule of these Regulations shall be provided for submission of expressions of interest. The time may be increased according to the nature and complexity of the assignment.

Preparation of short list

50.-(1) The short list shall be made up of consultants who in the view of a procuring entity possess the required capabilities and experience to provide the specific services which only consultants appearing on the short list may be invited to submit proposals.

(2) A new shortlist shall be prepared for every new request for proposals and shall comprise five to ten firms and at least three firms from Tanzania, unless there are no qualified firms from Tanzania and for the purposes of establishing the short list, the nationality of a firm shall be that of the country in which it is registered or incorporated.

(3) A tender board may request the procurement management unit to expand or reduce a short list; however, once a tender board has approved a short list, a procurement management unit shall not add or delete names without a tender board's concurrence.

(4) Prior to the issue of the request for proposal documents, the consultants will be requested to confirm their desire to participate in the competition. In order to maintain the minimum number of five on the shortlist, the procurement management unit will, with the tender board's consent, replace firms that have communicated to the procuring entity or tender board in writing they will not participate, by other firms where available.

(5) Firms that expressed interest, as well as any other firm that specifically so requests, shall be provided with the final short list of firms.

(6) A procuring entity and an appropriate tender board may make use of several sources when drawing up the short list of consultants as follows:

(a) the procuring entity's own experience of consulting firms and individual consultants; and

- (b) the list of consultants who expressed interest in providing the proposed services.

(7) A short list which has not been approved by the appropriate tender board shall not be used for the selection of a consultant for a public financed project.

(8) Notwithstanding the provisions of sub-regulations (1) to (5) of this Regulation, where an eligible consultant has satisfactorily carried out feasibility studies for a project, and is technically qualified to undertake detailed project or engineering design, preparation of tender documents or supervision of implementation, a tender board may not object, if the same consultant is appointed to carry out such subsequent functions, especially where it is probable that this procedure would be substantially advantageous to a procuring entity but the price of such services shall be subject to review, based on current rates of services in the different sectors.

(10) Any consultant who wishes to provide the requested services, may express his desire in writing to be short-listed to the procuring entity concerned. However, an expression of interest to participate in the provision of services shall in no way oblige the procuring entity to include the applicant in the short list.

Prequali
fic-ation

51.-(1) In the case of major and complex services, the short list shall be prepared in two stages of which the first is pre-qualification which shall consist of invitations to consultants renowned for their experience and skills or by means of an announcement to consultants to express their interest in the assignment.

(2) (a) The announcement shall contain a brief outline of the assignment and only request consultants to submit a detailed statement of capability and experience relevant to the assignment in the format to be provided by the procuring entity in line with standard prequalification documents issued by the Authority.

(b) criteria used in pre-qualification shall not be applied during the follow-up evaluation of the technical proposals.

(3) Pre-qualification shall in particular be mandatory in all situations where a procuring entity wishes to engage into restricted architectural competition in accordance with architectural competition procedures set forth by the relevant regulatory board and subject to the approval of the Authority.

(4) The procuring entity shall evaluate the responses and information obtained and shall prepare a short list to be approved by an appropriate tender board, by including the best qualified firms.

(5) For advertisement for pre-qualification, from the date of first publication of the advertisement to the closing date for submission of pre-qualification application, a procuring entity shall allow a minimum time prescribed in the Third schedule of these Regulations.

Request
for
proposals

52.-(1) The request for proposals shall contain:

- (a) a letter of invitation;
- (b) information to consultants;
- (c) terms of reference;
- (d) proposed contract; and
- (e) standard form for technical and financial proposals.

(2) Procuring entities shall use standard request for proposals documents issued by the Authority and shall list all the documents included in the request for proposals.

Letter of
invitation

53.The letter of invitation shall state the intention of the procuring entity to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

Information
to
consultants

54.-(1) The information to consultants shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by

indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score.

(2) The information to consultants shall indicate the expected input of key professional staff time and the consultants shall be free to prepare their own estimates of staff time necessary to carry out the assignment.

(3) The information to consultants shall specify the proposal validity period which shall not be less than sixty days and may not exceed one hundred and twenty days.

(4) The information to consultants shall include adequate information, on the following aspects of the assignment:

- (a) a brief description of the assignment;
- (b) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (c) details of the selection procedure to be followed, including:
 - (i) a listing of the technical evaluation criteria and weights given to each criterion;
 - (ii) the details of the financial evaluation;
 - (iii) the relative weights for quality and cost in the case of quality and cost based selection;
 - (iv) the minimum pass score for quality;
 - (v) the details on the public opening of financial proposals; and
 - (vi) available budget in the case of fixed budget selection.
- (d) an estimate of the level of key staff inputs (in staff-months) required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;

- (e) details and status of any external and internal financing;
- (f) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
- (g) the deadline for the submission of proposals;
- (h) currency in which the costs of services shall be expressed, compared, and paid;
- (i) reference to any written laws in Tanzania that may be particularly relevant to the proposed consultants' contract;
- (j) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the procuring entity judgement, such activities constitute a conflict of interest with the services provided under the assignment;
- (k) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (l) a request that the invited firm:
 - (i) acknowledges receipt of the request for proposal; and
 - (ii) informs the procuring entity whether or not it will be submitting a proposal;
- (m) the short list of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (n) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (o) a statement indicating:
 - (i) whether or not the consultants' contract and personnel shall be tax-free; and

- (ii) what the likely tax burden will be or where this information can be obtained, and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (p) if not included in the terms of reference or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the procuring entity;
- (q) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (r) the procedure to handle clarifications about the information given in the request for proposals; and
- (s) any conditions for subcontracting part of the assignment.

Contract **55.-(1)** A procuring entity shall use the appropriate Standard Form of Contract issued by the Authority with minimum changes as necessary to address specific project issues.

(2) Changes in the standard contract shall be introduced only through Contract Data Sheets or through Special Conditions of Contract.

(3) Where such forms are not available for a specific service, procuring entities shall use other contract forms acceptable to the Authority.

Receipt of proposals **56.-(1)** The procuring entity shall allow enough time for the consultants to prepare their proposals depending on the assignment, but normally shall not be less and not more than the time prescribed in the Third Schedule of these Regulations depending on the nature of the assignment.

(2) During such interval, the firms may request clarifications about the information provided in the request for proposals and the procuring entity shall provide the clarification in writing and copy them to all firms on the short list who intend to submit proposals and where necessary, the procuring entity shall extend the deadline for submission of proposals.

(3) The procuring entity shall respond to any request by a consultant for clarification of the information contained in the request for proposal that is received by the procuring entity at least two weeks prior to the deadline for the submission of the proposals.

(4) The procuring entity shall respond within three working days of receipt of the query so as to enable consultants to take into account the clarification received in the preparation of its proposal, without identifying the source of request, communicate the clarification to all consultants to whom the procuring entity has provided the request for proposal documents

(5) The technical and financial proposals shall be submitted at the same time, no amendments to the technical or financial proposal shall be accepted after the deadline.

(6) To safeguard the integrity of the process, the technical and financial proposals shall be submitted in a manner specified in the request for proposal. The technical proposals shall be opened in public immediately by the appropriate tender board after the closing time for submission of proposals.

(7) The proposals shall be numbered serially and the last one endorsed with "and last".

(8) The financial proposals shall remain sealed and shall be deposited with the secretary of the appropriate tender board until they are opened publicly.

(9) Any proposal received after the closing time for submission of proposals shall be returned unopened.

(10) The secretary of the tender board shall prepare minutes of the opening ceremony giving all the details of the opening. The minutes shall be signed by chairman and the secretary of the opening ceremony.

(11) The signed minutes of the opening ceremony may be provided on request to consultants who submitted proposals

Evaluation
of
proposals

57.-(1) The evaluation of the proposals shall be carried out in the following two stages:

- (a) the quality, and
- (b) the cost.

(2) Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any tender board and donor agency reviews and approval, are concluded.

(3) The financial proposals shall be opened only thereafter and the evaluation shall be carried out in full conformity with the provisions of the request for proposals.

(4) The evaluation process shall begin as soon as possible after opening of the proposals.

Evaluati
on of
the
quality

58.-(1) The evaluation of technical proposals shall be carried out on the basis of the principal criteria to which merit points are accorded so that each proposal is scored out of a hundred and the firms shall be ranked by order of merit on the basis of the highest score.

(2) A procuring entity shall evaluate each technical proposal by using an evaluation committee of five or more specialists taking into account several criteria which had previously been disclosed in the request for proposals.

(3) As a guide to evaluating technical proposals, the evaluation committee shall use numerical ratings for each of the following criteria which may further be divided into sub criteria, but kept to a minimum:

- (a) experience of the consultant in the same field as that of the assignment and on similar projects;
- (b) professional reputation of the consultant and previous performance and experience with the procuring entity;
- (c) knowledge of the project environment in the country and in the region and their implications for the project;

- (d) Inclusion of local firms and experts in the assignment;
- (e) understanding of the terms of reference;
- (f) overall quality of the proposal, plan and methodology proposed;
- (g) qualification of experts and experience in the field of the assignment; and
- (h) ability to deal with national personnel and agencies and language proficiency.

(4) The relative importance of the sub-criteria specified under sub-regulation (3) rated out of one hundred will vary with the type of services to be performed and as a guide, the relative merit points are provided in Table (a) of the Sixth Schedule of these Regulations

(5) The Authority shall from time to time issue guidelines on how to fix weights depending on different types of assignments. However in case where there is a participation of only local persons or firms, the weight given to participation of local firms shall be fixed to zero.

(6) The technical criteria for pre-qualification shall be limited to factors and in according to numerical ratings provided in Table (b) of the Sixth Schedule of these Regulations.

(7) Factors provided in Table (c) of the Sixth Schedule of these Regulations shall be indicated in the request for proposals and used in the evaluation of proposals to which other numerical ratings could also be attributed to attain the score of 100 points.

(8) The curriculum vitae of the proposed key personnel shall be signed by the holder and an authorized official of the consultant and shall be rated in the following three subcriteria as relevant to the task:

- (a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;

- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) experience in the country, knowledge of the local language, culture, administrative system and government organization.

(9) The evaluation committee shall evaluate each proposal on the basis of criteria stipulated in the request for proposal.

(10) The numerical ratings as set out in the request for proposals for each factor, shall be attributed for each proposal received and then tabulated on a summary weighted accordingly and summed up and such method shall provide consistent assessment of the various proposals received and that the proper weight is given to each proposal.

(11) At the end of the process, the evaluation committee shall prepare an evaluation report of the "technical quality" of the proposals which shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposal and all records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

(12) The evaluation committee shall submit the evaluation report on the technical proposals to the appropriate tender board which shall review, comment on the evaluation report and where appropriate, approve the evaluation report and the scores.

Notificati
on of
results of
technical
evaluation

59.-(1) After the evaluation of technical quality is completed, the procuring entity shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the request for proposals and terms of reference, indicating that their financial proposals will be returned unopened after completing the selection process.

(2) A procuring entity shall simultaneously notify the consultants that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals.

Date of opening of Financial Proposals

60.-(1) The date of opening financial proposals shall not be sooner than two weeks after the notification date. Financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend.

(2) Notwithstanding provisions of sub-regulation (1), where all consultants have qualified to have their financial proposals opened in the case of quality and cost based selection or in the case of quality and least cost selection, the procuring entity may fix shorter period for opening of financial proposal subject to obtaining confirmation of the attendance of all successful firms at the set date for opening.

Procedure at the opening of financial proposal

61.-(1) The opening of financial proposal shall take place in the date, time and place set for opening by the procuring entity in the presence of firms representative who choose to attend.

(2) Before the opening of the financial proposal, the secretary of the tender board shall read out the results of the technical evaluation to the people attending the opening meeting.

(3) Envelopes containing financial proposals of the successful firms shall then be opened and the proposed prices shall be read aloud and recorded and the appropriate tender board shall prepare the minutes of the public opening.

(4) The secretary of the tender board shall prepare minutes of the opening ceremony giving all the details of the opening. The minutes shall be signed by chairman and the secretary of the opening ceremony.

(5) The signed minutes of the opening ceremony may be provided on request to consultants who submitted proposals

Evaluation of financial proposals

62.-(1) An evaluation committee of three members or more shall first review the financial proposal for consistency with the technical proposal and if there are any inconsistencies they shall make the necessary adjustment.

(2) An evaluation shall review the financial proposals and if there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a common currency selected by the procuring entity as stated in the request for proposals.

(3) The evaluation committee shall make the conversion by using the selling (exchange) rates for those currencies quoted by an official source such as the Bank of Tanzania or by a commercial bank, or by an internationally circulated newspaper for similar transactions.

(4) The request for proposals shall specify the source of the exchange rate to be used, and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposals.

(5) For the purpose of evaluation, "cost" shall include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

(6) In a situation where margin of preference has been included, financial proposals shall be evaluated as follows:

(a) after the financial proposals of the successful firms have been opened and reviewed by the evaluation team, those found responsive shall be classified into the following groups:

(i) Group A: financial proposals offered by national consultants as well as association between national consultants, eligible for the preference;

(ii) Group B: financial proposals submitted by associations between national and foreign consultants, eligible for the preference; and

(iii) Group C: financial proposals offered by foreign Consultants;

(b) for the purpose of evaluation and comparison of financial proposals:

- (i) an amount equal to the specified margin of preference for group A shall be added to financial proposals received from consultants in Group C; and
- (ii) an amount equal to the difference between the margin of preference for group A and that of Group B shall be added to financial proposals received from consultants in group B.

Combine
d quality
and cost
evaluatio
n

63.-(1) The proposal with the lowest cost shall be given a financial score of one hundred and other proposals given financial scores that are inversely proportional to their prices and in the alternative a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the request for proposals.

(2) The total score shall be obtained by weighting the quality and cost scores and adding them and the weight for the "cost" shall be chosen taking into account the complexity of the assignment and the relative importance of quality.

(3) Notwithstanding sub-regulation (2), the weight for cost shall normally be in the range of ten to twenty points, but in no case shall exceed thirty points out of a total score of one hundred.

(4) The proposed weightings for quality and cost shall be specified in the request for proposals and the firm obtaining the highest total score shall be recommended for contract award and for negotiations.

Confiden
-tiality

64.-(1) Information relating, to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm.

(2) If at such a stage, a consultant wishes to bring additional information to the notice of a procuring entity, a tender board or both, it shall do so in writing.

Submiss
ion to
the
Board

65. On completion of the combined quality and cost evaluation, a procuring entity shall prepare an evaluation report of the combined quality and cost comprising the forms together with the recommendations concerning the selection of the consultant and be

submitted to the appropriate tender board for review, and where appropriate approval with all copies of the proposals attached to it.

Contract negotiations

66.-(1) After the appropriate tender board has approved the award recommendations, the procuring entity shall promptly invite the selected consultant to negotiate, in order to finalise the terms of the contract based on the model contract on one hand and the consultant's proposal on the other hand.

(2) In the invitation, the consultant shall be informed of any special problems found in the proposal review which may be discussed during the negotiation.

(3) Negotiations shall include discussions on:

- (a) the terms of reference;
- (b) comments made by the consultant on the scope of services;
- (c) the methodology;
- (d) staffing;
- (e) counter part staff and training;
- (f) procuring entity's inputs, and special conditions of the contract;
- (g) consultant's proposed work programme; and
- (h) clarifying details that were not apparent or could not be finalised at the time of evaluation.

(4) The discussions shall not substantially alter the original terms of reference or the terms of the contract, provided that the final terms of reference and the agreed methodology shall be incorporated in "Description of Services" which shall form part of the contract.

(5) The selected firm shall not be allowed to substitute key staff between the time of receipt of proposals and commencement of the services unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment and where that is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm.

(6) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

(7) Financial negotiations shall include clarification of the consultants' tax liability and how tax liability has been or would be reflected in the contract.

(8) Proposed unit rates for staff-months and reimbursable shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

(9) If the negotiations fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and invite the next ranked firm for negotiations in which case the procuring entity shall consult with the appropriate tender board prior to taking this step.

(10) The consultant shall be informed of the reasons for termination of the negotiation and once negotiations are commenced with the next ranked firm, the procuring entity shall not reopen the earlier negotiations.

(11) Procurement management unit shall recommend membership of a negotiation team based on appropriate seniority and experience depending on the value and complexity of the procurement or disposal requirement and the membership shall be approved by the appropriate tender board.

(12) The number of members of the negotiation team shall depend on the value and complexity of the procurement or disposal requirement, but shall in all cases be a minimum of three, and may include members of the original evaluation committee or different officers.

(13) The negotiation team shall include members with relevant mix of skills and experience, including:

- (a) knowledge of end-user requirements;
- (b) negotiation skills;
- (c) procurement and contracting skills;
- (d) financial management skills; or
- (e) technical skills relevant to the subject of the procurement.

(14) Where the required skill or experience is not available within the procuring entity or where there is a conflict of interest, a member of negotiation team may be external to the procuring entity.

(15) Members of the negotiation team shall select a chairman from among their number who shall be responsible for:

- (a) ensuring all arrangements for negotiation meetings are made;
- (b) chairing all negotiations;
- (c) ensuring the negotiations are conducted in accordance with all legal requirements;
- (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
- (e) ensuring all members have a common understanding of the process of negotiations and objectives to be achieved;
- (f) ensuring members understand their own role in the negotiations and the standard approach of the team;
- (g) managing communications between the negotiation team and the consultant or any other body;
- (h) ensuring that the negotiation team has access to adequate resources; and
- (i) preparing the final report on the negotiation or ensuring that it is prepared.

(16) The evaluation committee shall prepare a negotiations plan which shall specify the issues to be negotiated and the objectives to be achieved and whenever possible, quantify the objectives and set maximum and minimum negotiating parameters for the negotiation team

(17) The appropriate tender board shall approve the negotiations plan and the membership of the negotiation team prior to any negotiations taking place.

(18) The negotiation team shall produce minutes of the meeting and shall obtain the tenderer's written agreement that it is a true and accurate record of the negotiations held and submit the minutes to the procurement management unit;

(19) The procurement management unit shall submit the recommendations of the negotiation team to the tender board to:

- (a) proceed with contract award to the recommended firm, incorporating the agreements reached during negotiations;
- (b) revise the negotiation objectives and hold further negotiations, or
- (c) terminate the negotiation and reject the firm.

(20) Where the negotiation team recommends rejection of the firm, it may also, where appropriate, recommend inviting the next ranked firm for negotiations in the case of competitive methods of selection or a new tenderer to submit a tender in the case of single source selection.

(21) The tender board may:

- (a) approve the recommendations;
- (b) request further negotiations on specific points;
- (c) reject the recommendations with reasons; or
- (d) cancel the negotiations in their entirety.

(22) The results of any approved negotiations shall be specified in any letter of tender acceptance and incorporated into the contract document.

(23) Where negotiations are commenced with the next ranked consultant or a new consultant is invited, the procuring entity shall not reopen earlier negotiations; and the original consultant shall be informed in writing of the reasons for termination of the negotiations.

Award of contract **67.**-(1) The award of contract shall be made to the consultant whose proposal has been selected and with whom contract negotiations have been successfully completed.

(2) After concluding a contract, the procuring entity shall inform the other consultants who have responded to the invitation within a period of one week that their proposals have not been successful.

(3) The award of contract shall be published by the Authority in the *Government Gazette*, Authority's journal and website and in at least one local newspaper of wide circulation in the United Republic.

(4) To enable the information concerning the award of the contract to be published and for purposes of recording and distributing statistical information, procuring entities must ensure that copies of award notices, suitably notated with the number of proposals received, the range of proposal and the estimates are forwarded to the Authority. Copies shall be posted to the Authority within three days of sending an acceptance notice to the consultant.

Role of the Tender Board **68.**-(1) The appropriate tender board shall review the selection process for the of consultants proposed by a procuring entity, including the cost estimate, the contract packaging, applicable procedures, the short list, selection criteria, and so forth, for its conformity with these Regulations and the proposed implementation program.

(2) A procuring entity shall promptly inform the appropriate tender board of any delay, or other changes in the scheduling of the hiring process, which could significantly affect the timely and successful implementation of the project, and agree with such tender board on corrective measures.

Prior review by the Tender Board **69.**-(1) Before inviting proposals, a procurement management unit shall furnish to the appropriate tender board for its review the short list and the proposed request for proposal and shall make such modifications to the short list and the documents as the tender board shall reasonably request.

(2) Any further modification shall require the tender board's prior approval before the request for proposal is issued to the short-listed consultants.

(3) After the technical proposals have been evaluated, the procurement management unit shall furnish to the appropriate tender board, in sufficient time for its review, a technical evaluation report and copies of the proposals.

(4) If the appropriate tender board determines that the technical evaluation is inconsistent with the provisions of the request for proposals, it shall promptly inform the procurement management unit and state the reason for its determination.

(5) A procurement management unit shall request the appropriate tender board's approval if the evaluation report recommends rejection of all proposals.

(6) After receiving the tender board's approval to the technical evaluation, the procurement management unit shall proceed with opening of the financial envelopes and then the financial evaluation will be undertaken in accordance with the provisions of the request for proposals.

(7) A procurement management unit shall furnish to the appropriate tender board in sufficient time for its review, the final evaluation report along with its proposed selection of the winning firm and if the appropriate tender board determines that the evaluation and proposed selection are inconsistent with the provisions of the request for proposals, it shall promptly inform the procurement management unit and state the reasons for its determination and where such determination have not been made the tender board shall advise its approval to the proposed selection.

**PART VI
SELECTION OF PARTICULAR TYPES OF CONSULTANTS**

Selection of public bodies, agencies as consultants

70. Consulting firms which are partially or totally controlled or sponsored by government or public authorities may be eligible for public financed projects provided that:

- (a) their qualification and experience are suitable for the assignment in question;
- (b) their structure and legal status are such that they can enter into a legally - binding agreement with the public authorities' project implementation agency; and
- (c) privileges, as well as other advantages such as tax exemptions and other facilities and special payment provisions, shall be evaluated and neutralized in the cost comparison to ensure fair competition.

Selection of United Nations Agencies as consultants

71.-(1) United Nations agencies may be hired as consultants, where they are qualified to provide technical assistance and advice in their area of expertise.

(2) United Nations agencies shall not receive any preferential treatment in a competitive selection process, except that a procuring entity may accept the privileges and immunities granted to United Nations Agencies and their staff under existing international conventions and may agree with United Nations Agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the appropriate tender board.

(3) Privileges, as well as other advantages such as tax exemptions and other facilities and special payment provisions, shall be evaluated and neutralized in the cost comparison to ensure fair competition.

Selection of Non-governmental organizations

72.-(1) Non-governmental organisations are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management and implementation of projects essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches.

(2) Non-governmental organisations may be included in the short list if they express interest and provided that a procuring entity and a respective tender board are satisfied with their qualifications and eligibility to participate.

(3) For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely non-governmental organisations and if so, the quality and cost based selection procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of nongovernmental organisations, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation.

(4) Privileges as well as other advantages such as tax exemptions and other facilities, and special payment provisions shall be evaluated and neutralized in the cost comparison to ensure fair competition.

Selection
of
procure-
ment
agents

73.-(1) When a procuring entity lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ as its agents, a firm that specializes in handling procurement.

(2) Procurement agents shall be paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee.

(3) Procurement agents shall be selected using quality and cost based selection procedures with cost being given a weight up to fifty percent.

(4) The standard contract form applicable for procurement agents, with payments based on a percentage of the total procurements and/or staff-month rates, shall be used.

Inspectio
n agents

74.-(1) A procuring entity may wish to employ inspection agents to inspect and certify goods prior to shipment or on arrival in Tanzania in which case inspection by such agents shall cover the quality and quantity of the goods concerned and reasonable prices.

(2) Inspection agents shall be selected using quality and cost based selection procedures giving cost a weight up to fifty percent and using a contract format with payments based on a percentage of the value of goods inspected and certified.

Auditors **75.**-(1) Auditors shall carry out auditing tasks under well defined terms of reference and professional standards.

(2) Auditors shall be selected according to quality and cost based selection, with cost as a substantial selection factor that is, forty to fifty points or by the "least - cost selection" outlined in Regulation 39.

Service delivery contracts **76.**-(1) Projects in the social sector in particular may involve hiring of large numbers of individuals who deliver services on a contract basis for example, social workers, such as nurses and paramedics.

(2) The job descriptions minimum qualifications, terms of employment, selection procedures, and the extent of tender board review of these procedures and documents shall be described on a case by case.

**PART VII
SELECTION OF INDIVIDUAL CONSULTANTS**

Selection of individual consultants **77.**-(1) Individual consultants shall be employed on assignments for which:

- (a) teams of personnel are not required;
- (b) no additional outside professional support is required; and
- (c) the experience and qualifications of the individual are the paramount requirement.

(2) Individual consultants are selected on the basis of their qualifications for the assignment and may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the procuring entity.

(3) Individuals employed by a procuring entity shall meet all relevant qualifications and shall be fully capable of carrying out the assignment.

(4) Capability shall be judged on the basis of professional competence, experience and knowledge of the local conditions.

(5) From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Regulations shall apply to the parent firm.

(6) In the selection and use of individual consultants, consultancy services whose value is less than value prescribed in the Fourth Schedule of these Regulations shall be reserved for individual national consultants.

Types
of
services

78.-(1) The types of services for which a procuring entity may require services of individual consultants are, but not limited to, the following:

- (a) preparation of terms of reference;
- (b) opening and evaluation of tenders for works contracts and supplier and consultant s proposals;
- (c) preparation of the brief where architectural services are to be procured;
- (d) revision and updating of feasibility studies;
- (e) preliminary project or engineering design;
- (f) technical assistance for the planning of development, economic or sectoral planning, organization and management;
- (g) application of the recommendations formulated in a study;
- (h) training;

- (i) assistance of the procuring entity with project implementation, and in particular for the monitoring and supervision of project implementation, as well as for investigations and technical advice;
- (j) preparation of project completion reports; and
- (k) all other necessary assistance decided upon by the procuring entity.

Selection process **79.**-(1) The selection process for individual consultants shall comprise the following stages:

- (i) preparation of the terms of reference and contract format;
- (ii) advertisement of the consultancy job;
- (iii) preparation of the estimated budget;
- (iv) preparation of the short list;
- (v) evaluation of qualification and experience;
- (vi) negotiation of fees and contract terms;
- (vii) signing of contract; and
- (viii) supervision and evaluation of services.

(2) For short-term assignments of a few weeks to one or two months, the procuring entity may, after approval by the appropriate tender board, recruit a qualified individual consultant directly on the basis of information available to it.

(3) The procuring entity shall consider the consultant's curriculum vitae and reference and if these are satisfactory and the latter is available, the fees and the contract terms may be negotiated.

(4) Subject to the provisions of sub-regulation (1), for longer term assignments, the procuring entity shall prepare a shortlist of three to seven consultants selected on the widest possible geographical base and including at least two national consultants using the procuring entity's own sources of information.

(5) The individual consultant may also be recruited through governmental or international academic organizations or consulting firms.

(6) Once the shortlist is established the procuring entity shall, on the basis of the curriculum vitae and other relevant information available to it, evaluate the qualifications and experience of each consultant, particularly in the field of the assignment concerned and classify them by order of merit.

(7) The criteria to be used in the evaluation shall be those prescribed in Table (d) of the Sixth Schedule of these Regulations.

(8) A procuring entity shall contact the first individual consultant on the ranking and if he is available, fees and contract terms shall be negotiated.

(9) The negotiations, which shall begin with interviews will continue until one of the short listed individual consultants is definitively retained for the assignment.

PART VIII

TYPES OF CONTRACTS, THEIR CONDITIONS FOR USE

Lump sum
(firm fixed
price)
contract

80.-(1) The lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined.

(2) The lump-sum contracts are widely used for simple planning and feasibility studies, environment studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

(3) Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs.

(4) Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

Time
based
contract

81.-(1) Time based contracts shall be used when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess.

(2) Such contracts may be used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and, or agreed unit prices and the rates for staff include salary, social costs, overhead, fee or profit, and, where appropriate, special allowances.

(3) Such contracts shall include a maximum amount of total payments to be made to the consultants and the ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

(4) Time based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily, and payments claimed by the consultants are appropriate.

Retainer
and /or
contingenc
y
(success)
fee
contract

82.-(1) Retainer and contingency fee contracts are widely used when consultants that is, banks or financial firms, are preparing companies for sale or mergers of firms, notably in privatization operations.

(2) The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

Percenta
ge
contract

83.-(1) Percentage based contracts may be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the contract.

(2) Percentage based contract shall clearly define the total cost from which the percentage is to be calculated. The consultant or service provider shall be required to indicate his or her cost as a percentage of the total cost of the assignment.

(3) The use of such a contract is recommended only if it is based on a fixed target cost and covers precisely defined services.

Indefinite
delivery
contract
(Price
agreement

84.-(1) Indefinite delivery contracts are used when a procuring entity needs to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance.

(2) This type of contract is commonly used to retain "advisers" for implementation of complex projects expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more.

(3) The procuring entity and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

Running contracts

85.-(1) Running contract are used for contract extending over a period of time for an estimated or variable quantity of services obtained through request for submission of unit rates which are applied over an extended period of time and which offer the procuring entity to engage such consultants without further competitive selection.

(2) This type of contract is commonly used for contracts for which continuity of expert service is desirable. Such contracts included but not limited to financial auditing, procurement agency contracts, inspection agency, etc.

(3) The procuring entity and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

(4) The use of running contracts shall be subject to approval of the Authority.

PART IX

DELEGATION OF PROCUREMENT AUTHORITY

Delegation and contracting out procurement and disposal by tender functions

86.-(1) Subject to the Act and these Regulations, an accounting officer or chief executive officer may:

(a) delegate certain procurement and disposal by tender functions of the accounting officer or Chief executive officer, tender board or procurement management unit to:

- (i) a sub-division of that entity; or
- (ii) a member of staff of that entity

(b) contract out certain procurement and disposal by tender functions of the tender board, procurement management unit or user department to:

- (i) another procuring entity; or
- (ii) a procurement agent.

(2) For avoidance of doubt, delegation of functions shall be within the procuring entity and contracting out of functions shall be outside the procuring entity

(3) Notwithstanding delegation under sub-regulation (1), the accounting officer or chief executive officer shall remain accountable for all decisions taken under the delegated or contracted out authority.

(4) Where a function is delegated or contracted out, an accounting officer or chief executive officer shall ensure the independence of functions and powers in accordance with Section 38 of the Act.

(5) A function may be delegated or contracted out where it is cost effective because of the work load or type of work or circumstances of the procurement management unit;

(6) Delegation shall not be used for the purpose of avoiding the provisions of the Act, these Regulations or guidelines issued under the Act.

(7) A person(s) to whom a procurement function is delegated or a firm or procuring entity to which the procurement functions has been contracted shall at all times comply with the Act, these Regulations, guidelines issued under the Act and any conditions of the delegation or contracting.

Delegation of the Accounting Officer or Chief Executive Officer own functions

87.-(1) An accounting officer or chief executive officer may delegate in writing the following functions to a member of staff of the procuring entity:

- (a) certifying the availability of funds required for procurement;
- (b) committing of funds prior to contract placement;
- (c) communicating award decisions;
- (d) ensuring that the implementation of the awarded contract is in accordance with the terms and the conditions of award;
- (e) implementing the recommendations of the Authority.

(2) The accounting officer or chief executive officer shall not delegate the following powers and functions:

- (a) establishment of and appointment of members of a tender board;
- (b) establishment of a procurement management unit;
- (c) investigation of a complaint by a bidder; and

- (d) submission of reports of findings in respect of complaints to the Authority

(3) In order to maintain independence of functions, the functions of the accounting officer or chief executive officer prescribed in sub-regulation (1) shall not be delegated to:

- (a) a member of a tender board or any delegated tender board; or
- (b) a member of a procurement management unit or any delegated procurement management unit

Delegations of the functions of tender board or procurement management unit

88.-(1) An accounting officer or chief executive officer may, on recommendation of the tender board, delegate any of the procurement or disposal by tender functions of the tender board or procurement management unit to:

- (a) a sub-division of the procuring entity; or
- (b) a member of staff of the procuring entity.

(2) A tender board may recommend to the accounting officer or chief executive officer the delegation of procurement and disposal by tender function to a sub-division of the procuring entity, subject to any value limitations or other exceptions where:

- (a) the sub-division has a large procurement or disposal by tender workload which would be more effectively managed by the subdivision;
- (b) the sub-division has a specialized procurement or disposal by tender workload which would be more effectively managed by the subdivision;
- (c) the sub-division is geographically distant from the procuring entity and a delegation would reduce practical and logistical problems or reduce costs;

- (d) the sub-division operates in practical terms as an independent entity and would operate more effectively under delegated authority; and
- (e) in any other reasonable circumstances.

(3) Where an accounting officer or chief executive officer approves a delegation of authority to a sub-division, he shall, in the same way as the procuring entity:-

- (a) appoint a delegated tender board for the respective sub-division; and
- (b) cause to be established a delegated procurement management unit for the respective sub-division.

(4) When procurement is delegated to a sub-division of the procuring entity, the tender board and procurement management unit of the procuring entity shall;

- (a) remain responsible for work and decisions of the bodies to whom the procurement and disposal function by tender is delegated;
- (b) monitor or audit delegated bodies as required
- (c) submit consolidated reports covering all the procurement and disposal activities of the procuring entity to the Authority or any other body;
- (d) liaise with the Authority or any other body on behalf of the body to whom the procurement and disposal by tender functions are delegated; and
- (e) advise the body to whom the procurement and disposal functions are delegated on all matters relating to public procurement and disposal of public assets by tender.

(5) A tender board and procurement management unit to whom the procurement and disposal by tender functions are delegated shall:-

- (a) submit such reports to the main tender board of the procuring entity as may be required;
- (b) give a copy of the minutes of all its meetings to the main tender body of the procuring entity;
- (c) seek advice from the main tender board and procurement management unit on all matters relating to public procurement and disposal of public assets by tender
- (d) request the main tender board and procurement management unit to act on its behalf in matters requiring liaison with the Authority or any other body

(6) An accounting officer or chief executive officer shall not delegate any of the following functions of tender board to a sub-division of the procuring entity:

- (a) Providing overall guidance on procurement development within the procuring entity;
- (b) Liaising directly with the Authority on matters within its jurisdiction; and
- (c) Making recommendations to the accounting officer in respect to delegation of functions.

(7) An accounting officer or chief executive officer shall not delegate any of the following functions of procurement management unit to a sub-division of the procuring entity

- (a) advising user departments on any individual procurement method or practice;
- (b) liaising directly with the Authority on matters within its jurisdiction;

- (c) acting as procurement coordinator for the procuring entity
- (d) planning for procurement of the procuring entity;
- (e) preparing reports required for submission to the tender board or accounting officer or chief executive officer.

(8) An accounting officer or chief executive officer may revoke the delegation of the authority through written instructions to the holder of the delegated function in case where

- (a) where the holder of the delegated functions is not complying with the Act, these Regulations, guidelines made under Act and conditions of the delegation;
- (b) where the circumstance prompting the delegation have changed;
- (c) where a malpractice is alleged, proved or suspected; and
- (d) for any other justified reason

Contract
ing out
to
another
procuring
entity

89.-(1) Subject to the provisions of the Act, an accounting officer or chief executive officer may contract out entire procurement and disposal by tender function to another procuring entity:

- (a) where the procuring entity is unable to comply with the Act, these Regulations or guidelines due to its size or any other factor;
- (b) where the accounting officer or chief executive officer decides that it would be more economical or efficient to delegate the function; or
- (c) in any other reasonable circumstance.

(2) A tender board may recommend the contracting out limited procurement or disposal by tender function to another procuring entity:-

- (a) where that other procuring entity has specialized knowledge, expertise or experience in the subject matter of the procurement or disposal by tender;
- (b) where a requirement is subject to common procurement or disposal by tender;
- (c) where a project is being jointly implemented;
- (d) where it would be more economical or efficient to contract out a requirement; or
- (e) in any other reasonable circumstances.

(3) Where the procurement and disposal by tender function is contracted out to another procuring entity, the accounting officer or chief executive officers of the two procuring entities shall agree on:

- (a) any function that may be excluded from the contract in the case of entire contracting out
- (b) the requirements, type of requirements or projects to be subject of the contract, in the case of limited contracting out;
- (c) the mechanism for implementation of a procurement and disposal by tender requirement;
- (d) reporting and monitoring procedures and responsibilities;
- (e) any limitations or exceptions to the contract ; and
- (f) any costs to be paid

(4) An agreement for contracting out shall be confirmed in writing and signed by the accounting officers or chief executive officers of the two procuring entities

(5) Where a limited procurement and disposal by tender requirement is contracted out to another procuring entity, the

institutional arrangements for the approval of the requirements shall be agreed upon by the accounting officers or chief executive officers, but may include:

- (a) approval of the tender board of the procuring entity initiating the requirements;
- (b) approval of the tender board of the procuring entity to which the procurement has been contracted;
- (c) approval of the tender boards of the two procuring entities;
- (d) a requirement that a representative of the initiating tender board may observe or participate in the meetings of the tender board to which the procurement is contracted;
- (e) a requirement for approval by a joint tender board established by both procuring entities
- (6) The procuring entity shall furnish the Authority with the copy of the contract entered between the two entities.

Contract
ing out
to
procure
ment
Agent

90-(1) A procuring entity may contract out any of the following procurement and disposal by tender functions of a procuring entity to a procurement agent

- (a) advising user department on an individual procurement and disposal by tender methods or practice;
- (b) recommending appropriate procurement and disposal methods;
- (c) preparing:
 - (i) a statement of requirements or terms of reference;
 - (ii) solicitation documents and any clarifications or amendments;
 - (iii) contract documents;
 - (iv) contract amendments;
 - (v) receiving bids;

- (vi) coordinating bid openings; and
- (vii) managing the bid evaluation process.

(2) A procuring entity may contract out the following contract management functions of a user department to a procurement agent:

- (a) administering and managing contracts;
- (b) reporting to the procurement management unit any departure from the terms and conditions of the awarded contract;
- (c) preparing change orders in accordance with the terms and conditions of the contract; or
- (d) certifying invoices for payment to consultants.

(3) A procuring entity shall not contract out both the procurement and disposal by tender functions and the contract management functions to the same procurement agent

(4) The functions of the accounting officer or chief executive officer and the tender board shall not be contracted out to a procurement agent.

(5) The procuring entity shall furnish the Authority with the copy of the contract entered between the procuring entity and the procurement agent.

Disagree
ments
between
the
Accounti
ng
Officer
or chief
executiv
e officer
and the
Tender
Board

91. (1) Where the accounting officer is not satisfied with the decision of the tender board regarding application or interpretation of any procurement method, process or practice or disposal by tender under these Regulations, the accounting officer may:

- (a) return the decision to the tender board for review giving written reasons for the dissatisfaction and ;
- (b) where not satisfied with the outcome of the review he may request for an independent review by the Authority .

(2) Where a tender board disagrees with the views of the accounting officer or chief executive officer on its recommendations under subregulation (1) it may request for independent advice from the Authority

(3) A party seeking advice from the Authority under subregulation (1) and (2) shall state in writing the reasons for its disagreement

Disagree
ments
between
the
Tender
Board
and the
procure
ment
manage
ment unit

92-(1) Where a tender board disagrees with the recommendations of the procurement management unit, it may:

- a. return the submission to the procurement management unit for review giving written reasons for its disagreement; or
- b. request for independent advice from the Authority.

(2) Where a procurement management unit disagrees with the views of the tender board on its recommendations under subregulation (1)(a) it may request for independent advice from the Authority

(3) A party seeking advice from the Authority under subregulation (1) and (2) shall state in writing the reasons for its disagreement

Disagree
ments
between
the
procure
ment
manage
ment unit
and the
user
departme
nt

93-(1) Where a procurement management unit disagrees with the the user department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the two parties may jointly consult with any two members of the tender board for review and guidance in resolving the disagreement.

(2) Where such review fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the tender board for a formal decision by the tender board.

PART X
IMPORTANT PROVISIONS IN THE IMPLEMENTATION OF CONTRACTS

Modific
a-tions
of
contract

94. Before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract, a procurement management unit shall inform the appropriate tender board of the proposed extension, modification, substitution, waiver, or change, and the reasons for such changes.

Emerge
ncy
procure-
ment

95.-(1) If an Accounting Officer or Chief Executive officer of a procurement entity finds that it is in the interest of the Government that services, the value of which exceeds his or her authority, ought to be procured as a matter of urgency, the procuring entity shall:

- (a) evaluate the need for such urgent procurement and decide which procurement method shall be followed in order to guarantee economy and efficiency, with due regard to circumstances of urgency and without regard to his limit of authority;
- (b) procure the services in accordance with the method of procurement selected; and
- (c) immediately thereafter, present the unauthorised procurement to the Paymaster General for retrospective approval.

(2) An Accounting Officer or Chief Executive Officer engaging in procurement in excess of its limit of authority may be held personally liable for the value of the unauthorised procurement in accordance with Sections 16, 17 and 76 of the Act if the Paymaster General decides that the procurement was unnecessary extravagant, occasioned by the procuring entity's lack of foresight or timely action, or otherwise could not be justified.

(3) An award of a contract made by an Accounting Officer or Chief Executive Officer beyond his or her authority and not approved in retrospect shall nevertheless be valid.

(4) Tender Boards are not authorized to grant retrospective approval, but may be prepared to give advice to the Paymaster General, if called upon to do so.

(5) The Authority in collaboration with the Stock Verification Department and the Technical Audit Unit of the Ministry of Finance shall advise the Paymaster General on the appropriate action to take.

Alterati
on
and
amendm
ent

96. A procurement contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendment is endorsed by the approving authority that reviewed and approved the original procurement

Additio
ns to
contract
value

97. Any additions to the value of a procurement contract shall be reviewed and agreed by the approving authority that endorsed the original contract.

Validity
of
procure-
ment
authoriz
ation

98.-(1) Where an approval to award a contract has been given but the procuring entity is unable to conclude a contract with the approved consultant, the authority given by a tender board shall be valid for a period of three months which may be extended for a further period of three months without changing the terms and conditions of the original contract.

(2) Sub-regulation (1) shall apply only where the approved consultant has not been notified of the award of contract.

(3) Where the authority granted by a tender board expired in accordance with sub-regulation (1) but approved consultant has not been notified of the award of contract, all proposes received shall be treated as having been rejected and the selection process annulled and new request for proposals be made provided that firms which had submitted proposals in the first instance are equally invited to submit proposals.

**PART XI
PROHIBITION**

Proper Conduct **99.** (1) Procuring entities and approving authorities as well as consultants under public financed contracts shall proceed in a transparent and accountable manner during the selection and execution of such contracts as required by Section 72 of the Act.

(2) A procuring entity, approving authority and a consultant shall, in any request for proposal for public contracts include an undertaking of the consultant to observe the country's laws against fraud and corruption including bribery in competing for and executing a contract as per Memorandum given under the Seventh Schedule to these Regulations

Disclosure of pecuniary interest **100.**-(1) If a member of the procuring entity or a member an approving authority has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the procuring entity or approving authority at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the evaluation, consideration or discussion of the contract or other matter or vote on any question with respect to it.

(2) A member of a procuring entity or a member of an approving authority who has disclosed an interest in accordance with this Regulation shall forthwith withdraw from the meeting.

(3) Any person who fails to comply with the provisions of sub-regulation (2), he shall for each offence be liable to the provisions of section 76 of the Act unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

Pecuniary interests for purposes of Regulation 100 **101.**-(1) For the purposes of Regulation 100 a person shall be treated, subject to sub-regulation (2) and (3), as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment, of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

(2) Sub-regulation (1) does not apply to membership of or employment under any public body and a member of a company or other body shall not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.

(3) In the case of married persons living together, the interest of one spouse shall, if known to the other, be deemed for the purposes of Regulation 100 to be also an interest of the other.

General notices and recording of disclosures for the purpose of Regulation 100

102.-(1) A general notice given in writing to the accounting officer or chief executive officer, in case of an employee of the procuring entity, or to the secretary of the tender board by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, shall unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body, or to that person which may be the subject of consideration after the date of the notice.

(2) The accounting officer or chief executive officer, in the case of an employee of the procuring entity or the Secretary of a tender board, in the case of an approving authority, shall cause to be recorded in a book to be kept for the purpose, particulars of any disclosure made under Regulation 100 and of any notice given under this Regulation, and the book shall be open at all reasonable hours to the inspection of any member of the public.

Tampering with submitted proposals

- 103.**-(1) No person shall:
- (a) open an envelop or other container in which a proposal is contained, other than in the due and proper execution of his duties under these regulations;
 - (b) burn, tear or otherwise destroy any proposal; or
 - (c) erase or do any other act which falsifies or renders incomplete or misleading any proposal.

(2) The measures provided by the Act shall not preclude the institution of criminal proceedings pursuant to the Penal Code, the Prevention of Corruption Act, 1971, or any other written Law against any person discharging functions or exercising powers under the Act or these Regulations.

**PART XII
REVIEW OF PROCUREMENT DECISIONS AND DISPUTES
SETTLEMENT**

Review of procurement decisions

104. A consultant who claims to have suffered or that may suffer any loss or injury as a result of breach of a duty imposed on a procuring entity or an approving authority by the Act or these Regulations may seek a review in accordance with Section 79 of the Act and Regulations 105 to 108

Time limit on review

105. The consultant shall submit an application for review within twenty eight days of becoming or should have become aware of the circumstances giving rise to the complaint or dispute.

Submission of applications for review

106.-(1) Any application for administrative review shall be submitted in writing to the Accounting Officer or Chief Executive Officer of a procuring entity and a copy given to the Authority.

(2) The application for administrative review shall include:

- (a) details of the procurement requirements to which the complaint relates;
- (b) details of the Section of the Act, Regulation or provision that has been breached or omitted;
- (c) an explanation of how the section of the act, regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
- (d) documentary or other evidence supporting the complaint where available;
- (e) Remedy sought; and
- (f) any other information relevant to the complaint

(3) The accounting officer or chief executive officer or of the approving authority shall not entertain a complaint or dispute or continue to do so after the procurement contract has entered into force.

Adminis
t-rative
review
by
accounti
ng
officer

107.-(1) An accounting officer or chief executive officer shall immediately, upon receipt of an application for administrative review, suspend the procurement or disposal proceedings where a continuation of the proceedings might result in an incorrect contract award decision or making worse any damage already done.

(2) An accounting officer or chief executive officer shall institute an investigation to consider:

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring entity;
- (c) information provided by staff of a procuring entity;
- (d) information provided by other consultants; and
- (e) any other relevant information.

(3) An accounting officer or chief executive officer shall, within thirty days after receipt of the complaint or dispute, deliver a written decision which shall indicate:

- (a) whether the application is upheld in whole, in part or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken.

(4) The accounting officer shall submit a copy of the decision to the Authority.

(5) Where the accounting officer or chief executive officer does not issue a decision within the time specified in sub-regulation (3), the consultant submitting the complaint or dispute or the procuring entity shall be entitled immediately thereafter to institute proceedings under Regulation 108 and upon instituting such proceedings, the competence of the accounting officer or chief executive officer or of the approving authority to entertain the complaint or dispute shall cease.

Adminis
t-rative
review
by the
Authorit
y

108.-(1) A consultant may submit an application for review by the Authority where the accounting officer or chief executive officer does not issue a decision within the time specified in Regulation 107(3) or the consultant is not satisfied with the decision by accounting officer or chief executive officer.

(2) The application to the Authority for administrative review shall be submitted within fourteen working days from the date of communication of the decision by the accounting officer, or after expiry of time specified in Regulation 107(3).

(3) The application for administrative review by the Authority shall be accompanied by a payment of a fee prescribed in the Fifth Schedule to these Regulations

(4) The application to the Authority for administrative review shall be copied to the respective accounting officer or chief executive officer and shall include:

- (a) a copy of the original application to an accounting officer and the supporting documents;
- (b) a copy of relevant correspondence to and from an accounting officer;
- (c) a statement by the consultant that an accounting officer failed to issue a decision and the relevant dates, where applicable; or an explanation of why the consultant is not satisfied with the decision of the accounting officer, where applicable.

(5) The Authority shall, upon receipt of an application, immediately:

- (a) give notice of the application to the procuring entity;
- (b) instruct the procuring entity to suspend any further action on the selection requirement, where the Authority considers a suspension necessary;
- (c) notify all consultants who submitted proposals of the application and invite them to submit any similar complaints if any prior to a given deadline; and
- (d) institute an investigation.

(6) The Authority shall investigate the application for administrative review by considering, where appropriate, the following:

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring entity;
- (c) the information provided by staff of a procuring entity;
- (d) information provided by other consultants; and
- (e) any other relevant information.

(7) The Authority shall within thirty days after receipt of a application for administrative review deliver a written decision which shall indicate:

- (a) whether the application is upheld in whole, in part or rejected;
- (b) the reasons for its decision; and
- (c) the corrective measures to be undertaken.

(8) The decision of the Authority shall be final unless an action is commenced under section 82.

Review
by the
Public
Procurement
Appeals
Authority

109 Complaints or disputes not amicably settled by the Authority shall be referred to the Public Procurement Appeals Authority for which its Rules and procedures shall apply.

PART XIII MISCELLANEOUS PROVISIONS

Evaluation
of
consultant's
performance

110.-(1) A procuring entity shall evaluate and record the performance of consultants on services financed by the Government or any public body.

(2) The procuring entity's procedures shall be designed to ensure that performance evaluation is handled objectively and confidentially.

(3) A procuring entity shall take into consideration the performance of consultants on public financed projects and studies.

Role of
the
Consultant

111.-(1) Once a consultant receives the pre-qualification or request for proposals document, the consultant shall study the documents carefully to decide if it can meet the technical, financial and contractual conditions, and if so, proceed to prepare its offer.

(2) The consultant shall critically review the documents to see if there is any ambiguity, omission or internal contradiction, or any

feature of the terms of reference or other conditions which are unclear or appear discriminatory or restrictive; if so, it shall seek clarification from the procuring entity, in writing, within the time period specified in the request for proposals documents.

(3) The criteria and methodology for selection of the successful consultant shall be outlined in the request for proposals documents, generally under "Information to Consultants". If these are not clear, clarification shall be similarly sought from the procuring entity.

(4) The specific requests for proposals documents issued by the procuring entity shall govern each procurement and if a consultant feels that any of the provisions in the documents are inconsistent with these Regulations, it shall also raise this with the procuring entity including all the supporting documents requested in the Request for Proposals.

(5) It shall be essential to ensure accuracy in the curriculum vitae of key staff submitted with the proposal and such curriculum vitae shall be signed by the consultants and the individual and dated. Non-compliance with both technical and financial requirements shall result in rejection of the proposal.

(6) If a consultant wishes to propose deviations to a basic requirement, or propose an alternative solution, the consultant shall quote the price for the fully compliant proposal and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted.

(7) Once proposals are received and opened, consultants will not be required or permitted to change the price or substance of their proposals.

Action
by
tender
boards

112.-(1) Consultants are free to send copies of their communications on issues and questions with a procurement management unit to an appropriate tender board or to write to an

appropriate tender board directly, when a procurement management unit does not respond promptly, or the communication is a complaint against a procurement management unit.

(2) References received by a tender board from short-listed consultants sufficiently at least 15 days in advance, prior to the closing date for submission of the proposals, will, if appropriate, be referred to the procurement management unit with the tender board's comments and advice, for action or response.

(3) Communication received from consultants after the opening of the proposals will be transmitted to the procurement management unit for examination and response to the consultant and the tender board.

(4) If additional data is required to complete this process, these will be obtained from the procurement management unit and if additional information or clarification is required from the consultant the tender board will ask the procurement management unit to obtain it and comment or incorporate it, as appropriate, in the evaluation report.

(5) The tender board's review will not be completed until the communication is fully examined and considered.

(6) Except for acknowledgement, a tender board will not enter into discussion or correspondence with any consultant during the evaluation and review process of the procurement until award of contract is notified.

Amend-
ment
of the
Regula-
tions

113. The Minister may, by order published in the *Gazette*, modify or alter these Regulations and their application in such manner and to such extent as may be necessary or expedient to bring these Regulations into conformity with the provisions of the Act.

Repeal
and
saving
GN.137 of
2001

114. Public Procurement (Selection and Employment of Consultants) Regulations GN. 137 are hereby revoked.

FIRST SCHEDULE

AUTHORISED PROCUREMENT LIMITS FOR ACCOUNTING OFFICERS AND CHIEF EXECUTIVE OFFICERS

(a) Authorised Ministerial Procurement Limits for Accounting Officers and Heads of Departments

Method of procurement	Maximum procurement value per annum subject to the limit of Tshs 10,000,000 per contract for the Accounting Officer and Tshs 3,000,000 per contract for the Head of Department.	
	Heads of Department	Accounting Officers
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000

Notes:

For the procurement to be approved by the Head of Department or Accounting Officer, the procurement must have the prior endorsement of the Secretary to the Ministerial Tender Board and by at least two other members of that Ministerial Tender board.

(b) Authorised Parastatal Organizations Procurement Limits for Chief Executive Officers

Method of procurement	Maximum procurement value per annum subject to the limit of Tshs 7,500,000 per contract for the Chief Executive and Tshs. 3,000,000/= for Head of Department	
	Head of Department	Accounting Officer
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources	Up to Tshs 20,000,000	Up to Tshs 50,000,000

NOTES: *For the procurement to be approved by the Chief Executive or Head of Department,, the procurement must have the prior endorsement of the Secretary to the Parastatal Organization Tender Board and at least two other member of the Parastatal Organisation Tender Board.*

(c) Authorised TanRoads Procurement Limits (in Tshs.)

Method of procurement	Regional Manager	Chief Executive	
		Maximum Per Contract	Maximum Per annum
Direct contracting for works and services on quotations basis with minimum three quotations from different sources	TO BE FIXED BY TANROADS HEADQUATERS BASED ON POWERS GIVEN TO DELEGATE	50,000,000	300,000,000
Direct shopping for goods on quotations basis with minimum three quotations from different sources		10,000,000	50,000,000

NOTES

For the procurement to be approved by the TanRoads Chief Executive, the procurement must have the prior endorsement of the Secretary to the TanRoads Headquarters Tender Board and at least two other member of the TanRoads Headquarters Tender Board.

SECOND SCHEDULE

METHODS OF SELECTION AND LIMIT OF APPLICATION

Method of Procurement	Limits
International Competitive Selection	No Limit
National Competitive Selection	Up to Tshs 1,000,000,000
Restricted Competitive Selection	Up to Tshs 500,000,000
Single-Source Selection	Up to Tshs 300,000,000
Individual Selection	Up to 150,000,000/-
Minor Value Procurement	Up to Tshs 7,500,000

THIRD SCHEDULE

STANDARD PROCUREMENT PROCESSING TIME

S/N	Activity	Time (Calendar days)	
		National Competitive Selection	International Competitive Selection
1	Preparation of Terms of Reference	7 to 21	21 to 30
2	(i) Inviting for expression of interest up to submission of the same by consultants OR	At least 14	at least 30
	(ii) Invitation of Application for prequalification up to the submission of the same by Consultants	at least 30	at least 45
3	Evaluation of Expression of interest and preparing shortlist with approvals	14	21
4	Preparation issuance of the Request for Proposal	14	21
5	Review and approval of Request for Proposal by the tender board or approval committee	7	7

6	Preparation and submission of proposals by the consultants	At least 30	at least 45
7	Evaluation of Proposal and notification of award and obtaining necessary approvals	30	30
8	Award of contract	7	7

FOURTH SCHEDULE

NATIONAL AND EXCLUSIVE PREFERENCE

(a) Margin of Preference for National and International competitive

Regulation	Input of National firm in the association	Preference (%)
14(2)	20-40%	4
	40-60%	6
	60-80%	8
	80-100%	10

(b) Project value below which Exclusive Preference will be applied

Regulation	Beneficiary of preference	Project Value
15(1)	National firms or Association of National and Foreign firms in which the contribution of the national firm to the association is more than 75%	500,000,000
75(6)	Individual Consultant	50,000,000

FIFTH SCHEDULE

FEES FOR ADMINISTRATIVE REVIEW BY THE AUTHORITY

Fees payable to the Authority on lodging an application for Administrative Review	Tshs. 10,000/-
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SIXTH SCHEDULE

GUIDELINES FOR FIXING WEIGHTS FOR EVALUATING TECHNICAL PROPOSAL

(a) General –Regulation 58(4)

S/No	Criteria	Weights
1	Firm's general experience, reputation and experience in previous similar assignments	5% to 15%
2	Understanding of the terms of reference, methodology and the overall quality of the proposal	20% to 40%
3	Qualification of key personnel	30% to 60%
4	Local firms participation	5% to 15%
5	Participation by national experts	5% to 10%
6	Knowledge of the country	5% to 10%

(b) Pre-qualification – Regulation 58(6)

S/No	Criteria	Weights
1	Overall experience in the field of the assignment and in comparable assignments	20% to 50%
2	Professional reputation of the firm and its experience in previous assignments	20% to 40%
3	Knowledge of project environment in Tanzania and of the regional countries and their implications for the project	10% to 20%
4	Inclusion of local firms and experts in the assignment	10% to 20%

(c) Request for Proposal (or Evaluation of Proposal)-Regulation 58(7)

S/No	Criteria	Weights
1	Understanding of terms of reference	10% to 20%
2	Overall quality of the offer, quality of the work and methodology	20% to 30%
3	Qualifications of experts and experience in the field of the assignment	40% to 60%
4	Inclusion of local experts	5% to 15%

(d) Individual Consultants – Regulation 79(7)

S/No	Criteria	Weights
1	General Qualifications and Suitability of the task to be performed	30% to 60%
2	Experience in the specific assignment described in the terms of reference	30% to 50%
3	Language proficiency	5% to 15%
4	Knowledge of the country	0% to 10%

SEVENTH SCHEDULE

Anti-Bribery Policy/Code of Conduct and a Compliance Program

MEMORANDUM

**Government of the United Republic of Tanzania
Procedures for tendering for public sector contracts**

The following procedures will apply to the letting of contracts for the public sector in addition to the standard legal and projects. These procedures are administrative requirements; they will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of the United Republic of Tanzania and any of the competing tenders.

- (1) Each tenderer must Submit a statement, as part of the tender documents, with the following text.

“This company places importance on competitive tendering taking place on a basis that is free fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relations or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub-contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and compliance Program are attached"

(Alternatively: This company has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers')

- (2) (a) This statement must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and, where relevant, of its subsidiary in the United Republic of Tanzania. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
- (b) Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners, the tenderer may cover the subcontractors and consortium partners in its own statement, provided the tenderer assumes full responsibility.
- (3) (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
- (b) Each tenderer will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
- (c) The successful tenderer will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
- (d) Within six months of the completion of the performance of the contract, the successful tenderer will formally certify that no bribes or other illicit com- missions have been paid. The final accounting shall include brief details

of the goods and services provided that are sufficient to establish the legitimacy of the payments made.

- (e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
- i) Cancellation of the contract,
 - ii) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages), unsuccessful tenderer would present their claims under international arbitration,
 - iii) Forfeiture of the tender security, and
 - iv) Debarment by the Government of the United Republic of Tanzania from tendering for further public contracts for a period of ten years and as the Government may deem appropriate.
- (6) Tenderers shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their - general or project - specific - Compliance Program.
- (7) The Government of the United Republic of Tanzania has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by tenderers for this contract, and to which in turn all tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a tenderer may be disclosed to another tenderer or to the public).

**Dar es Salaam,
12th April, 2005**

**BASIL P.MRAMBA (MP),
Minister for Finance**