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Act

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The Public Procurement Amendment ACT, 2016

Tanzania, United Republic

Ministry of Finance and Planning

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THE PUBLIC PROCUREMENT (AMENDMENT) ACT, 2016

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THE UNITED REPUBLIC OF TANZANIA



NO. 5 OF 2016

IA MULLINGANO WA TANZANIA

I ASSENT,

[Signature]

.....

President

07/07/2016

[.....]

An Act to amend the Public Procurement Act with a view to enabling efficiency in regulating procurement processes, to ensure value for money in public procurement and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania

PART I
PRELIMINARY PROVISIONS

Construction
Cap. 410

1. This Act may be cited as the Public Procurement (Amendment) Act, 2016 and shall be read as one with the Public Procurement Act, hereinafter referred to as the "principal Act".

PART II
GENERAL AMENDMENTS

Amendment of
section 3

2. Section 3 of the principal Act is amended-

(a) by deleting the definition of the term “defence and national security organs” and substituting for it the following:

Cap .47 “defence and national security organs” has the meaning ascribed to it under the National Security Council Act;”

(b) in the definition of the word “procurement”, by deleting the words “preparation and award of contracts” and substituting for them the words “preparation, award and management of contracts”;

(c) by inserting in its appropriate alphabetical order, the following new definition:

“ “value for money” means the maximum benefit from goods, works or services procured with the resources available worth the cost incurred;”

(d) inserting immediately after paragraph (d) the following:

“local firm” means a firm whose majority share capital is owned by citizens of the United Republic”

(e) inserting immediately after the proposed new definition “local firm” the following definition:

“life-saving health commodities” includes medicines, medical devices and health supplies that effectively address leading avoidable causes of death during pregnancy, childbirth and childhood as may be modified from time to time by the Minister in consultation with the Minister responsible for health by the order published in the *Gazette*”

Addition of
section 4A

3. The principal Act is amended by adding immediately after section 4, a new section 4A as follows:

“General
principles and
standards of
procurement and
disposal by
tender

4A.-(1) All public procurement and disposal by tender shall be conducted in accordance with the basic principles set out in this Act.

(2) Subject to this Act, all procurement and disposal shall be conducted in a manner that maximizes integrity, competition, accountability, economy, efficiency, transparency and achieves value for money.

(3) Procuring entities shall, ~~in the execution of their duties;~~ undertake to achieve the highest standards of equity, taking into account-

- (a) equality of opportunity to all tenderers;
- (b) fairness of treatment to all parties; and
- (c) the need to obtain the best value for money in terms of price, quality and delivery, having regards to prescribed specifications and criteria.”

Amendment of
section 6

4. The principal Act is amended in section 6(2) by inserting immediately after the word “procurement” appearing in paragraph (d) the word “policy”.

Amendment of
section 9

5. The principal Act is amended in section 9(1) by-

(a) deleting paragraph (d) and substituting for it the following-

“(d) in collaboration with the Attorney General’s Chambers and professional bodies, prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other documents to procuring entities;”

(b) adding immediately after paragraph (m), the following new paragraphs-

“(n) build capacity to stakeholders engaged in public procurement issues;

(o) obtain price information for standardized common use items and services from relevant public bodies with a view to ensuring that the prices conform with the prevailing market prices.”

(c) renaming paragraphs (n) and (o) as paragraphs (p) and (q) respectively.

Amendment of
section 10

6. The principal Act is amended in section 10 by adding immediately after subsection (2) the following new subsection-

“(3) During the conduct of investigation, the Authority may order the suspension of proceedings or implementation of any matter under investigation”.

Amendment of
section 18

7. The principal Act is amended in section 18(1) by deleting the word “tenderers” appearing in paragraph (e).

Amendment of
section 20

8. The principal Act is amended in section 20(1) by deleting the words “entities, not of Government” appearing in the fourth line of paragraph (a) and substituting for them the words “non-Government entities”.

Amendment of
section 23

9. The principal Act is amended in section 23 by deleting subsection (2) and substituting for it the following-

“(2) The Chief Executive Officer shall be appointed from amongst professionals with at least ten years experience in either engineering, architecture, law, procurement and supplies management, quantity surveying, business administration, economic development planning or in any other related field, and shall have academic qualifications and experience in such fields including proven record of procurement experience.”

Amendment of
section 25

10. The principal Act is amended in section 25 by deleting subsection (5).

Amendment of
section 35

11. The principal Act is amended in section 35 by-
(a) deleting subsections (3), (4) and (5); and
(b) renumbering subsection (6) as subsection (3).

Amendment of
section 36

12. The principal Act is amended in section 36(1) by-
(a) deleting paragraph (1) and substituting for it the following-

- “(1) submitting to the Authority details of procurement contracts awarded and annual procurement plan for the next financial year.”
- (b) adding immediately after paragraph (m), a new paragraph (n) as follows:
- “(n) save for areas where there is no electronic infrastructure, ensure that all procurement information is promptly posted electronically; and”
- (c) renaming paragraph (n) as paragraph (o).

Amendment of
Part V

13. The principal Act is amended by deleting the title to Part V and substitute for it the following:

“SPECIFIC PRINCIPLES OF PUBLIC
PROCUREMENT”

Repeal of
section 47

14. The principal Act is amended by repealing section 47.

Amendment of
section 50

15. The principal Act is amended in section 50 by-

(a) deleting the words “closed or” appearing in subsection (1);

(b) deleting subsection (3) and substituting for it the following-

“(3) For the purpose of this section, “open framework agreement” means an agreement containing specified terms and conditions but does not contain agreed price.”

Addition of
sections 55A, 55B,
55C, 55D and 55E

16. The principal Act is amended by adding immediately after section 55, the following new sections-

“Inclusion of
local firms and
experts in
consultancy
contracts

55A.-(1) Foreign firms competing to be awarded non-emergency consultancy assignments whether by tender or any other means recognized in this Act shall be required to include local experts and firms in their teams .

(2) In the evaluation of foreign firms procuring entities shall ensure that the principle of mandatory inclusion of local experts and local firms in non-emergency assignments has been observed and shall be apportioned a weight to reflect its intensity and level.

(3) A procuring entity shall, for the purpose of subsection (1), assign weights as follows:

(a) in the criteria for participation of local firms, assignment of maximum weight of fifteen percent shall be included in the request for proposal, and firms that demonstrate inclusion of local firms of at least fifty percent are granted a full score; and

- (b) in the criteria for participation of national experts, assignment of maximum weight of ten percent shall be included in the request for proposal, and firms that demonstrate that at least fifty percent of their key staff who are Tanzanians are granted a full score.

Use of local experts in goods, works and non-consultancy services contract

55B. When applying the margin of preference in respect of works or non-consultancy services, a procuring entity shall comply with the guidelines issued by the Authority, and shall consider-

- (a) in addition to shareholding structure in the joint venture, the extent of inclusion of key local staff in the joint venture;
- (b) the extent of use of materials locally manufactured, produced or mined.

Preference to
local goods

55C. In contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the Regulations.

Capacity
building of
local firms

55D.-(1) A procuring entity shall, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.

(2) Where individual firms lack the capacity to execute the contracts, the firms may form joint ventures with a view to enhancing their capacity.

(3) The Minister may make Regulations prescribing procedures for capacity building of local firms under this section.”

55E. Notwithstanding any other provision to the contrary, local firm under section 55A, 55B, 55C and 55B shall have a share capital which is wholly owned by citizens of the United Republic”

Amendment of
section 59

17. The principal Act is amended in section 59 by deleting subsection (6).

Amendment of section 60

18. Section 60 of the principal Act is amended-

- (a) in subsection (3), by deleting the word “fourteen” appearing in the fourth line and substituting for it the word “seven working”;
- (b) subsection (11), by deleting the words “when a written acceptance of a tender is communicated to the successful tenderer” and substituting for them the words “when the formal contract is signed by parties to the contract”

Addition of section 60A

19. The principal Act is amended by adding immediately after section 60, a new section 60A as follows:

“Witnessing of contract signing

Cap. 12

60A.-(1) Witnessing of signing of a contract shall be done in accordance with the law or any other relevant legal instrument which establishes the procuring entity concerned.

(2) Where the law or a legal instrument does not provide for the manner of witnessing the signing of contracts, any person enumerated under the Notaries Public and Commissioner for Oaths Act shall be eligible to witness the signing of contracts.”

Amendment of section 63

20. The principal Act is amended by deleting section 63 and substituting for it the following:

“e-procurement 63. Procuring entities shall ensure that procurement or disposal by tender is implemented and reported through electronic procedures or manually where electronic facility is not available.”

Amendment of
section 64

21. Section 64 of the principal Act is amended-

(a) in subsection (2), by-

- (i) adding the words “including special groups” at the end of paragraph (c); and
- (ii) deleting the closing phrase and substituting for it the following:

“the procuring entity shall set aside a specific percentage of the procurement volume in accordance with the procedures set out in the Regulations”.

(b) in sub-section (3) by adding the following new paragraph-

“(c) “special groups” includes women, youth, elderly and persons with disability”.

(c) by adding immediately after subsection (4) the following new subsections:

(5) The use of force account may be justified where:

- (a) the works are small, scattered and in remote location for which qualified construction firms are unlikely to tender at a reasonable prices;
- (b) work is required to be carried out without disrupting ongoing operations;
- (c) there is an emergency that needs immediate attention.

- (6) For the purposes of subsection(5), “force account” means a process where works are carried out by a public or semi public departments or agencies by using its personnel and equipment or in collaboration with any other public or private entity.

Amendment of
section 65

22. Section 65 of the principal Act is amended-

- (a) in subsection (1), by deleting the word “urgent” and substituting for it the word “emergency”;
- (b) in subsection (2), by deleting the word “urgent” appearing in paragraph (a) and (b) and substituting for it the word “emergency”
- (c) by deleting subsections (3) and (4);
- (d) by renumbering subsections (5) to (8) as subsections (3) to (6) respectively; and
- (e) in subsection (5) as renumbered by changing the reference to subsection (8) as reference to subsection (6).

Addition of
sections 65A and
65B

23. The principal Act is amended by adding immediately after section 65 the following new sections-

“Procurement
directly from
manufacturer,
dealers or
service
providers

65A.-(1) A procuring entity or the Agency shall, for the purpose of obtaining value for money in terms of price, quality and delivery, procure goods or services directly from a manufacturer, dealer, wholesaler or service provider.

(2) The Minister may make Regulations prescribing-

- (a) goods and services to be procured in terms of subsection (1);
- (b) the manner and procedures of procurement directly from manufacturer, dealer, wholesaler or service provider.

Approved
procurement
Standards

65B.-(1) Procurement of goods for Government use shall be done in conformity with established and approved standards.

(2) Approved standards referred under subsection (1) shall be-

- (a) issued by relevant Government organs specified in Regulations made under this Act; and
- (b) in the manner and procedure prescribed in the Regulations made under this Act.

(3) Notwithstanding subsection (1), the Minister may make Regulations for procurement of certain goods for Government use without approved procurement standards.”

Addition of section
67A

24. The principal Act is amended by adding immediately after section 67 the following new section:

“Lifesaving
health
commodities

67A.-(1) Life-saving health commodities, supplies and equipment shall be treated as items of public interest in their procurement.

(2) The procuring entity shall, in consideration of their importance and nature, by approval of the Minister, fast-track their procurement process or use emergency procurement.

(3) Where the procurement referred to under subsection (1) is to be done under emergency procurement, the procedure stipulated under section 65 shall, with necessary modifications, apply.”

Amendment of
section 73

25. The principal Act is amended in section 73(5) by-

- (a) deleting the words “Subject to the provisions of section 60(3), after” and substituting for them the word “After”; and
- (b) deleting the word “e-examination” and substituting for it the word “examination”.

Amendment of
section 76

26. The principal Act is amended in section 76(2) by-

- (a) deleting paragraphs (c) and (d);
- (b) renaming paragraph (e) as paragraph (c).

Amendment of
section 77

27. The principal Act is amended in section 77(1) by deleting the word “is” appearing in paragraph (b).

Amendment of
section 83

28. Section 83 of the principal Act is amended by-

- (a) deleting subsections (2), (3) and (4) and substituting for them the following-

“(2) Where a procuring entity is satisfied, after due diligence, that any person or firm to which it is proposed that a tender be awarded, has engaged in fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, the procuring entity shall-

- (a) reject a proposal for award of such contract; and
(b) report any person or tenderer, including its directors to the Authority for debarment and blacklisting in accordance with section 62 of the Act.

(3) Where a procuring entity is satisfied after determination by a court or Appeals Authority, as the case may be, that corrupt, fraudulent, collusive, coercive or obstructive practices were engaged in by any person or tenderer in procurement, award of contract or the execution of that contract, the procuring entity shall-

- (a) report any person or tenderer, including its directors, to the Authority for debarment and blacklisting in accordance with section 62 of the Act;
(b) require such person or tenderer to reimburse the portion of disbursed funds and cancel the portion of undisbursed funds to a contract for goods, works or services.

(4) Save as provided in this Act, the Authority shall debar and blacklist such person or tenderer determined in terms of subsection (3)(a) including its directors, for the period of not less than ten years.

(5) The determination by court under subsection (3) shall be sufficient proof for the Authority to debar and blacklist such a person or tenderer, including its directors.”

(b) renumbering subsections (5) and (6) as subsections (6) and (7) respectively.

Amendment of
section 88

29. The principal Act is amended in section 88 by-

(a) deleting subsection (4); and

(b) renumbering subsections (5), (6) and (7) as subsections (4), (5) and (6) respectively.

Amendment of
section 89

30. Section 89(3) of the principal Act is amended-

(a) by deleting the opening phrase and substituting for it the following-

“(3) The Executive Secretary shall be responsible for:”

(b) by deleting the word “control” appearing in paragraph (c) and substituting for it the word “management.”

Amendment of
section 91

31. The principal Act is amended in section 91 by deleting subsection (3).

Amendment of
section 93

32. Section 93 of the principal Act is amended-

(a) in subsection (1), by deleting the words “Members of the Appeals Board” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;

- (b) in subsection (2), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;
- (c) in subsection (3), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;

Amendment of
section 95

33. The principal Act is amended in section 95 by deleting subsection (3).

Amendment of
section 96

34. Section 96 of the principal Act is amended-

- (a) in subsection (4) by deleting the words “twenty eighty days” and substituting for them the words “seven working days”
- (b) in subsection (6) by deleting the word “fourteen” and substituting for it the word “seven working”

Amendment of
section 97

35. Section 97 of the principal Act is amended-

- (a) in subsection (2), by deleting the closing phrase and substituting for it the following closing phrase-
“the tenderer may make a complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision.”
- (b) in subsection (3), by deleting the word “fourteen” appearing in the fifth line and substituting for it the word “seven working”;
- (c) in subsection (5), by adding immediately after paragraph (f) the following new paragraphs:

- “(g) order payment of compensation to the procuring entity for any reasonable cost incurred by procuring entity in whose favor a decision has been made by the Appeals Authority;
 - (h) set aside, vary or confirm the decisions made by the Authority to blacklist; or
 - (i) any other order or relief as it may deem fit to grant.”
- (d) by deleting subsection (8) and substituting for it the following-
- “(8) The decision of the Appeals Authority shall be binding on the parties to the complaint or appeal and shall be enforceable in the same manner as a decree or order of the court”.

Amendment of
section 99

36. Section 99 of the principal Act is amended by-

- (a) deleting subsections (1) and (2);
- (b) renumbering subsections (3) and (4) as subsections (1) and (2) respectively;
- (c) in subsection (1) as renumbered-
 - (a) by inserting the words “made pursuant to sections 96 and 97 after the words “Appeals Authority”;
 - (b) by deleting the word “seven days” appearing in the second line and substituting for them the words “seven working days”

Amendment of
section 101

37. Section 101 of the principal Act is amended-
- (a) in subsection (2) by deleting paragraph (b) and substituting for it the following-
 - “(b) in the case of an application by a procuring entity or a tenderer who is a public institution challenging the decision of the Appeals Authority, the procuring entity and tenderer shall state their positions to the Attorney General immediately after leave has been granted by the High Court.”
 - (b) in subsection (3) by deleting the words “in accordance with Order XXXIV of the Civil Procedure Code” appearing at the end of that subsection.

Amendment of
section 105

38. The principal Act is amended in section 105(2) by-
- (a) inserting immediately after the word “aircrafts” appearing in paragraph(d) the following:
 - “lifesaving health commodities”
 - (b) deleting the word “and” appearing in paragraph (w);
 - (c) adding immediately after paragraph (w) the following new paragraphs:
 - “(x) procurement procedures for commercial use by public bodies; and
 - (y) procedures for emergency procurement;”
 - (d) renaming paragraph (x) as paragraph (z).

Amendment of the
Second Schedule

39. The principal Act is amended in the Second Schedule by-
- (a) deleting the words “not less than once in a month, as the Chairman may determine.” appearing at the end of paragraph 5 and substituting for them the word “quarterly.”; and
 - (b) adding immediately after paragraph 5 the following proviso-

“Provided that, the board may convene an extra-ordinary meeting as the Chairman may determine.”

Amendment of the
Third Schedule

40. The principal Act is amended in the Third Schedule by-
- (a) deleting paragraphs 3 and 8; and
 - (b) renumbering paragraphs 9 and 10 as paragraphs 8 and 9 respectively.

Passed by the National Assembly on the 29th June, 2016.



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Clerk of the National Assembly