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**NOTICE**

The Bills following hereunder shall be presented before the House of Representatives for the first reading which will start its session on 21<sup>st</sup> day of September, 2016, and is gazetted for the public notice incorporating together with their object and reasons.

**ZANZIBAR**  
29<sup>th</sup> August, 2016

(Dr. ABDULHAMID Y. MZEE)  
*Secretary to the Revolutionary  
Council and Chief Secretary*

**ABILL**

*for*

**AN ACT TO REPEAL THE PUBLIC PROCUREMENT AND  
DISPOSAL OF PUBLIC ASSETS ACT, NO. 9 OF 2005 AND TO  
ENACT LAW WHICH WILL ESTABLISH THE PUBLIC  
PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
AUTHORITY AND PROVIDE FOR OTHER MATTERS  
CONNECTED THEREWITH**

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**ENACTED** by the House of Representatives of Zanzibar

**PART I**  
**PRELIMINARY PROVISIONS**

Short title and Commencement.      **1.** This Act may be cited as the Public Procurement and Disposal of Public Assets Act, 2016 and shall come into operation on such date as the Minister, by notice published in the Gazette, appoint.

Application.      **2.-(1)** This Act shall, except provided otherwise, apply to-

- (a) all public procurement and disposal of public assets undertaken by a procuring and disposing entity;
- (b) all public finances-
  - (i) originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever form these may take;
  - (ii) that may be earmarked for external obligation purposes, except those resources that may be earmarked for payments of membership subscriptions and contributions; and
  - (iii) of a procuring and disposing entity;
- (c) resources in the form of counterpart transfers or co- financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programmes;
- (d) procurement and disposal by a procuring and disposing entity, within or outside Zanzibar.
- (e) procurement financed from specific public finances specified in paragraph (b), in the case of an entity not being of Government;
- (f) procurement and disposal by a company registered under the Companies Act in which a procuring and disposing entity has majority share.

(2) For the avoidance of doubt, the following activities by a procuring and disposing entity are not procurements to which this Act applies-

- (a) the acquisition of an asset or of equipment, where the asset or equipment is being disposed of by another procuring and disposing entity in accordance with the Act.
- (b) the acquisition of a service provided by another procuring and disposing entity, except a service normally offered by that procuring and disposing entity for a fee; and
- (c) the recruitment of the services of an individual as an employee of a procuring and disposing entity in accordance with the administrative policies of the procuring and disposing entity.

3. In this Act, unless the context requires otherwise-

Interpre-  
tation.

"Accounting Officer" means the Accounting Officer appointed as such under the provisions of the Public Finance Act;

"approving authority" means an Accounting officer, ministerial tender board, a parastatal tender board and regional Tender board

"authorised officer" means a person appointed as an authorised officer under this Act;

"Authority" means the Public Procurement and Disposal of Public Assets Authority established under section 4 of this Act;

"bid" means an offer to provide or to acquire works, services or supplies or any combination thereof, and shall include pre-qualification where applicable;

"bidder" means a physical or artificial person intending to participate or participating in public procurement or disposal proceedings;

"bidding documents" means solicitation documents;

"bid notice" means any advertisement by which eligible providers are invited to submit written offers to provide or acquire works,

services and supplies, or any combination of them in case of procurement and disposal respectively;

"competitive selection" means the method of procurement whereby a limited number of consultants or providers of services are invited after Pre-qualification by the procuring and disposing entity to compete with each other on the basis of a combination of the quality and cost after prequalification;

"competent authority" means a Government office which has the mandate to perform a specified function;

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

"consultant" means an individual who, or a firm, company, corporation, organisation or partnership which provides consultancy services to a procuring and disposing entity;

"contract" means an agreement between a procuring and disposing entity and a provider, resulting from the application of the appropriate and approved procurement or disposal procedures and proceedings as the case may be, concluded in pursuance of a bid award decision of a Tender boards or any other appropriate authority;

"Contractor" means a provider as defined in this Act;

"Commissioner" means the Commissioner for the Department as provided in this Act.

"corrupt practice" includes the offering, giving, receiving or soliciting anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

"disposal" means the divestiture of public assets, including intellectual and proprietary rights and goodwill and any other rights of a procuring and disposing entity by any means, including sale, rental, lease, franchise, auction or any combination so classified;

"disposal process" means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract;

"emergency" means circumstances which are urgent, unforeseeable and not caused by dilatory conduct;

"emergency situation" means a circumstance which is urgent or unforeseeable or a situation which is not caused by dilatory conduct where-

- (a) Zanzibar is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;
- (b) life or the quality of life or environment may be seriously compromised;
- (c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness;
- (d) an investment project is seriously delayed for want of minor items; or
- (e) a government programme would be delayed or seriously compromised unless a procurement is undertaken within the required time frame;

"foreign provider" means a provider whose business is not registered in Zanzibar;

"fraudulent practice" includes a misrepresentation of facts in order to influence a procurement or disposal process or the execution

of a contract to the detriment of the procuring or disposing entity and includes collusive practices among bidders prior to or after bid submission designed to establish bid prices at artificial noncompetitive levels and to deprive the procuring and disposing entity of the benefits of free and open competition;

"Government stores" means an allocated store providing goods or services to Government institutions;

"guidelines" means directives issued by the Authority established under this Act;

"Independent Institution" means a government institution or department which holds a vote of account in the government budget;

"industry standards" means standards defined and codified by internationally recognized providers' associations and professional bodies in the respective fields and includes best practices;

"listed provider" means a provider registered by the Authority in accordance with this Act;

"Minister" means the Minister responsible for Finance;

"Zanzibar provider" means a provider registered in Zanzibar and wholly owned and controlled by Zanzibaris;

"non-consultancy service" means a service of a skilled or a non-skilled nature, which is not a consultancy service; and includes, cleaning, security and maintenance and repair services;

"Parastatal organisation" means-

- (i) a body corporate established by any law;
- (ii) any corporation registered under the Companies Act in which not less than fifty percent of the share capital is owned by the government or by another parastatal

organization ,or in case of a company limited by guarantee, where the government has undertaken to meet fifty percent or more of the liabilities of the company; or

(iii) any company, management board, association or statutory body in which the Government has a majority or controlling interest;

"Paymaster General" means the Principal Secretary to the Ministry responsible for finance and includes officers acting under the authority of the Paymaster General;

"pre-qualification" means a screening process designed to ensure that invitations to bid are confined to capable providers;

"President" means the President of Zanzibar and chairman of the Revolutionary Council;

"post qualification" means a formal procedure applied after tenders have been evaluated prior to award of contract, to determine whether or not the lowest evaluated tender has experience, capability and resources to carry out the contract effectively;

"procurement" means acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise or any other contractual means, of any type of works, services or supplies or any combination;

"procurement and disposal notice board" means the notice board of a procuring and disposing entity, which is used to display notices required to be displayed under this Act and regulations made under this Act and to display any other information relating to the procurement and disposal activities of the procuring and disposing entity;

"Procurement and Disposal Management Unit" means a division in each procuring and disposing entity responsible for the execution of the procurement and disposal function;

"Procurement Agent" means a natural or artificial person specialized in procurement who acts for another, called the principal, in dealing with third parties in matters relating to procurement;

"procurement process" means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management;

"procurement specialist" means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement or who is certified or registered by a procurement professional body;

"procuring and disposing entity" means-

- (a) Ministry or department of Government;
- (b) Regional Government;
- (c) Local Government;
- (d) body corporate established by the law;
- (e) a Company registered under the Companies Act in which government or a procurement and disposing entity-
  - (i) has a majority in the Board of Directors of the Company;
  - (ii) is entitled to cast or controls the casting of more than fifty percent of the maximum number of votes that may be cast at a general meeting of the Company; or
  - (iii) controls more than fifty percent of the issued share capital of the company, excluding any part of the issued share capital that does not carry a right to participate beyond a specified amount in the distribution of profits or capital; and



- (f) an entity not being of government to which section 2(1)(d) of this Act applies and includes-
  - (i) a commission established under the law;
  - (ii) a public university and a public tertiary institution established under the law; or
  - (iii) any other procuring and disposing entity as may be prescribed by the Minister;

"provider" means a natural person or a artificial person including a consultant, contractor or supplier licensed by a competent authority to undertake business activities;

"public asset" means any property, tangible or intangible, owned by government or by a procuring and disposing entity, including physical property, shares, proprietary rights and land, except land held by the Ministry responsible for land or a regional land body or land which is compulsorily acquired by government in accordance with the law;

"public funds" means monetary resources appropriated to procuring and disposing entities through budgetary processes, including the Consolidated Fund, grants and credits put at the disposal of the procuring and disposing entities by foreign donors; and revenues generated by the procuring and disposing entities;

“Public office” means-

- (i) any person holding or acting in an office of emolument in the service of the government;
- (ii) a person holding or acting in the office of Minister;
- (iii) an employee of any body corporate such as referred to in the definition of public body or public department;
- (iv) any person conducting negotiations for or in relation to a public contract or a prospective public contract on behalf of a public body;

- (v) a person who is a consultant to a public body or public institution;

"services" means any object of procurement or disposal other than works and supplies, and includes professional, non professional and commercial types of services as well as supplies and works which are incidental to, but not exceeding the value of those services;

"solicitation documents" means bidding documents or any other documents inviting bidders to participate in procurement or disposal proceedings and includes documents inviting potential bidders to pre-qualify, and standard bidding documents;

"specifications" means the description of an object of procurement or disposal in accordance with national and international standards adopted and approved by the Authority, after consultation with the Bureau of Standards, or other appropriate trade associations and professions, the use of which shall be mandatory in all bidding documents;

"supplies" means goods, raw materials, products, equipment, livestock, assets, land or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as works or services incidental to the provision of those supplies where the value of the works or services does not exceed the value of the supplies;

"tender" means "bid";

"Terms of reference" means the statement issued by the procuring and disposing entity giving the definition of the objectives, goals and scope of services including where the applicable means to be used;

"urgent" does not include circumstances that-

- (a) should have been foreseen by the procuring and disposing entity;

- (b) are a result of inadequate planning; or
- (c) are a result of delays by or within the procuring and disposing entity;

"User Department" means any department, division, branch or section of the procuring and disposing entity, including any project unit working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements;

"works" means any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater, and includes the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build own and operate projects, build operate and transfer projects or any arrangement of this nature, or any other form of private and public partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning and training; as well as supplies or services incidental to those works where the value of the incidental supplies or services does not exceed the value of the works.

4.-(1) Where this Act conflicts with an obligation of the Revolutionary Government of Zanzibar arising out of an agreement with one or more states or with an international organization, the provisions of the agreement shall prevail over this Act. International obligations.

(2) Where an agreement referred to in this section contains a preference or preferences in favour of national and resident providers, a procuring and disposing entity shall ensure that the applicable preference or preferences are clearly stated in the bidding documents.

(3) Where a bilateral loan or negotiated grant contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with this Act.

(4) Notwithstanding subsection (3), where there is a conflict between this Act, regulations made under this Act or guidelines issued by the Authority and a condition imposed by the donor of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds.

## **PART II PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY**

Establishment of the Authority. **5.-(1)** There is established the Public Procurement and Disposal of Public Assets Authority which shall be autonomous body of the government.

(2) The Authority shall be-

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable to sue and being sued;
- (c) capable by its corporate name, to borrow money, acquire and dispose of property; and
- (d) do all other things a body corporate may lawfully do.

(3) The application of the seal of the Authority on any document shall be authenticated by the signatures of the Executive Director or any other officer of the Authority authorised by the Executive Director.

(4) Every document purporting to be an instrument issued by the Authority, sealed with the seal of the Authority and authenticated in accordance with subsection (3) of this section, shall be deemed to be an instrument of the Authority and shall be received in evidence without further proof.

Objectives of the Authority. **6.** The objectives of the Authority are-

- (a) to ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and disposal standards and practices;

- (b) to advise government, local governments, regional governments, parastatals, providers and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary on their harmonisation;
- (c) to set standards for the public procurement and disposal systems in Zanzibar;
- (d) to monitor compliance of procuring and disposing entities;
- (e) to build procurement and disposal capacity in Zanzibar; and
- (f) to maintain a register of providers and procurement professionals.

7.-(1) The functions of the Authority are to-

Functions  
of the  
Authority.

- (a) advise government, local governments and other procuring and disposing entities on all public procurement and disposal policies, principles and practices;
- (b) monitor and report on the performance of the public procurement and disposal systems in Zanzibar and advise on desirable changes;
- (c) advise competent authorities on standards for procurement education and training, competence levels and certification requirements;
- (d) prepare, update and issue authorized versions of the standardized bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (e) ensure that any deviation from the use of the standardised bidding documents, procedural forms and any other attendant documents is effected only after the prior, written approval of the Authority;

- (f) issue guidelines under this Act;
- (g) organise and maintain a system for the publication of data on public procurement and disposal opportunities, awards and any other information of public interest as may be determined by the Authority;
- (h) maintain a register of providers of works, services and supplies;
- (i) conduct periodic inspections of the records and proceedings of the procuring and disposing entities to ensure full and correct application of this Act;
- (j) institute-
  - (i) procurement or disposal audits during the bid preparatory process;
  - (ii) contract audits in the course of the execution of an awarded bid; and
  - (iii) performance audit after the completion of the contract in respect of any procurement or disposal, as may be required;
- (k) adopt, adapt and update common specifications standards, the use of which shall be mandatory for all procuring and disposing entities;
- (l) determine, develop, introduce, maintain and update related system-wide databases and technology;
- (m) develop a procurement and disposal capacity building strategy for institutional and human resource development;
- (n) where applicable, determine the prices of works, services and supplies which are used in common by two or more procuring and disposing entities and which may be subject to common procurement and review the prices from time to time;

- (o) establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal;
- (p) undertake procurement and disposal research and surveys nationally and internationally;
- (q) undertake any activity that may be necessary for the execution of its functions; and
- (r) administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act.

(2) The Authority may contract a third party to carry out procurement audits, investigations and inspections.

(3) The Authority shall resolve any dispute arising from the application of this Act following procedures to be prescribed by regulations made under this Act.

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

Powers of  
the  
Authority.

- (a) require any information, documents, records and reports in respect of any aspect of the public procurement and disposal process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any procuring and disposing entity or provider;
- (b) summon witnesses, call for the production of books of accounts, plans, documents, and examine witnesses and parties concerned on oath;
- (c) commission or undertake investigations and institute procurement or disposal contract and performance audits;
- (d) cause to be inspected any procurement or disposal transaction to ensure compliance with a bid award by a procuring and disposing entity;

- (e) act upon complaints by procuring and disposing entities, providers or any other entity or person, in respect of any procurement or disposal activity, following the procedure in the Act;
- (f) suspend a provider from engaging in any public procurement or disposal process, in accordance with Act.

(2) For the purpose of conducting procurement and disposal audits, or compliance checks and investigations, the Executive Director may in writing-

- (a) authorise an officer of the Authority; or
- (b) appoint any person to be an authorised officer, to enter any premises of a procuring and disposing entity, at a reasonable time and inspect the premises and to make any inquiries that may be necessary for the collection of information.

(3) Where an officer of the Authority or an authorised officer is refused entry or is prevented from entering premises, contrary to subsection (2) of this section, a magistrate may, on application by the Authority, issue a warrant authorising the Police to enter the premises, using such force as may be reasonably necessary and to conduct the search and obtain the required information.

Action on  
recommendations of  
the  
Authority.

**9.-(1)** Where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, the Authority may-

- (a) direct the concerned procuring and disposing entity to take such corrective action as may be necessary in the circumstances, to rectify the breach; or
- (b) recommend to a competent authority-
  - (i) to suspend the officer responsible for the breach;
  - (ii) to replace the head of the procurement and disposal unit or the Chairperson of the Tender board, as the case may be;



- (iii) to recommend disciplining of the Accounting Officer;
- (iv) to transfer temporarily, the procuring and disposing function of a procuring and disposing entity to a third party procurement agency;

(2) A competent authority shall respond in writing to the Authority's recommendations under subsection (1)(b) of this section, within a period prescribed by regulations made under this Act.

(3) Where the competent authority rejects the Authority's recommendations under subsection (1)(b) of this section, the Authority shall-

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

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

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

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

Establishment of the Board of Directors.

**10.-(1)** There is established a Board of Directors of the Authority which shall execute the functions and powers as provided for under this Act.

(2) The Board shall be composed of-

- (a) Chairperson who shall be appointed by the President;
- (b) Paymaster General;
- (c) Executive Director of the Authority;
- (d) State Attorney from Attorney General's Chambers;
- (e) one person from Zanzibar Association of Accountants and Auditors;
- (f) one person from Zanzibar Chamber of Commerce and Industry; and
- (g) not more than three other members appointed by the Minister.

(3) Save for ex-officio members, other members shall be appointed by the Minister upon consultation with responsible institution, provided that, in making appointments, the Minister shall consider gender.

(3) State Attorney designated to the Ministry of Finance shall be a Secretary to the Board.

Qualifications for Chairperson.

**11.** A person shall be eligible to be appointed as a Chairperson if he-

- (a) is a Zanzibari;
- (b) holds at least first degree in procurement and supplies, material management, engineering, economic, legal or any related field from a recognized educational institution;
- (c) has a working experience of at least fifteen years with at least ten years at managerial level or public service; and
- (d) possess high integrity to the government and society in general.

**12.-(1)** The Board shall be responsible for the general direction and supervision for the functions of the Authority. Functions of the Board

(2) Without prejudice to the generality of sub section (1) of this section, the Board shall-

- (a) oversee the operations of the Authority;
- (b) advise the government on procurement policy and strategic issues;
- (c) to supervise and monitor the management of functions of the Authority;
- (d) to monitor the adherence of all provisions relating to public procurement and disposal of public assets;
- (e) to determine the appointment of staff of the Authority and assign responsibilities of employees and setting their terms and conditions of employment including promotion, dismissal and disciplines; and
- (f) to set strategies, action plans and appropriate work targets for each department of the Authority; and
- (g) perform any other function conferred by this Act or which may be necessary for achieving the purposes for which the Authority is established.

**13.** A member of the Board other than ex-officio member shall, unless his appointment is sooner terminated or otherwise ceases to be a member, hold office for a period of three years and may be eligible for reappointment for another one term only. Tenure of the Board.

**14.-(1)** The Board shall meet ordinarily at least once in every three months and may meet at any time when the need arises for the discharge of its business but in any event, the emergence meetings shall not more than one in two months. Meetings of the Board.

(2) The meetings of the Board shall be presided over by the Chairperson or in his absence the Vice-Chairperson and in the absence of both Chairperson and Vice- Chairperson, the members present shall elect one member among them to preside such meeting.

(3) The quorum of meeting of the Board shall be four members of the total number of members, except when a member has declared an interest in an agenda or in a matter before the Board, the member in question shall not be counted for the purpose of forming a quorum in relation to that agenda or matter in question.

(4) A member, on receiving the agenda of the meeting of the Board, or on notification of a matter being brought to the attention of the Board shall-

- (a) sign a declaration form as prescribed in the first schedule to this Act, indicating whether he has, or intends to acquire, a direct or indirect personal interest in any agenda or specific matter requiring the Board's consideration and decision; and
- (b) where such an interest exists, not participate in the deliberations or decision making process of the Board in relation to the agenda or the matter in question.

(5) The decision of the Board shall be by a majority of votes, and where there is an equality of votes, the Chairperson shall have a casting vote.

(6) The minutes of each meeting of the Board shall be confirmed at the next meeting of the Board.

(7) Subject to this Act and regulations made under this Act, the Board shall regulate its procedure in the conduct of its business.

Committees  
of the  
Board.

**15.-(1)** The Board may establish a Complaints Review Committee which shall handle complaints from providers and any other interested parties arising out of the execution of the procurement or disposal function by the procuring and disposing entities.

(2) Without prejudice to sub section (1) of this section, the Board may establish any other committee that may be necessary for the better carrying out of the functions of the Authority.

(3) The Board shall determine the composition, terms of references and other terms and conditions of services of the committees.

**16.-(1)** The Board may, by instrument, delegate to a committee or Executive Director, any of the functions or powers of the Board, except- Delegation of functions and powers.

- (a) the function of monitoring and reporting on the performance of the public procurement and disposal systems in Zanzibar and advising on desirable changes;
- (b) the function of advising competent authorities on the development of training standards, competence levels and certification requirements;
- (c) the function of preparing, updating and issuing authorised versions of the standardised bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (d) the function of issuing guidelines;
- (e) the function of instituting-
  - (i) procurement or disposal audits during the preparatory process;
  - (ii) contract audits in the course of the execution of an awarded bid; and
  - (iii) performance audits after the completion of the contract in respect of any procurement or disposal, as may be required;
- (f) the power to act upon complaints by procuring and disposing entities, providers and any other entity or person in respect of any party to a procurement or disposal activity; and

- (g) the power to suspend a provider from engaging in a public procurement or disposal process.

(2) A person who exercises a delegated function or powers shall comply with the terms and conditions of delegation and with any directives or guidelines issued by the Board.

(3) A person aggrieved by a decision made under this section may appeal to the Board within two months from the date of making the decision.

Termination  
of office of  
Board  
members.

**17.**-(1) The appointing authority may, at any time, terminate the appointment of a member of the Board for-

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

(2) Any member of the Board may resign by giving not less than one month's prior notice in writing to the appointing authority.

Appoint-  
ment of  
Executive  
Director.

**18.**-(1) There shall be Executive Director of the Authority who shall be appointed by the President upon such terms and conditions as may be prescribed in his letter of appointment.

(2) A person shall be qualified to be appointed as Director General if he:-

- (a) is a Zanzibari;
- (b) holds at least first degree of procurement and supplies, material management, engineering, finance, economic, law and any other related field from a recognized educational Institution; and
- (c) has working experience of at least fifteen years in procurement and supplies with at least ten years practicing or engaged on procurement or administrators or in public service.

(3) The Executive Director shall be responsible for the day to day functions of the Authority, and also be responsible for-

- (a) management and operations of the Authority;
- (b) management of the funds, property and business of the Authority;
- (c) administration, organization and control of the officers and staff of the Authority; and
- (d) promoting, training and disciplining of the officers and staff of the Authority.

(4) The Executive Director shall not engage in any business, profession, occupation or paid employment elsewhere.

**19.-**(1) The Board shall appoint other staff of the Authority as may be required for the performance of the functions of the Authority on terms and conditions of service determined by the Authority. Other staff of the Authority.

(2) The Authority may, in order to facilitate the performance of its functions under this Act, establish such department, section or units to be headed by the heads and other staff as may be determined by the Board.

Funds of the Authority.

**20.**-(1) The funds of the Authority shall consist of-

- (a) money appropriated by the House of Representatives for the purposes of the Authority;
- (b) loans or grants received by the Authority for its activities; and
- (c) revenues collected from services that are rendered by the Authority.

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

(3) The financial year of the Authority shall be the same as the financial year of the government.

Management plan and budget

**21.**-(1) The Executive Director shall, not later than three months before the end of each financial year, prepare and submit to the Board an annual management plan which shall include a budget for its approval for the next financial year.

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

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

Account and audit

**22.**-(1) The Authority shall keep proper books of accounts and records of all its transactions.

(2) The annual accounts of the Authority and the procurement and disposal activities of the Authority shall be audited by the Controller and Auditor General.

Annual performance report.

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



- (a) the Minister an annual performance evaluation report in respect of that year's activities consisting of-
  - (i) financial statements and the annual management plan;
  - (ii) an evaluation of the operations of the Authority and the procuring and disposing entities; and
  - (iii) any other information as the Board may direct; and
- (b) the Controller and Auditor General-
  - (i) the accounts of the Authority for the financial year; and
  - (ii) the annual performance evaluation report referred to in paragraph (a) of sub section (1) of this section.

(2) The Minister shall lay before House of Representatives the annual performance evaluation report within two months from the date of his receiving the report, or at the next sitting of House of Representatives, whichever comes first.

(3) The Controller and Auditor General shall submit the audited report to the House of Representatives within four months from the date of receiving the accounts.

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

Internal  
audit  
report.

(2) The Executive Director shall submit every report referred to in sub section (1) of this section, to the Board for its consideration at the next meeting of the Board after the Executive Director received the report.

### PART III PROCURING AND DISPOSING ENTITIES

**25.** For the purpose of this Act, a procuring and disposing entity shall be composed of-

Procure-  
ment and  
Disposing  
entity.

- (a) an Accounting Officer;
- (b) a Tender Board;
- (c) a Procurement and Disposal Management Unit; and
- (d) a user department.

Powers of Procurement and Disposing entity.

**26.**-(1) A procuring and disposing entity shall be responsible for the management of all procurement and disposal activities within its jurisdiction in accordance with this Act, regulations and guidelines made under this Act.

(2) Notwithstanding subsection (1) of this section, the Paymaster General, for each financial year, appoint an agent to carry out the procurement and disposal activities of the Authority, except the micro procurement activities as described in this Act, which shall be carried out by the Authority.

Accounting Officer.

**27.**-(1) The Accounting Officer of a procuring and disposing entity shall have overall responsibility for the execution of the procurement and disposal process in the procuring and disposing entity, and in particular, shall be responsible for-

- (a) establishing a Tender Board in accordance with this Act;
- (b) Nominating members of the Tender Board for approval by the Paymaster General;
- (c) causing to be established a Procurement and Disposal Management Unit staffed at an appropriate level;
- (d) advertising bid opportunities;
- (e) communicating award decisions;
- (f) certifying the availability of funds to support the procurement or disposal activities;
- (g) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;

- (h) investigating complaints by providers;
- (i) submitting a copy of any complaints and reports of the findings to the Authority; and
- (j) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award.

(2) Notwithstanding subsection (1) (g) of this section, an Accounting Officer shall not sign a contract before a procurement is approved by the Tender Board except where due to an emergency situation, the Tender Board cannot meet to approve the procurement.

(3) Where the Accounting Officer signs a contract for a procurement to be made for the purposes of an emergency situation under subsection (2) of this section, the Accounting Officer shall-

- (a) inform the Tender Board of the contract within seven working days of signing the contract; and
- (c) within ten working days after signing the contract, submit in respect of the contract, a report to the Authority.

**28.**-(1) Subject to sub-section (2) of this section, a Tender Board shall be composed of the heads of department specified in the second schedule to this Act. Tender Board

(2) The Members of the Tender Board shall be nominated by the Accounting Officer and approved by the Paymaster General.

(3) The following officers of a procuring and disposal entity are not eligible for nomination to the Tender Board of that procuring and disposal entity-

- (i) the Head of the Procurement and Disposal Management Unit;
- (ii) the staff of the department of internal audit.

(4) Where the Accounting Officer nominates members of the Tender Board, but before the nomination is approved by the Paymaster General in accordance with subsection (2) of this section, there is an emergency situation in respect of which a procurement activity has to be performed, the Accounting Officer shall perform the role of the Tender Board.

(5) Where an Accounting Officer performs the role of the Tender Board under the provisions of subsection (4) of this section, the Accounting Officer shall submit a report of the procurement activity carried out, to the Authority and give a copy to the Paymaster General.

(6) The Head of the Procurement and Disposal Management Unit shall attend the meetings of the Tender Board to offer clarification on any submissions to be considered by the Tender Board.

(7) The Tender Board may co-opt advisers to assist it in the discharge of its functions.

(8) The Accounting Officer shall inform the Authority of the composition of the Tender Board and the qualifications of its members not later than fourteen days from the date of its appointment.

(9) Members of the Tender Board shall be appointed with regard to their technical competence and skills required for the discharge of the functions of the Tender Board.

(10) The tenure of the members of the Tender Board shall be three years and a member may be re-appointed for only one further term.

(11) Where the Paymaster General is satisfied that it is not practicable to apply subsection (10) of this section, the Paymaster General shall exempt the concerned procuring and disposing entity from the application of the subsection.

Functions  
of a Tender  
Board.

**29.-(1)** A Tender Board shall be responsible for-

- (a) adjudication of recommendations from the Procurement and Disposal Management Unit and award of contracts;

- (b) approving the Evaluation Committee;
- (c) approving negotiation teams;
- (d) ensuring that before it is approved, a procurement is in accordance with the procurement plan;
- (e) approving bidding and contract documents;
- (f) the following activities, for the purposes of disposal of the public assets of a procuring and disposing entity;
- (g) assessing and verifying the public assets identified by a user department or by the Board of Survey for disposal;
- (h) causing the assets identified under subparagraph (g) to be valued in accordance with regulations made under this Act;
- (i) approving the reserve price for the public assets to be disposed of;
- (j) approving procurement and disposal procedures;
- (k) ensuring that best practices in relation to procurement and disposal are strictly adhered to by procuring and disposing entities;
- (l) ensuring compliance with this Act; and
- (m) liaising directly with the Authority on matters within its jurisdiction.

(2) The Tender Board shall make a report in respect of the activities under subsection (1) of this section and submit the report to the Accounting Officer for approval.

**30. A Tender Board shall-**

- (a) authorise-
  - (i) the choice of a procurement and disposal procedure;
  - (ii) solicitation documents before issue;

Powers of  
a Tender  
Board.

- (iii) technical, financial or combined evaluation reports;
  - (iv) contract documentation in line with the authorised evaluation report; and
  - (v) any amendment to an awarded contract;
- (b) recommend for the delegation of a procurement or disposal function by the Accounting Officer whenever the necessity arises; and
  - (c) award contracts in accordance with applicable procurement or disposal procedures as the case may be.

Procurement and Disposal Management Unit. **31.**-(1) A procuring and disposing entity shall cause to be established a Procurement and Disposal Management Unit staffed at an appropriate level.

(2) The Head of Procurement and Disposal Management Unit shall be a procurement specialist.

Functions of Procurement and Disposal Management Unit **32.** A Procurement and Disposal Management Unit shall-

- (a) manage all procurement or disposal activities of the procuring and disposing entity except adjudication and the award of contracts;
- (b) support the functioning of the Tender Board ;
- (c) implement the decisions of the Tender Board;
- (d) liaise directly with the Authority on matters within its jurisdiction;
- (e) act as a secretariat to the Tender Board;
- (f) plan the procurement and disposal activities of the procuring and disposing entity;
- (g) recommend procurement and disposal procedures;
- (h) recommendation of members of the evaluation and negotiation teams;
- (i) check and prepare statements of requirements;

- (j) prepare bid documents;
- (k) prepare advertisements of bid opportunities;
- (l) issue bidding documents;
- (l) maintain a providers list;
- (m) prepare contract documents and issue approved contract documents;
- (o) maintain and archive records of the procurement and disposal process;
- (p) prepare monthly reports for the Tender Board;
- (q) co-ordinate the procurement and disposal activities of all the departments of the procuring and disposing entity;
- (r) prepare any other such reports as may be required from time to time.

**33.** A Procurement and Disposal Management Unit shall have the powers to-

Powers of  
Procurement  
and  
Disposal  
Management  
Unit

- (a) recommend the composition of the evaluation and negotiation committees, for the approval of the Tender Board;
- (b) contract independent advice as may be necessary in the discharge of its functions;
- (c) ensure compliance with this Act, regulations and guidelines made under this Act, and best practices;
- (d) manage bid proposals and pre-qualification submissions and make recommendations on them to the Tender Board ;
- (e) provide bid clarifications; and
- (f) receive bids.

Disagreement  
between  
Tender  
Board and  
Procurement  
and  
Disposal  
Management  
Unit.

**34.**-(1) Where a Tender Board disagrees with the recommendations of a Procurement and Disposal Management Unit, it may-

- (a) return the submission to the Procurement and Disposal Management Unit for review giving written reasons for its disagreement; or
- (b) request for independent advice from the Authority.

(2) Where a Procurement and Disposal Management Unit disagrees with the views of the Tender Board on its recommendations under subsection (1) of this section, it may request for independent advice from the Authority.

(3) A party seeking for advice from the Authority under subsections (1) and (2) of this section, shall state in writing the reasons for its disagreement.

Functions  
of the User  
Department.

**35.**-(1) The User Department of a Procuring and Disposing Entity shall perform the following functions-

- (a) liaise with and assist the Procurement and Disposal Management Unit throughout the procurement or disposal process to the point of contract placement;
- (b) initiate procurement and disposal requirements and forward them to the Procurement and Disposal Management Unit;
- (c) propose technical inputs to statements of requirements for procurement requirements to the Procurement and Disposal Management Unit;
- (d) propose technical specifications to the Procurement and Disposal Management Unit when necessary;
- (e) input with technical evaluation of bids received as required by the Procurement and Disposal Management Unit;
- (f) arrange for payments to providers;
- (g) report any departure from the terms and conditions of an awarded contract to the Procurement and Disposal Management Unit;



- (h) forward details of any required contract amendments to the Procurement and Disposal Management Unit for action;
- (i) maintain and archive records of contracts management; and
- (j) prepare any reports required for submission to the Procurement and Disposal Unit, the Committee or the Accounting Officer.

(2) The User Department shall prepare a procurement plan based on the approved budget, which shall be submitted to the Procurement and Disposal Management Unit for implementation when required.

**36.** In the exercise of its functions a User Department shall-

Powers of a User Department.

- (a) initiate procurement and disposal requirements;
- (b) recommend Statements of Requirements to the Procurement and Disposal Unit;
- (c) undertake conformity assessments;
- (d) issue change orders in accordance with the terms and conditions of the contract; and
- (e) certify invoices for payments to providers.

**37.** Where a Procurement and Disposal Management Unit disagrees with a User Department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the parties may forward the cause of the disagreement as a submission to the Tender Board for a formal decision by the Tender Board.

Disagreement between Procurement and Disposal Management Unit and User Department.

**38.**-(1) All evaluations shall be conducted by an Evaluation Committee, which shall make a report to the Procurement and Disposal Management Unit.

Evaluation Committee

(2) The membership of the Evaluation Committee shall be recommended by Procurement and Disposal Management Unit, in accordance with Regulations made under this Act, and approved by the Tender Board.

(3) The number of the members of the Evaluation Committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three members.

(4) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement requirement.

(5) Members of the Evaluation Committee may be external to the Procuring and Disposing Entity, where the required skills or experience are not available within the Procuring and Disposing Entity or where members are indisposed or have a conflict of interest.

(6) All members of the Evaluation Committee shall sign the Code of Ethics provided under the regulation made under this Act, declaring that they do not have a conflict of interest in the procurement requirement.

(7) The meetings of the Evaluation Committee, the conduct of the evaluation and the evaluation methodologies shall be executed in accordance with the regulation made under this Act.

Independence in performance of functions.

**39.** Subject to the provisions of this Act, the Accounting Officer, the Tender board, the Procurement and Disposal Management Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers.

Delegation of powers by the Accounting Officer.

**40.** An Accounting Officer may-

- (a) delegate certain procurement and disposal functions of the Accounting Officer, Tender Board or procurement and disposal management unit to-
  - (i) a sub-division of the procuring and disposing entity; or
  - (ii) a member of staff of the procuring and disposing entity; and
- (b) contract out certain procurement and disposal functions of the Tender Board, procurement and disposal management unit or user department to-

any other procuring and disposing entity; or in accordance with the terms and conditions specified in regulations made under this Act.

**41.**-(1) A procuring and disposing entity which is not able to comply with a particular procurement or disposal procedure required under this Act, may apply to the Authority for accreditation of an alternative system.

Accreditation for alternative systems.

(2) The Authority shall permit accreditation of an alternative system-

- (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with this Act;
- (b) where market conditions or behaviour do not allow effective application of this Act; and
- (c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices.

(3) Notwithstanding subsection (2) of this section, the Authority may, on its own initiative, accredit an alternative system for a procuring and disposing entity which is not able to comply with a procurement or disposal procedure required under this Act.

(4) The Authority shall accredit an alternative system where a procuring and disposing entity-

- (a) operates in a specialised field or discipline which requires alternative or additional regulations;
- (b) has a status that requires alternative or additional regulations;
- (c) is required to use an alternative system to comply with the provisions of international or any other agreements; or
- (d) has other valid reasons which necessitate the use of an alternative system.

(5) An application for accreditation shall be made using the procedure provided in regulations made under this Act.

Records of a procuring and disposing entity.

**42.**-(1) A procuring and disposing entity shall maintain records on its procurement and disposal proceedings for a period of seven years from the date of a decision to terminate the procurement or disposal action, or the date of the contract completion, whichever comes later, except where a contract is ongoing or is challenged, in which case, the records shall be kept for an additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(2) The records to be maintained by a procuring and disposing entity under subsection (1) of this section, shall include a summary report of the procurement procedure used in respect of each contract, which shall indicate-

- (a) a description of the objectives of the respective procurement;
- (b) a list of the participating bidders;
- (c) the bid prices;
- (d) the bid evaluation criteria;
- (e) a summary of the evaluation and comparison of bids, including the grounds for rejecting any of the bids;
- (f) where applicable, a summary of the proceedings of the administrative reviews including the decisions taken;
- (g) a statement of the grounds for cancellation of procurement proceedings; and
- (h) any other information as may be prescribed by the regulations.

(2) The records of the procurement and disposal process shall be open to inspection by the Authority and a competent authority during working hours.

Defence and National Security Organs.

**43.**-(1) For the avoidance of doubt, the Defence and National Security Organs shall comply with this Act subject to subsections (2) and (3) of this section.

(2) The Defence and National Security Organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively.

(3) The Defence and National Security Organs shall agree annually with the Authority on the category of restricted items to be included on the restricted list and on which restricted procurement or disposal methods, set out in Part VI, shall apply to each category of item on the restricted list.

(4) The restricted list of items shall be subjected to classified audit and laid before the House of Representatives in the Annual Performance Evaluation Report.

(5) The Defence and National Security Organs shall appoint a tender board to handle the procurement and disposal of their classified items.

(6) The members of the Tender Board of the Defence and National Security Organs shall be nominated by the respective accounting officers and approved by the Paymaster General.

#### **PART IV BASIC PROCUREMENT AND DISPOSAL PRINCIPLES.**

**44.** All public procurement and disposal shall be conducted in accordance with the following principles- Application of basic principles.

- (a) non-discrimination;
- (b) transparency, accountability and fairness;
- (c) Maximisation of competition and ensuring value for money;
- (d) Confidentiality;
- (e) Economy and efficiency; and
- (f) Promotion of ethics and Integrity.

**45.** A procuring and disposing entity shall use open bidding as the preferred method of procurement and disposal. Open competitive bidding.

**46.** A contract shall be awarded to the bidder with the best evaluated offer ascertained on the basis of the methodology and criteria detailed in the bidding documents. Best evaluated bids.

Public  
accessibil-  
ity.

**47.** Copies of the forms made under this Act, standard bidding documents and decisions of the Authority shall be made accessible to the public.

## **PART V PUBLIC PROCUREMENT AND DISPOSAL RULES.**

Application  
of public  
procure-  
ment and  
disposal  
rules.

**48.** All public procurement and disposal shall be carried out in accordance with the rules set out in this Part of the Act, any regulations and guidelines made under this Act.

Communi-  
cation.

**49.**-(1) All communication between a procuring and disposing entity, bidder, or provider, shall be in writing and communication in any other form shall be referred to and confirmed in writing.

(2) English and Swahili shall be the languages of communication unless otherwise specified by the Authority.

(3) Forms of communication shall be specified in the solicitation documents.

Procurement  
and  
disposal  
planning.

**50.**-(1) In accordance with the budget preparation procedures issued by the Minister, a procuring and disposing entity shall in each financial year, by a date determined by the Paymaster General prepare and submit to the Paymaster General and to the Authority, its annual procurement plan for the following financial year.

(2) A procuring and disposing entity shall plan its procurement and disposal in a rational manner and in particular shall-

- (a) aggregate its requirements where possible, both within and between the procuring and disposal entity and between procuring and disposal entities, to obtain value for money and to reduce procurement costs;
- (b) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;

- (c) not to split a procurement or a disposal to defeat the use of the appropriate procurement or disposal method;
- (d) integrate its procurement budget with its expenditure programme; and
- (e) integrate the disposal of assets, both listed and unlisted, in its assets register as well as in its income and expenditure budget.

(3) The Authority shall issue guidelines in respect of the format of the procurement plan to be prepared under this section.

(4) A procuring and disposing entity shall, on a quarterly basis and in any other case, wherever necessary, review and update its procurement plan.

(5) A procuring and disposing entity shall notify the Paymaster General and the Authority of any changes made to its procurement plan and submit the updated and approved plan to the Authority.

(6) A procuring and disposing entity shall display its procurement plan and the updated and approved plan on its procurement and disposal notice board or using any other method as may be prescribed, for not less than twenty working days.

(7) Procurement shall not be carried out outside the procurement plan except in cases of emergency situations.

**51.-(1)** All procurement or disposal requirements shall be documented prior to the commencement of any procurement or disposal proceedings.

Initiation of procurement or disposal requirements and confirmation of funding.

(2) Procurement or disposal shall only be initiated or continued on the confirmation that funding, in the full amount over the required period, is available or will be made available at the time the contract commitment is made.

(3) All procurement or disposal requirements shall be approved by the Accounting Officer prior to the commencement of any procurement or disposal process.

Preference schemes.

**52.**-(1) Subject to the economic and social policies of Government and the international obligations of Government, preference shall be given to domestically manufactured goods and Zanzibari contractors and Zanzibari consultants, in order to promote their development, by giving them a competitive advantage when competing for public procurement contracts, with foreign manufactured goods, foreign contractors or foreign consultants.

(2) To promote particular sectors within specified geographic areas, specified public procurement contracts or parts of a contract shall be subject to reservation schemes.

(3) Preference schemes shall be applied-

- (a) in respect of goods, works and non-consultancy services, where the open domestic or open international bidding methods are used, with a specified margin of preference being added during the financial comparison stage of the evaluation process to the evaluated price of the bid which does not qualify for preference; and
- (b) in respect of consultancy services, for the quality and cost based selection method and the least cost selection method, where proposals are invited from both national and foreign consultants, with a specified margin of preference being added to the evaluated price of the foreign proposal, during the financial comparison stage of the evaluation process.

(4) The margin of preference specified in subsection (1) shall-

- (a) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal;
- (b) in respect of goods that qualify as domestically manufactured goods, be related to the percentage of the labour, raw material and components of the goods that originate from Zanzibar; and
- (c) in respect of works and services-



- (i) be proportional to the percentage of the share capital of the contractor or consultant, where the consultant is a firm owned by Government or by Zanzibaris; or
- (ii) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal, if the consultant is a Zanzibaris.

(5) A procuring and disposing entity shall when procuring goods, works or services under this section, grant a margin of preference-

- (a) of fifteen percent, in respect of goods; and
- (b) of ten percent, in respect of works or services.

(6) Goods qualify for preference, as domestically manufactured goods, under subsection (4)(b) of this section, where-

- (a) where the labour or value addition to the good is more than thirty percent of the ex-works of the goods; and
- (b) the production facility in which the goods are to be manufactured, assembled or processed is in Zanzibar and is engaged in the manufacturing, assembling or processing of the goods at the time of submission of the bid.

(7) A contractor and a consultant qualify for preference as a Zanzibari contractor or a Zanzibari consultant under subsection (4) (c) where-

- (a) the contractor or consultant is incorporated or registered in Zanzibar;
- (b) the contractor or consultant if an individual, is a Zanzibaris;
- (c) the contractor or consultant if a company registered in Zanzibar, more than fifty percent of the capital of the contractor or consultant is owned by a Zanzibaris; and

- (d) the contractor or consultant if a legal entity, more than fifty percent of the capital of the contractor or consultant is owned by the Government or by a procuring and disposing entity.

(8) A contractor or consultant who qualifies as such under subsection (5)(d) of this section, shall be-

- (a) legally and financially autonomous;
- (b) established as a commercial venture; and
- (c) authorised by a competent authority or a professional body to operate as a contractor or to perform services as a consultant.

(9) A procuring and disposing entity shall, when procuring works or services under a joint venture or under an association between a Zanzibari contractor and a foreign partner or between a Zanzibari consultant and a foreign partner, grant a margin of preference of four percent for the works or services.

(10) A joint venture or an association between a Zanzibari contractor and a foreign partner or between a Zanzibari consultant and a foreign partner shall be eligible for preference where-

- (a) the joint venture is registered in Zanzibar ;
- (b) the Zanzibari contractor or Zanzibari consultant in the joint venture qualifies for preference under subsection (5); or
- (c) the Zanzibari contractor or Zanzibari consultant demonstrates a beneficiary interest of more than fifty percent in the joint venture as demonstrated by the profit and loss sharing provisions of the joint venture agreement.

Reservation scheme.

**53.**-(1) The Authority shall, in consultation with a competent authority, and the relevant stakeholders, specify the public procurement contracts to be subject to a reservation scheme and shall designate the particular sectors, within a specified geographical area, that are eligible to participate in the reservation scheme.

(2) A public procurement contract shall be subject to a reservation scheme in order to-

- (a) promote the use of local expertise and materials;
- (b) promote the participation of local communities or local organisations; or
- (c) apply specific technologies.

(3) A procuring and disposing entity that intends to make procurement under a reservation scheme shall-

- (a) apply to the Authority for permission to use alternative procurement procedures and documents and shall in the application indicate the contract packages, specifications and contracting processes to be included in the bidding documents; and
- (b) deal with only the providers that are eligible to participate in a reservation scheme, in accordance with this section.

(4) The procurement procedures and documents and the contract packages, specifications and contracting processes to be used under subsection (3) of this section shall be in accordance with the basic procurement principles prescribed under this Act.

**54.**-(1) A statement of requirements may be in the form of-

- (a) specifications;
- (b) terms of reference;
- (c) scope of works;
- (d) drawings;
- (e) bills of quantities; or
- (f) an equivalent of any of the items specified in this subsection, as may be appropriate.

Statement  
of  
requirements

(2) A statement of requirements shall give a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.

Best practice and industry standards.

**55.** Procuring and disposing entities shall at all times use industry standards defined and codified by internationally recognised trade associations and professional bodies in the appropriate fields.

Standard bidding documents.

**56.**-(1) A procuring and disposing entity shall use the standard documents provided by the Authority as models for drafting all solicitation documents for each individual procurement or disposal requirement.

(2) All standard bidding documents shall-

- (a) detail the terms and conditions, which shall apply to any resulting contract; and
- (b) contain the General Conditions of Contract, or a statement of the General Conditions of Contract which shall apply.

(3) The general conditions of contract shall not be modified except through Special Conditions inserted into the solicitation documents or contract.

(4) A procuring and disposing entity shall obtain the prior consent of the Authority to place a contract against the general conditions of contract other than those contained in the standard solicitation documents provided by the Authority.

Selection of bidders

**57.** All methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure maximum competition.

Bidding period.

**58.** The bidding period shall be sufficient to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition.

Clarification of solicitation documentation.

**59.**-(1) At any time prior to the deadline for bid submission, a procuring and disposing entity may, on its own initiative, or in response to a request for clarification by a bidder, modify the solicitation documents by issuing an addendum.

(2) Where a procuring and disposing entity considers it necessary, it may extend the closing date to enable bidders to take the addendum fully into account while preparing their bids.

**60.** A procuring and disposing entity shall require bidders to submit sealed written bids unless otherwise provided for in this Act or regulations made under this Act. Form of bids.

**61.** The method for bid submission shall be prescribed by regulations made under this Act and shall be determined in the regulations by the type, complexity and evaluation method of the procurement or disposal being handled by the procuring and disposing entity. Bid submission methods.

**62.** A bidder may modify or withdraw his bid at any time before the deadline for bid submission, using the method prescribed by regulations made under this Act. Modification and withdrawal of bids.

**63.** All bidding processes shall include a formal bid receipt and a bid opening. Bid receipt and opening.

**64.** A procuring and disposing entity shall require all bidders participating in public procurement or disposal to meet the qualification criteria set out in the bidding documents which in all cases shall include the following basic qualifications- Basic qualifications of bidders.

- (a) that the bidder has the legal capacity to enter into the contract;
- (b) that the bidder is not-
  - (i) Insolvent;
  - (ii) in receivership;
  - (iii) bankrupt; or
  - (iv) being wound up;
- (c) that the bidder's business activities have not been suspended;
- (d) that the bidder is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b).

Evaluation. **65.**-(1) The choice of an evaluation methodology shall be determined by the type, value and complexity of the procurement or disposal.

(2) All solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.

(3) No evaluation criteria other than that stated in the bidding documents shall be taken into account.

(4) A procuring and disposing entity shall ensure that the evaluation of bids is done expeditiously in accordance with regulations made under this Act.

Change in bid details. **66.** There shall not be any alterations or any changes in the substance of bids, including changes in price, after the date and time of bid closing, except as may be otherwise prescribed by regulations made under this Act.

Clarification of bids received **67.** A procuring and disposing entity may ask bidders for clarification of their bids in order to assist in an evaluation and to clarify details that were not apparent or could not be finalised at the time of bidding, in accordance with procedures prescribed by regulations made under this Act.

Prohibition of negotiation. **68.**-(1) Negotiations on price shall not be carried out between a procuring and disposing entity and a contractor, in respect of a proposal of the contractor, except where-

- (a) the competitive procurement method was used and only one bid was received in response to the call for bids;
- (b) the direct procurement method was used; or
- (c) the procurement is for consultancy services.

(2) Negotiations on price under subsection (1) of this section shall only be carried out where the best evaluated bid or proposal exceeds the budget of the procuring and disposing entity.

(3) For the purposes of the negotiations under this section, the procuring and disposing entity shall investigate why the cost of the procurement exceeds the budget of the procuring and disposing entity and may-

- (a) cancel the procurement process and request for new proposals;  
or
- (b) negotiate with the best evaluated bidder in order to obtain a reduction of the scope of the quantities of the procurement.

**69.**-(1) A procuring and disposing entity may reject any or all the bids at any time prior to the award of a contract. Rejection  
of bids.

(2) The rejection of all bids or all proposals shall only be justified where:-

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

(3) Lack of competition shall be determined solely on the basis of the number of tenders' or persons who made proposals.

**70.**-(1) For the purposes of this Act, an award decision is not a contract. Contract.

(2) An award shall not be confirmed by a procuring and disposing entity until-

- (a) the period specified by regulations made under this Act has lapsed; and
- (b) funding has been committed in the full amount over the required period.

(3) An award shall be confirmed by a written contract signed by both the provider and the procuring and disposing entity only after the conditions set out in subsection (2) of this section, have been fully satisfied.

(4) The award decision shall be posted in a manner prescribed by regulations during the period specified in paragraph (a) of sub-section (2) of this section.

(5) The regulations shall prescribe the types of contracts.

Change in bidder's circumstances.

**71.** Any change in the circumstances of a bidder during the procurement or disposal process that could materially affect the bidder's capacity to execute the contract shall be immediately drawn to the attention of the tender board by the bidder.

Prohibition of public officers.

**72.** Public Officers shall not participate in the disposal process as bidders except where specific items are offered to the Public Officials of a procuring and disposing entity subject to-

- (a) internal advertisement and competition;
- (b) the sale price being no less than the authorized valuation of the items to be offered;
- (c) the concurrence of the Head of the Procurement and Disposal Management Unit, the Tender Boards and the Accounting Officer; and
- (d) the complete record of each offer being kept by the procuring and disposing entity for inspection and record, a copy of which documentation shall be forwarded by the Accounting Officer to the Authority within seven working days.

## **PART VI METHODS OF PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS**

Choice of procurement method.

**73.-(1)** A procuring and disposing entity shall in respect of-

- (a) the procurement of goods, works and non consulting services, use any of the methods in sections 74-80 and the conditions for their use specified in the third schedule to this Act; and
- (b) the procurement of consulting services, use section 86 and the conditions for procuring consultancy services specified in the Third Schedule to this Act.



(2) The choice of a procurement or disposal method shall first be approved by the Tender Board.

(3) A procuring and disposing entity shall first obtain the consent of the Authority before it uses any other method than the ones set out in this Part of the Act.

**74.**-(1) Except as provided for in this Act or regulations made under this Act, a procuring and disposing entity shall use the open domestic bidding method. Open domestic bidding.

(2) Open domestic bidding is a procurement method which is open to participation on equal terms by all providers through advertisement of the procurement opportunity.

(3) Open domestic bidding shall be used to obtain maximum possible competition and value for money.

(4) Nothing shall prevent a foreign or international bidder from participating in open domestic bidding.

**75.**-(1) Open international bidding is the procurement method which is open to participation on equal terms by all providers, through advertisement of the procurement opportunity and which specifically seeks to attract foreign providers. Open International bidding.

(2) Open international bidding is used to obtain the maximum possible competition and value for money, where national providers may not necessarily make this achievable.

**76.**-(1) Restricted domestic bidding is the procurement method where bids are obtained by direct invitation without open advertisement. Restricted domestic bidding.

(2) Restricted domestic bidding is used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit the open bidding procedure.

Restricted international bidding. **77.**-(1) Restricted international bidding is the procurement procedure where bids are obtained by direct invitation without open advertisement and the invited bidders include foreign providers.

(2) Restricted international bidding shall be used to obtain competition and value for money to the extent possible where the value or circumstances do not justify or permit an open bidding method and the short listed bidders include foreign providers.

Quotation method. **78.**-(1) The quotation method is a simplified procurement method which compares price quotations obtained from a number of providers.

(2) The quotation method shall be used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit open or restricted bidding procedures.

(3) The quotation method shall be used in works and supplies.

Direct procurement. **79.**-(1) Direct procurement is a sole source procurement method for procurement requirements where exceptional circumstances prevent the use of competition.

(2) Direct procurement shall be used to achieve efficient and timely procurement, where the circumstances do not permit a competitive method.

Minor value procurement. **80.**-(1) Micro procurement is a procurement method which shall be used for very low value procurement requirements.

(2) Micro procurement shall be used to achieve efficient and timely procurement where the value does not justify a competitive procedure.

Methods of disposal of public assets. **81.**-(1) Public assets may be disposed of using any of the following methods-

- (a) public auction;
- (b) public bidding;
- (c) direct negotiations;

- (d) sale to public officers;
- (e) destruction of the assets;
- (f) conversion or classification of assets into another form for disposal by sale;
- (g) trade-in;
- (h) transfer to another procuring and disposing entity; and
- (i) donation.

(2) Where a public asset is to be donated the procuring and disposing entity shall take into account the following factors-

- (a) national security and public interest issues;
- (b) health and safety issues;
- (c) legal and human rights issues;
- (d) environmental considerations; and
- (e) the asset is obsolete and of minimal value.

(3) Donation shall only be used where the other methods of disposal cannot be used by the procuring and disposing entity.

(4) Notwithstanding subsection (1) of this section, a procuring and disposing entity shall not dispose of any strategic asset, without the prior approval of the Minister.

(5) Subsection (1)(c) of this section, shall not apply to the disposal of land by the Ministry responsible for Land.

(6) For the avoidance of doubt, subsection (2)(c) of this section, applies to the disposal of land held by the Ministry responsible for Land on behalf of a procuring and disposing entity.

(7) In this section "strategic asset" means land, a building, a ship, shares and any other asset as may be prescribed, belonging to the Government, situated within or outside Zanzibar.

(8) The procedures for the methods in subsection (1) of this section, shall be prescribed by regulations made under this Act.

Selection  
of  
providers

**82.** The detailed procedures for selection of providers shall be prescribed by regulations.

Procure-  
ment of  
consultancy  
services.

**83.-(1)** A procuring and disposing entity shall procure a consultancy service by publishing a notice, as specified in the fourth schedule to this Act, inviting expression of interest for a required assignment.

(2) The procuring and disposing entity shall, from the expressions received in respect of the notice under subsection (1), prepare a shortlist of consultants, who have the capacity to perform the required assignment.

(3) Notwithstanding subsection (1) of this section, a procuring and disposing entity may procure consultancy services using a shortlist of consultants developed-

- (a) from the register of providers of the Authority;
- (b) on the recommendation of a competent authority;
- (c) using the pre-qualified list of the procuring and disposing entity; or
- (d) using the pre-qualified list of another procuring and disposing entity.

(4) A procuring and disposing entity shall procure consultancy services using subsection (3) of this section, where-

- (a) the required consultancy services can only be provided by a limited number of consultants;
- (b) the time and cost required to examine and evaluate a large number of expressions of interest is not proportionate to the value of the assignment to be undertaken; or
- (c) there is an emergency situation.

(5) The selection methods to be used for the selection of consultants shall be prescribed by regulations made under this Act and shall include-

- (a) quality and cost based selection method;
- (b) quality based selection method;
- (c) fixed budget selection method;
- (d) least cost based selection method; and
- (e) the consultants' qualifications selection method.

(6) The procuring and disposing entity may conduct negotiations with the selected consultants but negotiations shall not be held with several consultants simultaneously.

(7) Notwithstanding this section, where exceptional circumstances prevent the use of competitive bidding and where any of the conditions for using the direct procurement method as specified in the Fourth Schedule to this Act are satisfied, a procuring and disposing entity may source a consultant who has the capacity to perform the required assignment.

## **PART VII TYPES OF CONTRACT**

**84.**-(1) A procuring and disposing entity shall in respect of a procurement activity, use any of the contract types specified in this Part or a combination of any of them, using procedures prescribed by regulations made under this Act. Choice of contract.

(2) The types of contracts shall be-

- (a) Lump sum contract;
- (b) Time-based contract;
- (c) Admeasurement contract;
- (d) Framework contract;
- (e) Percentage based contract;

- (f) Cost reimbursable contract;
- (g) Target price contract;
- (h) Retainer contract;
- (i) Success fee contract.

Other type  
of contract  
or  
contracting  
arrangement

**85.**-(1) For any other type of contract or contracting arrangement, other than those specified in section 83, including acquisition by rental, lease, hire purchase, licence, tenancy, franchise or by an arrangement that involves the mobilisation of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects or concessioning, the procuring and disposing entity shall seek guidance from the Authority on the applicable procurement procedures and documents.

(2) In this section "an arrangement that involves the mobilisation of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects or concessioning" includes financing by build own operate, build own transfer, build own operate transfer and public private partnership.

## **PART VIII ADMINISTRATIVE REVIEW**

Administra-  
tive review.

**86.**-(1) A bidder may seek administrative review for any omission or breach by a procuring and disposing entity of this Act, or any regulations or guidelines made under this Act or of the provisions of bidding documents, including best practices.

(2) A procuring and disposing entity shall provide a bidder who seeks administrative review with-

- (a) a summary of the evaluation process;
- (b) a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and
- (c) the reasons for rejecting the concerned bids.

(3) The information provided to a bidder under subsection (2) of this section, shall be used only for administrative review purposes.

**87.**-(1) A bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity. Review by Accounting Officer.

(2) A complaint by a bidder against a procuring and disposing entity shall-

- (a) be in writing and shall be submitted to the Accounting Officer of the procuring and disposing entity with the prescribed fee, and a copy shall be given to the Authority;
- (b) be made within ten working days from the date the bidder, first becomes aware or ought to have become aware, of the circumstances giving rise to the complaint.

(3) On receiving the complaint and the prescribed fee, the Accounting Officer shall-

- (a) immediately suspend the procurement proceedings; and
- (b) make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her decisions and submit a copy of the decision to the Authority.

(4) Where-

- (a) the Accounting Officer does not make a decision within the period specified in sub-section (3)(b) of this section; or
- (b) the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.

(5) A contract shall not be entered into by an Accounting Officer with a provider-

- (a) during the period of administrative review;
- (b) before the Authority makes a final decision in respect of a complaint lodged with the Authority under section 88(3) of this Act.

Review by  
the  
Authority.

**88.**-(1) Upon receipt of a complaint, the Authority shall promptly give notice of the complaint to the respective procuring and disposing entity, suspending any further action thereon by the procuring and disposing entity until the Authority has settled the matter.

(2) The Authority shall, unless it dismisses the complaint-

- (a) prohibit a procuring and disposing entity from taking any further action; or
- (b) annul in whole or in part an unlawful act or decision made by the procuring and disposing entity.

(3) Before taking any decision on a complaint, the Authority shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring and disposing entity.

(4) The Authority shall issue its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.

(5) A bidder who is not satisfied with the decision of the Authority given under subsection (4) of this section, may seek redress in a court of competent jurisdiction.

## PART IX MISCELLANEOUS PROVISIONS

Limitation  
on contracts  
with  
members of  
procuring  
and  
disposing  
entities.

**89.**-(1) Except where expressly allowed by regulations, a procuring and disposing entity shall not enter into contract with-

- (a) a member of the Tender Board or of the evaluation committee, an employee of the procuring and disposal entity or a member of the Board of Survey;



- (b) a person appointed to politically or administratively control the procuring and disposing entity, including a Minister, the Accounting Officer or a member of the governing body of the procuring and disposing entity; and
- (c) a company, where a person specified in paragraph (a) or (b) has a controlling interest.

(2) A member of a Tender Board, a member of a procurement and disposal management unit, a member of the governing body of a procuring and disposing entity, or a member of the Board of Survey who has a conflict of interest with respect to a procurement or disposal shall not-

- (a) take part in any procurement or disposal proceedings; and
- (b) after a procurement or disposal contract is entered into, take part in any decision relating to the procurement or disposal contract.

(3) "Conflict of interest" in subsection (2) of this section, in relation to a person to whom that subsection applies, includes the personal interest of a relation or business associate which that person has knowledge or would have had knowledge if he or she exercised due diligence having regard to all the circumstances.

(4) "Relation" in subsection (3) of this section, means a biological or adopted child, a spouse and a parent.

(5) A person to whom this section applies shall reveal any personal interest that may impinge or which may be deemed to impinge on the business dealings of that person, with the procuring and disposing entity.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or both.

**90.** No action shall lie against any member or staff of the Authority or a procuring and disposing entity for any act or omission done in good faith. Protection  
from  
prosecution.

Code of  
conduct.

**91.**-(1) Public Officers as well as experts engaged to deliver specific services shall sign the Code of Ethical Conduct specified in the Fourth Schedule to this Act.

(2) All providers of works, services or supplies shall be required to sign a declaration of compliance with those codes of conduct determined by the Authority from time to time.

Suspension  
of  
providers.

**92.** The Authority may on the recommendation of a procuring and disposing entity or after investigations on its own initiative, suspend a provider from engaging in any public procurement or disposal process for a period determined by the Authority, where-

- (a) the provider breaches the Code of Ethics of providers;
- (b) the provider is debarred from the procurement processes of an international agency of which Zanzibar is a member;
- (c) after investigations by the Controller and Auditor General or an independent body appointed by the Controller and Auditor General, the provider is found to have a record of unsatisfactory performance;
- (d) the provider is convicted of a corrupt practice or a fraudulent practice under this Act;
- (e) the provider fails to substantially perform the obligations specified in the contract;
- (f) the provider is suspended by a professional body of the provider, for professional misconduct; or
- (g) the provider is found to have faulted on the obligations specified under the law.

Offences  
and  
penalties.

**93.**-(1) A person commits an offence who-

- (a) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under paragraph (a) of sub-section (1) of section 8 of this section;

- (b) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required by paragraph (b) of sub-section (1) of section 8;
- (c) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or a procuring and disposing entity in the performance of his or her functions or in the exercise of his or her power under this Act;
- (d) connives or colludes to commit a corrupt practice or a fraudulent practice, and on conviction is liable to a fine of not less than five hundred thousand shillings or to imprisonment for a term not exceeding five years or both.

(2) An Accounting Officer, a member of the Tender Board, a member of the evaluation committee, an employee of the Authority or of a procuring and disposing entity, who-

- (a) connives or colludes to commit a corrupt practice or a fraudulent practice during a procurement or disposal process;
- (b) engages in a corrupt practice or a fraudulent practice during a procurement or disposal process, commits an offence and is liable on conviction to a fine not exceeding Five Hundred Thousand Shillings or to imprisonment for a term not exceeding five years or both.

(3) An Accounting Officer who signs a contract contrary to-

- (a) section 25(2) of this Act, commits an offence and is liable on conviction to a fine not exceeding one five hundred thousand shillings or to imprisonment not exceeding five years, or both; and
- (b) section 25 (5) of this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding five years, or both and in addition to the fine, may be ordered by court to make

a refund of an amount equivalent to the difference in price between the price paid for the supplies, services or works and the market price.

(4) Where it is proved that a provider is involved in a fraudulent practice in any procurement proceeding-

- (a) the provider shall be disqualified by the Tender Board from the procurement proceeding; and
- (b) the tender board shall recommend to the Authority to suspend the provider.

(5) Where a provider is suspended under Act, and there is an existing contract between the provider and the procuring and disposing entity, the contract shall be voidable at the option of the procuring and disposing entity.

(6) Notwithstanding subsections (4) and (5) of this section, a procuring and disposing entity may seek any other legal remedy available, against the provider.

(7) Where a procuring and disposing entity, after appropriate investigations, is satisfied that any bidder to whom a proposal to award a contract is to be made, is engaged in a corrupt practice or a fraudulent practice in competing for the contract in question, the procuring and disposing entity may-

- (a) reject the proposal for award of the contract; or
- (b) recommend to the Authority that the bidder be suspended from participating in any procurement or disposal process.

(8) Where it is determined after a special audit or by a court that a bidder is engaged in a corrupt practice or a fraudulent practice during the procurement process, the award of a contract or execution of a contract, the Authority shall suspend the bidder from participating in any procurement or disposal process.

**94.**-(1) The Minister shall, on the recommendation of the Authority, issue regulations for the better carrying out of the objectives and functions of this Act. Regulations.

(2) Without prejudice to the general effect of subsection (1) of this section, the Minister shall, on the recommendation of the Authority, and approval of the House of Representatives, issue regulations for procurement and disposal by a procuring and disposing entity outside Zanzibar.

(3) Regulations made under this section may prescribe for a contravention of any of the provisions of the regulations or any guidelines issued under this Act.

**95.** For the better carrying out of the objectives of and functions under this Act, the Authority shall issue guidelines and published in the Gazette. Guidelines.

**96.**-(1) Except as provided for under this Act, this Act shall take precedence over all other enactments establishing Tender Boards or like mechanisms, and the responsible procuring and disposing entities shall within twelve months after this Act comes into force, bring their practices in conformity with this Act. Transitional provisions.

(2) A procurement process that had commenced before the coming into force of this Act shall be continued to completion under this Act.

**97.**-(1) The Public Procurement and Disposal of Public Assets Act No. 2 of 2005 is hereby repealed. Repeal and saving.

(2) Without prejudice sub section (1) of this section, any thing done or transaction intered in accordance with the provisions of the repealed Act, shall, before this Act coming into operation, continue and be deemed to be done or intered under the provisions of this Act.

**FIRST SCHEDULE**  
**STANDARD DECLARATION FORM**  
**[Made under section 14(4)(a)]**

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I, ..... do solemnly swear to abide by the rules of the Public Procurement and Disposal Public Assets Authority including the principles of natural justice, equity, the Code of Ethical Conduct and best practices in the performance of my duties as a member of the Board of Directors of the Public Procurement and Disposal of Public Assets Authority.

I also confirm that I do not have any direct or indirect interests of whatsoever nature in any item on the Agenda that may give rise to the principles of conflict of interest or cause unfair advantage to any party that is directly or indirectly involved in the particular agenda item.

I shall also, at all times, maintain the required level of confidentiality and professional standards in the performance of my duties as a member of the Board of Directors.

Subscribed and solemnly declared by me at ..... on the ..... day of..... 20.....

Signed by..... Board Member

**SECOND SCHEDULE**  
**COMPOSITION OF A TENDER BOARD**  
**[Made under section 28(1)]**

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A Tender Board shall be composed of the following members-

- (a) A chairperson;
- (b) Heads of Departments;
- (c) a maximum of three other members appointed by the Accounting Officer one of whom shall have a legal background.

**THIRD SCHEDULE**  
**CONDITIONS FOR USE OF PROCUREMENT METHODS**  
**[Made under section 73(1)]**

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Open domestic bidding.

1.-(1) Open domestic bidding shall be open to all bidders following a public advertisement of a Bid Notice in at least one widely read national newspaper.

(2) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the respective Tender Boards.

(3) A public bid opening shall be held in accordance with procedures prescribed by regulations.

Open international bidding.

2.-(1) Open international bidding may be used instead of open domestic bidding where competition will not be effective without foreign bidders or where foreign bids will increase value for money.

(2) Nothing shall prevent a domestic bidder from participating in open international bidding.

(3) The procurement process under open international bidding shall follow the procurement process to be set out in regulations.

(4) Open international bidding shall be open to all bidders following the public advertisement of a bid notice in a publication of wide international circulation.

(5) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the tender board but, in all cases shall be in line with guidelines.

(6) A public bid opening shall be held in accordance with the procedure prescribed by regulations.

Restricted domestic bidding.

3.-(1) Restricted domestic bidding may be used where-



- (a) the supplies, works or services are available only from a limited number of providers; or
- (b) there is insufficient time for an open bidding procedure in an emergency situation; or
- (c) the estimated value of the procurement does not exceed the threshold stated in the procurement guidelines issued under this Act.

(2) The procurement process under restricted domestic bidding shall follow the procurement procedures prescribed by regulations and as follows-

- (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a Bid Notice.
- (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations, and
- (c) a public bid opening shall be held in accordance with the procedure prescribed by regulations.

4.-(1) Restricted international bidding may be used where the supplies, works or services are available only from a limited number of providers and- Restricted international bidding.

- (a) there is insufficient time for an open bidding procedure in an emergency situation; or
- (b) the estimated value of the procurement does not exceed the threshold stated in the procurement guidelines.

(2) The procurement process under restricted international bidding shall follow the procedure prescribed by regulations and made under this Act as follows-

- (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a bid notice;

- (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations; and
- (c) a public bid opening shall be held in accordance with the procedure to be prescribed by regulations.

Quotation.

**5.-(1)** Quotations may be used where-

- (a) there is insufficient time for an open or restricted bidding procedure such as in an emergency situation; or
- (b) where the estimated value of the procurement does not exceed the threshold stated in the procurement guidelines.

**(2)** The process under quotations procurement shall be as follows-

- (a) the solicitation document shall be addressed to a limited number of potential bidders without advertising the opportunity;
- (b) the selection of the bidders shall be in accordance with regulations made under this Act;
- (c) a procuring and disposing entity shall obtain at least three bids; and
- (d) an internal bid opening shall be held in accordance with procedures to be prescribed by regulations.

Direct  
procure-  
ment.

**6.-(1)** Direct procurement may be used-

- (a) where-
  - (i) there is insufficient time for any other procedure such as in an emergency situation; or
  - (ii) the works, services or supplies are available from only one provider; or
  - (iii) an existing contract could be extended for additional works, services or supplies of a similar nature and no

advantage could be obtained by further competition, if the prices on the extended contract are reasonable; or

- (iv) additional works, services or supplies are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional works, services or supplies from the original supplier, provided the prices on the additional contract are reasonable; or
  - (v) it is essential or preferable to purchase additional works, services or supplies from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable;
- (b) in the circumstances specified in subparagraph (1) (a)(iii), (iv) and (v), where the value of the new works, services or supplies does not exceed fifteen percent of the value of the original or existing contract and the original or existing contract is awarded through a competitive process; and
- (c) where direct procurement is used more than once in the circumstances specified in sub paragraph (1) (b), the cumulative value of all new works, services or supplies shall not exceed twenty five percent of the value of the original or existing contract.

7.-(1) A procuring and disposing entity shall use the micro procurement method for unforeseen requirements whose estimated value is below the prescribed threshold. Micro procure-  
ment.

(2) Where a procuring and disposing entity engages in micro procurement-

- (a) the original invoice or receipt evidencing the supplies procured and the price paid shall be obtained and signed by the official procuring the supplies;

- (b) it shall be responsible for ensuring that value for money is obtained to the extent practical under the procurement procedure; and
- (c) a comparison of at least three quotations shall be made.

(3) A procuring and disposing entity shall not use micro procurement-

- (a) to split procurements in order to avoid using the appropriate procurement method; or
- (b) for the procurement of works, services or supplies where they are required continuously or repeatedly over a set period of time or for which a framework contract is required.

Notice  
inviting  
expression  
of interests  
for  
provision  
of  
consultancy  
services.

**8. A notice inviting expression of interests for provision of consultancy services shall-**

- (a) contain the name and address of the procuring and disposing entity and a brief description of the required services; and
- (b) be published in a newspaper of wide circulation and where applicable, in the relevant trade or professional publication.

## FOURTH SCHEDULE

### CODE OF ETHICAL CONDUCT IN BUSINESS

[Made under section 91(1)]

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**1.**-(1) Employees shall not use their authority or office for personal gain and shall seek to uphold and enhance the reputation of the Government of Zanzibar at home and abroad by- Ethical principles.

- (a) maintaining an impeccable standard of integrity in all business relationships both inside and outside the organisations in which they are employed;
- (b) fostering the highest possible standards of competence;
- (c) optimising the use of resources for which they are responsible to provide the maximum benefit to Zanzibar; and
- (d) complying both with the letter and the spirit of-
  - (i) the laws of Zanzibar and regulatory guidance;
  - (ii) accepted business practices in commercial markets; and
  - (iii) contractual conditions.

**2.** Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's business dealings with an industry. Conflict of interest.

**3.**-(1) Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain. Confidentiality and accuracy of information.

(2) Information given by employees in the course of business dealings shall be true and fair and not designed to mislead.

- Competition.      **4.** Employees shall avoid any business arrangement that might prevent the effective operation of fair competition.
- Business gifts.      **5.** Employees shall not accept business gifts from current or potential Government suppliers unless such gifts are of very small intrinsic value such as a calendar or a pen.
- Hospitality.      **6.** Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality.
- Restriction on use of information.      **7.** A member of the Authority, a procuring and disposing entity or expert contracted to deliver specific services shall not use to his or her personal or organisational advantage, information acquired by him or her by virtue of his or her association with the Authority or a procuring and disposing entity for a period of one year after vacating office or ceasing to render the specific services.
- Interpretation.      **8.** In this schedule, "employee" means a public officer and an expert.

## **OBJECTS AND REASONS**

The Objects of this Bill is to repeal the Public Procurement and Public Assets Act, No. 9 of 2005 and enact law which will provide for the establishment of the Public Procurement and Public Assets Authority and other matters connected thereto. The Authority to be established, shall be autonomous body capable to sue and being sued and have all pre-requisite elements as body corporate. The key functions of the Authority shall, among others are-

- (a) to advise government, local governments and other procuring and disposing entities on all public procurement and disposal policies, principles and practices;
- (b) to monitor and report on the performance of the public procurement and disposal systems in Zanzibar and advise on desirable changes;

- (c) to prepare, update and issue authorized versions of the standardized bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (d) to issue guidelines relating to the procuring and disposing standards to be observed by all government entities on procurement and disposal of public assets; and
- (e) many others as prescribed in this Bill.

Apart from above all, the Authority shall be vested with powers to resolve all dispute which may arise from any transaction of procurement and disposal of public assets.

The Authority shall be under the management of the Executive Director who shall be appointed by the President. A person to be appointed as Executive Director shall be a Zanzibaris having at least first degree in procurement and supplies, material management, engineering, finance, economic, law and any other related field from a recognized educational Institution; and working experience of at least fifteen years in that field with at least ten years practicing or engaged on procurement or administration or public service.

The Authority shall be under the supervision of the Board of Directors composed of Chairperson to be appointed by the President and other members from various public and private sectors in one way or the others relating to procurement matters, to be appointed by the Minister. The proposed composition of the Board is expected to provide a very substantive and useful contributions in the overall management and supervision of the Authority. The Board proposed to compose professional experts from different fields without forgetting the private sector in order to comply with Public Private Partnership (PPP) agenda.

The key functions of the Board among others, are-

- (a) to supervise and monitor the management of functions of the Authority;

- (b) to monitor the adherence of all provisions relating to public procurement and disposal of public assets;
- (c) to determine the appointment of staff of the Authority and assign responsibilities of employees and setting their terms and conditions of employment including promotion, dismissal and disciplines;
- (d) to set strategies, action plans and appropriate work targets for each department of the Authority; and
- (e) to do any other function as may be assigned by the Act.

It has been discovered that, the current Procurement and Disposal of Public Assets Act has got many lacunas. Among others are-

- (a) provisions relating to procurement and disposal of assets in Local Government;
- (b) existing highly bureaucracy in procurement procedures and disposal of public assets transactions and dealings mainly on disposal of used properties;
- (c) lack of provisions relating to thresholds for every type of procurement of goods, works and consultancy services;
- (d) lack of provisions relating to composition of Tender Board for local government and local authorities;
- (e) the Chief Executive Officers of each government department, public corporation and other public independent institution to be the Chairperson of the Tender Board while the same are accounting officer of the respective institution;
- (f) the low threshold for minor procurement;
- (g) lack of independent body to supervise all procurements and disposal transactions;
- (h) lack of many other provisions as best practices in procurements and disposal of public assets transactions; and



- (i) the law is not in uniformity with other procurement laws within the region of East African Community.

Due to the existing above stated lacunas, the new proposed law, shall consider to cover all stated areas together with the following as hereunder identified-

- (a) the expansion of scope of application of the law to central and local government, all government institutions and public corporations;
- (b) the general principles and methods of procurement and disposal of public assets;
- (c) the provisions relating to the establishment of management procurement system and dispute resolutions on procurement dealings;
- (d) establishment and composition of procurement entities to deal with procurement and disposal of public assets which will provide transparency in procurement dealings;
- (e) establishment of Tender Board for each government and public corporation, procurement management unit, evaluation committee and other related matters in all central and local government including public corporation and other government independent institutions;
- (f) to identify special contract to be used by public institutions and methods to be used with that contract;
- (g) to provides special consideration and privileges for national companies (Zanzibar Companies);
- (h) procurement and disposal of public assets through internet;
- (i) to provide methods of procurement and disposal of public assets for public fixed assets;

- (j) to provides for open and clear methods for procurement and disposal of public assets; and
- (k) many others related procurement and disposal of public assets matters.

This Bill is divided into Nine Parts, as briefly stated hereunder as follows-

**Part One** is about Preliminary provisions contain, short title and commencement date, scope of application of the Act and interpretation of some important terms used therein.

Part Two is about the establishment of Public Procurement and Disposal of Public Assets Authority which inter alia contain, objectives of the Authority, functions of the Authority, powers of the Authority, establishment of Board of Directors, composition of the Board, qualifications for Chairperson, functions of the Board, appointment of Executive Director, qualifications of Executive Director, other staff of the Authority and other related matters of the Board of Directors and the Authority in general.

**Part Three** is about procuring and disposing entities which includes, powers of the procuring and disposing entities, Accounting Officer, Tender Board, functions of the Tender Board, powers of the Tender Board, establishment of Procurement and Disposal Management Unit, functions of the Procurement and Disposal Management Unit, functions of the User Department, Evaluation Committees, delegation of powers of the Accounting Officer, accreditation for alternative system, Records of a procuring and disposing entity and many others.

**Part Four** is about Basic Procurement and Disposal Principles which contains, application of basic principles, open competitive bidding, best evaluated bids and public accessibility.

**Part Five** is about Public Procurement and Disposal Rules containing- Application of public procurement and disposal rules, procurement and disposal planning, preference schemes, reservation scheme, best practice and industry standards, standard bidding documents, Selection of bidders, bid submission methods, bid receipt and opening, basic qualifications of bidders, evaluation, rejection of bids, prohibition of public officers and others.

**Part Six** provides for Methods of Procurement and Disposal which contain, choice of procurement method, open domestic bidding, open International bidding, restricted domestic bidding, restricted international bidding, quotation method, direct procurement, minor value procurement, methods of disposal of public assets, procurement of consultancy services and others.

**Part Seven** is for types of contract containing choice of contract and other types of contract or contracting arrangement.

**Part Eight** is about Administrative Review which provides for administrative review, review by accounting officer and review by the authority.

**Part Nine** dealing with Miscellaneous Provisions which contain, limitation on contracts with members of procuring and disposing entities, protection from prosecution, code of conduct, offences and penalties, regulations, guidelines and repeal and saving.

Lastly, there are Four Schedules-

**First Schedule** is about Standard Declaration Form;

**Second Schedule** is about Composition of a Tender Board;

**Third Schedule** is about Conditions for use of Procurement Methods; and

**Fourth Schedule** is about Code of Ethical Conduct in Business.

**ZANZIBAR**  
29<sup>th</sup> August, 2016

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