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NOTICE

The Bill following hereunder shall be presented before the House of Representatives for the first reading which will start its session on 27th November, 2024 and is gazetted for the public notice incorporating together with their objects and reasons.

ZANZIBAR
05th November, 2024

(Eng. Zena Ahmed Said)
***Secretary to the Revolutionary
Council and Chief Secretary***

A BILL

for

AN ACT TO REPEAL THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, NO. 11 OF 2016 AND ENACT THE PUBLIC PROCUREMENT ACT TO PROVIDE COMPREHENSIVE PROVISIONS TO REGULATE AND CONTROL PUBLIC PROCUREMENTS AND OTHER MATTERS RELATED THERETO

ENACTED by the House of Representatives of Zanzibar.

**PART ONE
PRELIMINARY PROVISIONS**

Short title and commencement.

1. This Act may be cited as the Public Procurement Act, 2024 and shall come into operation upon being assented to by the President.

Application.

2.-(1) This Act shall apply to all public procurements undertaken by public procuring entity in procuring goods, works or services using finances originating from:

- (a) Consolidated Fund or Special Fund spent through the capital or recurrent budgets;
- (b) funds spent to meet external obligation, except financial resources that may be earmarked for payment of membership subscriptions and contributions;
- (c) financial resources in the form of counterpart transfers, co-financing or any finances of similar nature within the context of development cooperation agreement for implementation of national programs;
- (d) specific public finances for a non-governmental entity; and
- (e) public fund used in Public Private Partnership projects.

(2) For the avoidance of doubt, the following activities shall not be deemed as public procurements under the provisions of this Act:

- (a) acquisition of an asset disposed off by another procuring entity in accordance with any other law; and
- (b) reception of services from an employee of procuring entity in accordance with the administrative policies of the procuring entity.

(3) Where there is a conflict between the provisions of this Act and any other law which regulates any aspect of the public procurement, the provisions of this Act shall prevail.

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

Interpre-
tation.

“Accounting Officer” has meaning as ascribed to it under the Public Finance Management Act, No. 12 of 2016;

“approving authority” means an Accounting Officer or Tender Board as the case may be;

“Authority” means Zanzibar Public Procurement Regulatory Authority established under the provisions of section 4 of this Act;

“bid” means any offer submitted by the bidder to perform works, supply goods, provide services or any combination thereof, in response to the invitation by the procuring entity;

“bid opening” means an act of opening the closed bid in the presence of the respective bidders or their representatives who chose to witness the opening;

“bidder” means an individual person or legal entity authorized to participate in public procurement proceedings;

“bid document” means a model document issued by the Authority to be used by the procuring entity to float tender;

“bid notice” means any advertisement by which bidders are invited to submit their bids;

- “bid security” means the banking guarantee or other acceptable form of security submitted by a bidder together with a bid, to secure the obligation of the bidder relating to participating in procurement proceedings including the obligation to sign a procurement contract if the bid is duly accepted;
- “Board” means the Board of Directors of the Authority established under the provisions of section 10 of this Act;
- “conflict of interest” means the personal interest emanated from any kind of relationship between the officer of the procuring entity involved in the particular procurement process and the bidder participating in such procurement;
- “Consultant” means a natural or legal person who provides consultancy services to a procuring entity;
- “consultancy service” means a service of an intellectual provided by a consultant who is skilled and qualified in a particular field or profession and includes engineering, accountancy, auditing, financial, procurement, training and capacity building, management advice, policy studies and advice and assistance with institutional reform;
- “contractor” means any person or institution working in construction, reconstruction, repairing, renovation, demolition or any other activities relating to construction;
- “contract management” means management of procurement contracts for the purpose of assuring compliance with obligations under the terms and conditions of contracts;
- “contract period” means the period starting from a point of contract signing to the elapsing of contract validity including the defect’s liability period or warranty period;
- “collusive practices” means an arrangement between two or more bidders or bidder and employee of the procuring entity, designed to establish bid prices at artificial or any other form of improper purpose in order to win the bid or attain more profit;

- “coercive practice” means a practice that causes harm or threatens to cause harm, directly or indirectly, against a person or a person’s property, in order to influence that person’s participation in a procurement process;
- “corrupt conduct” has meaning as ascribed to it under the Zanzibar Anti-Corruption and Economic Crimes Act, No. 5 of 2023;
- “diaspora” has the meaning as ascribed to it under the Diaspora Affairs Act, No.4 of 2020;
- “Director General” means the Director General of the Authority appointed under the provisions of section 16 of this Act;
- “electronic procurement system” means the computerized system utilized by the procuring entities to manage the process of procurement by electronic means for the acquisition of goods, works or services;
- “foreign bidder” means a bidder whose business is not registered in Zanzibar;
- “framework agreement” means a type of contract which allows a Procuring Entity to procure goods, works or service needed continuously or repeatedly for the agreed price over an agreed period through placement of several orders;
- “fraudulent practice” means misrepresentation of fact to influence a procurement process or the execution of a contract to the detriment of the procuring entity or the bidders, and includes collusive practices amongst the bidders prior to or after bid submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;
- “goods” means things of every kind and descriptions whether tangible or intangible including commodities, agricultural crops, raw-material, products and equipment; matter in solid, liquid or gasses form and service incidental to the supply of such things;

- “Government” means the Revolutionary Government of Zanzibar;
- “local bidder” means a bidder who is registered to undertake business activities in Zanzibar in accordance with the Zanzibar laws;
- “Minister” means the Minister responsible for finance;
- “Ministry” means the Ministry responsible for finance;
- “market price index” means a metric that represents the price position relative to top competitors across commonly procured goods, works and services;
- “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;
- “Paymaster General” has meaning as ascribed to it under the Public Finance Management Act, No. 12 of 2016;
- “performance security” means a security guaranteed by the bidder who intends to sign contract with the procuring entity for the performance of the procurement contract;
- “preference” means the right or opportunity to select a bidder from an identified target group that is considered more desirable than another;
- “President” means the President of Zanzibar and Chairman of the Revolutionary Council;
- “post qualification” means a formal procedure applied after bids have been evaluated prior to award of contract to determine whether the lowest evaluated bid has experience, capability, and resources to carry out the contract effectively;
- “procurement” means acquisition of goods, services or works including where applicable by purchase, rental, lease, hire purchase, license, tenancy, franchise or any other

contractual means of any type of works, services or goods or any combination;

“Procurement Management Unit” means a unit established in accordance with section 40 of this Act;

“procurement process” means the stages in the procurement including planning, choice of procedure, measures to solicit offers from bidders, examination, evaluation of offers, contract award and other incidental stages to the end of contract;

“procuring entity” includes:

- (a) Ministry;
- (b) Special Departments;
- (c) Local Government;
- (d) Body Corporate established by the law;
- (e) a Company registered or established under the laws of Zanzibar in which the Government or procuring entity:
 - (i) has more than fifty percent of shares in the Company;
 - (ii) is entitled to cast or control the casting of more than fifty percent of the total number of votes that may be casted at a general meeting of the Company; or
 - (iii) controls more than fifty percent of the issued shares 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;
- (f) a commission or office established under the law;
- (g) a public university and a public tertiary institution established under the law; or

- (h) any other procuring entity as may be prescribed by the Minister;

“procurement threshold” means a limited value of money that is set in accordance with provisions of this Act for a procuring entity to expend in a particular procurement method;

“public body” means any:

- (a) ministry, department or agency of the Government;
- (b) institution established by the Government; or
- (c) company registered or established under the laws of Zanzibar whether majority or minority shares are owned by Government or being a company owned by the Government;

“public funds” has meaning as ascribed to it under the Public Finance Management Act, No. 12 of 2016;

“Public Private Partnership” has the meaning ascribed to it under the Public Private Partnership Act, No. 8 of 2015;

“Public officer” has meaning as ascribed to it under the Public Finance Management Act, No. 12 of 2016;

“responsive bid” means a bid that substantially complies with the conditions, requirements and specifications set out by the procuring entity;

“reservations scheme” means preference to procure goods, works or services with a particular sector designed to a defined target group of bidders within a specified geographical area;

“services” means any object of procurement other than works and goods, and includes professional, non-professional and commercial types of services as well as goods and works which are incidental to, but not exceeding the value of those services;

“solicitation documents” means any documents inviting bidders to participate in procurement proceedings;

“Special Departments” means the Special Departments as established under section 121 of the Constitution of Zanzibar, 1984;

“specifications” means the description of an object of procurement in accordance with national and international standards;

“terms of reference” means the statement issued by procuring entity giving the definition of the objectives, goals, duration and scope of services including where applicable means to be used;

“urgent” does not include circumstances that:

- (a) should have been foreseen by the procuring entity;
- (b) are a result of inadequate planning or conflict of interest;
or
- (c) are a result of delays within the procuring entity;

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

“unsolicited proposal” has the same meaning as ascribed to it under the Public Private Partnership Act, No. 8 of 2015;

“variation” means any change to a statement of requirements for goods, works or services resulted from unanticipated or unforeseeable events;

“value for money” means the most advantageous combination of cost, quality, time and sustainability to meet user requirements;

“work” means any work associated with the construction,

reconstruction, demolition, repair, renovation or maintenance of a building or structure, on the surface or underground and underwater or any other works related to works mentioned where the value of the incidental supplies or services does not exceed the value of the works; and

“Zanzibari Bidder” means individual or firm registered in Zanzibar and at least fifty one percent of its shares owned by Zanzibaris.

PART TWO ESTABLISHMENT OF THE AUTHORITY

Establishment of the Authority.

4.-(1) There is hereby established an Authority to be known as the Zanzibar Public Procurement Regulatory Authority and in its acronym shall be “ZPPRA”.

(2) The Authority shall be a body corporate with perpetual succession, common seal and shall, by its corporate name and subject to the law, be capable of:

- (a) suing and being sued;
- (b) acquiring and purchasing movable or immovable property;
- (c) entering any contract or transaction; and
- (d) performing or doing any other act or thing which the body corporate may, by law, be entitled to perform or do.

Seal and Logo of the Authority.

5.-(1) There shall be a common seal and logo of the Authority in a shape and size as may be determined by the Board.

(2) The application of the seal and logo of the Authority on any document shall be authenticated by the signature of the Director General or any other officer of the Authority authorized by the Director General.

(3) Any document purporting to be issued by the Authority shall

be sealed with a seal of the Authority and authenticated in accordance with the provisions of subsection (2) of this section.

6. The objectives of the Authority shall be to:

Objectives
of the
Authority.

- (a) ensure the application of fair, competitive, transparency and non-discriminatory in public procurement practices;
- (b) ensure value for money in public procurement is obtained;
- (c) promote integrity and confidentiality in the public procurement; and
- (d) harmonize the procurement systems in public procurement.

7. The functions of the Authority shall be, to:

Functions
of the
Authority.

- (a) regulate procurement standards and practices;
- (b) advise the Government on procurement principles and practices;
- (c) establish and manage an electronic procurement system to be used for the entire procurement process;
- (d) monitor, evaluate and report the performance of the public procurement systems and advise the Government on desirable changes;
- (e) issue guidelines, procedural forms, directives, circulars and any other attendant documents to the procuring entities;
- (f) prepare, update and issue standard bidding documents in consultation with the Attorney General's Chambers;
- (g) organize and maintain a system for the publication of data on public procurement opportunities, contract awards and any other information for public interest;
- (h) request price information for standard common used

items and services from relevant institution with a view to ensure that the price conform with the prevailing market prices;

- (i) establish and maintain a register of bidders and procuring entities;
- (j) investigate and act on complaints received on procurement proceeding from procuring entities or bidders;
- (k) conduct:
 - (i) procurement audit during the bidding preparatory stage;
 - (ii) audits in the course of the execution of procurement contract; and
 - (iii) performance and compliance audit after the completion of the procurement contract;
- (l) establish and maintain institutional linkages with entities with professional and related interest in public procurement;
- (m) administer the compliance of the provisions of this Act, regulations and guidelines issued under this Act; and
- (n) perform any other function which deems necessary for the proper implementation of the provisions of this Act.

Powers
of the
Authority.

8. The Authority shall, in performing its regulatory functions conferred under this Act, have powers, to:

- (a) demand any information, documents, records or reports in any form of any aspect of the public procurement process from any procuring entity or bidder;
- (b) summon and examine witnesses and parties concerned on oath;
- (c) conduct procurement investigations and contract

performance audits;

- (d) suspend or blacklist a bidder from engaging in any public procurement process in accordance with provisions of this Act and keep record of the suspended or blacklisted bidders; and
- (e) suspend or cancel any procurement proceeding at any stage where a serious irregularity relating to the provisions of this Act is discovered.

9. Notwithstanding the provisions of this Act, the Ministry shall, for each financial year, carry out the procurement activities for the Authority subject to the submitted annual procurement plan except the minor value procurement activities as prescribed under this Act.

Procurement of the Authority.

PART THREE MANAGEMENT AND ADMINISTRATION OF THE AUTHORITY

10.-(1) There shall be a Board of Directors of the Authority which shall be composed of:

Establishment and Composition of the Board.

- (a) Chairperson who shall be appointed by the President;
- (b) Director General;
- (c) State Attorney from the Attorney General's Chambers; and
- (d) four other members, one among them from private sector and one who is knowledgeable in public procurement.

(2) Members under subsection (1)(c) and (d) of this section, shall be appointed by the Minister after consultation with respective institution based on professionalism, gender and working experience.

11. A person shall qualify to be appointed as the Chairperson of the Board if that person has:

Qualifications of the Chairperson.

- (a) at least first degree in the field of procurement,

accounting, finance, economics, law, engineering or any other related field from an institution recognized by the Government; or

- (b) working experience of at least ten years and high level of competence to manage effectively affairs of the public or private bodies; and
- (c) high level of integrity.

Secretary of
the Board.

12.-(1) The Board shall appoint an employee of the Authority to be a Secretary of the Board.

(2) A person shall qualify to be a Secretary of the Board if that person has:

- (a) at least first degree of law or qualified corporate secretary from the institution recognized by the Government; and
- (b) working experience of not less than five years in the public service.

(3) The Secretary of the Board shall be accountable to the Board and shall:

- (a) prepare agenda of the meetings of the Board in consultation with the Chairperson;
- (b) take accurate minutes of the meetings of the Board;
- (c) maintain the correct and sufficient records of the meeting of the Board;
- (d) give proper and timely notification of the meetings of the Board to the members; and
- (e) perform any other function as may be directed by the Board.

13. The functions of the Board shall be to:

- (a) oversee the overall functions of the Authority;
- (b) supervise the implementation of this Act, regulations, policies and guidelines of the Authority;
- (c) provide strategic directives to the Authority;
- (d) supervise the ethics and professionalism of the staff and all matters concerning with the administration of the Authority;
- (e) advice the Minister on matters pertaining to public procurement; and
- (f) perform any other function for better implementation of the provisions of this Act.

14. The Board shall, in execution of its functions, have powers to:Powers of
the Board.

- (a) approve budget and organizational structure of the Authority;
- (b) prepare staff regulations and financial regulations;
- (c) approve work plan, standard bidding documents and any other document used in the course of execution of the functions of the Authority;
- (d) recruit and promote staff of the Authority in accordance with the provisions of the Public Service Act, No. 2 of 2011; and
- (e) take disciplinary actions against any staff of the Authority subject to the provisions of the relevant law.

15. The provisions relating to the proceedings of the Board shall be prescribed in the First Schedule of this Act.Proceedings
of the
Board.

Appoint-
ment of the
Director
General.

16.-(1) There shall be a Director General of the Authority who shall be appointed by the President.

(2) A person shall qualify to be appointed as the Director General, if that person has:

- (a) at least first degree in the field of procurement, engineering, accounting, finance, economic, law or any related fields from an institution recognized by the Government;
- (b) working experience for at least seven years in public service; and
- (c) high level of integrity.

Functions
of the
Director
General.

17.-(1) The Director General shall be the Chief Executive Officer of the Authority and shall be responsible for the day-to-day execution of the functions of the Authority and shall be accountable to the Board.

(2) Without prejudice to the provisions of subsection (1) of this section, the Director General shall:

- (a) manage the funds, assets and business of the Authority in accordance with relevant laws;
- (b) submit a report of the Authority to the Board;
- (c) implement national policies and international agreement relating to issues of the procurement;
- (d) propose and implement strategic and operational plan of the Authority; and
- (e) perform any other function necessary for the proper implementation of the provisions of this Act as may be directed by the Board.

Depart-
ments,
Units and
Divisions
of the
Authority.

18.-(1) The Authority shall, subject to the provisions of the Public Service Act, No. 2 of 2011, establish departments, units or divisions in such numbers and manners as it deems necessary for proper performance of its functions.

(2) Director of department and Manager of unit shall be appointed by the Board upon recommendation of the Director General.

(3) Heads of divisions shall be appointed by the Director General upon recommendations of director of the respective department.

(4) Directors and managers shall, in performance of their functions, be responsible to the Director General.

(5) Heads of divisions shall, in performance of their functions, be responsible to the directors of the respective departments.

19. There shall be the staff of the Authority who shall be employed in accordance with the provisions of Public Service Act, No. 2 of 2011. Staff of the Authority.

PART FOUR SPECIAL PROCUREMENT AUDIT, INVESTIGATION AND REPORT

20.-(1) The Authority may, where circumstances require, conduct special audit on any matter relating to public procurement and submit report to the Minister. Special procurement audit.

(2) Subject to the provisions of subsection (1) of this section, the Minister shall submit such report to the responsible Minister for consideration.

(3) The responsible Minister shall, in writing, inform the Minister on the actions or corrective actions taken regarding the findings of the special audit.

(4) For the purpose of this section, the responsible Minister means a Minister responsible for procuring entity within which such special audit has been conducted.

21.-(1) The Authority may, on its own initiatives or otherwise, undertake procurement investigation, if it deems necessary. Procurement investigation.

(2) In the exercise of its function under subsection (1) of this section, the Authority may:

- (a) adopt whatever procedure it considers appropriate to the circumstances of a particular case; or
- (b) order any person or entity to furnish any required information to the Authority.

(3) The Authority shall, after considering the findings of investigation and being satisfied that there is a breach of this Act:

- (a) direct the procuring entity to take appropriate actions that are necessary to rectify the contravention;
- (b) suspend or terminate the procurement proceedings;
- (c) prepare and submit a summary of findings and recommendations to the relevant authorities for action; or
- (d) order the procuring entity to transfer procuring responsibilities of the subject procurement to another procuring entity.

(4) The Authority shall, before making an order under subsection (3) of this section, give a right to be heard to the procuring entity and any other person who may be affected by the order.

Annual
Performance
Evaluation
Report.

22.-(1) The Authority shall, within six months after the end of each financial year, submit to the President, an annual performance evaluation report in respect of that year's activities consisting of:

- (a) an evaluation of the operations of the Authority;
- (b) an evaluation of operations of procuring entities in respect to compliance; and
- (c) procurement audit findings, complaints investigated and corrective actions taken.

(2) The President shall, upon receipt of the report under subsection (1) of this section, authorize the Minister to lay the report to the House of the Representatives.

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

PART FIVE FINANCIAL PROVISIONS

23. The funds and resources of the Authority shall consist of:

Funds and
resources
of the
Authority.

- (a) such money appropriated by the House of Representative;
- (b) contributions, donation or grants received by the Authority for the implementation of its function;
- (c) fees and charges collected from services that are rendered by the Authority; and
- (d) other money as may be legally acquired by the Authority.

24.-(1) The Director General shall, in respect of every financial year, prepare and submit to the Board for deliberation and recommendations detailed estimates of the income and expenditure for the Authority for the next year.

Budget.

(2) Upon deliberation and recommendation by the Board, the budget of the Authority shall be dealt in the same manner as part of the budget of the Ministry.

(3) The estimates of income and expenditure of the Authority shall be prepared subject with the provisions of the Public Finance Management Act, No. 12 of 2016 and any other directives as may be issued by the Government from time to time.

(4) The Director General shall ensure that all payments out of the Authority's funds are correctly made and properly authorized.

25. The Authority shall open and maintain bank accounts in banks recommended by the Board in accordance with the provisions of the Public Finance Management Act, No. 12 of 2016.

Opening
of Bank
account.

Accounts
and Audit.

26.-(1) The Authority shall properly keep and maintain books of account which include all financial records and transactions for every financial year.

(2) All accounts of the Authority shall be audited in accordance with the provisions of the Public Finance Management Act, No. 12 of 2016 and any other relevant financial laws.

Financial
Manage-
ment of the
Authority.

27.-(1) The Director General 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 Director General may, at any time before the end of a financial year, prepare and submit to the Board for approval any estimates of supplementary budget of the current financial year and submitted to the Minister.

Annual
Financial
Report
of the
Authority.

28. The Authority shall, within three months after the end of each financial year, prepare and submit to:

- (a) the Minister, an annual operational report and the annual management plan of the Authority; and
- (b) the Controller and Auditor General, accounts of the Authority for the financial year.

PART SIX

BASIC PRINCIPLES OF PUBLIC PROCUREMENT

Non-discrimi-
nation.

29. A bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion not related to qualification except to the extent provided for under this Act.

Transpa-
rency,
accounta-
bility and
fairness.

30.-(1) Any public procurement shall be conducted in a manner of transparency, accountability and fairness.

(2) A procuring entity shall ensure that there is openness and clarity in the conduct of public procurement procedures including actions taken and decision made.

31. Subject to the provisions of this Act, all procurements activities shall be conducted in a manner to maximize competition and achieve value for money. Competition.

32.-(1) Any public officer or person involved in the procurement process shall not disclose any confidential information regarding procurement process to a bidder or any other person. Confidentiality.

(2) Notwithstanding the provisions under subsection (1) of this section, a public officer may, upon prior written approval or order of the Accounting Officer, disclose to:

- (a) the competent authority, all information regarding the procurement process; or
- (b) the bidder, all information relating to the procurement process except:
 - (i) before the solicitation documents are officially issued;
 - (ii) the examination, clarification, evaluation and comparison of bids before the best evaluated bidder notice is officially displayed;
 - (iii) the disclosure is likely to prejudice the security of the Government;
 - (iv) the disclosure interferes with the right to the privacy of any person;
 - (v) the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest;
 - (vi) the information contains proprietary information including information relating to any

manufacturing process, trade secret, trademark, copyright, patent, or formula protected by law or by international treaty to which United Republic of Tanzania has ratified;

(vii) the disclosure of which is likely to cause harm to the interests of the proper functioning of any procuring entity; or

(viii) the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.

Economy and efficiency.

33. Any public procurement shall be conducted in a manner that promotes economy, efficiency and value for money.

Sustainable procurement and environmental conservation.

34. Any public procurement shall be conducted basing on sustainable procurement and environmental conservation.

PART SEVEN PROCURING ENTITY

Procuring entity.

35.-(1) There shall be a procuring entity which shall be composed of:

- (a) Accounting Officer;
- (b) Tender Board;
- (c) Procurement Management Unit; and
- (d) User Department.

(2) A procuring entity shall be responsible for the management of all procurement activities within its jurisdiction in accordance with the provisions of this Act, regulations and guidelines.

(3) A procuring entity shall, during preparation of procurement requirements, observe basic principles and thresholds as prescribed under this Act.

36.-(1) The Accounting Officer of a procuring entity shall have overall responsibilities for the administration and execution of the procurement process in the procuring entity and shall:

- (a) certify the availability of funds to support the procurement activities;
- (b) advertise bid opportunities;
- (c) issue bidding documents after approval of the Tender Board;
- (d) communicate award decisions;
- (e) award contract in accordance with applicable procurement procedures;
- (f) sign contract for procurement activities on behalf of the procuring entity;
- (g) formulate a Contract Management Committee as prescribed in the regulations;
- (h) formulate an Inspection Committee for goods delivered;
- (i) issue Goods Received Note;
- (j) investigate complaints lodged by bidders;
- (k) submit a copy of any complaints and report of the findings to the Authority;
- (l) implement decisions made by the Authority after investigation or adjudication of a complaint;
- (m) provide feedback on the implementation of the decision of the Authority within five working days of receiving communication of the decision;
- (n) close procurements by giving a written notice to the bidder once the contract is completed;

- (o) submit quarterly and annually implementation report to the Authority; and
- (p) ensure the application of electronic procurement system.

(2) Notwithstanding the provisions of subsection (1)(f) of this section, an Accounting Officer shall not sign a contract before a procurement is approved by the Tender Board except where there is an emergency.

(3) The Accounting Officer shall ensure that all the procurement activities of the respective procuring entity are processed through the Procurement Management Systems developed and, or authorized by the Authority.

(4) Where the Accounting Officer is not satisfied with the decision of the Tender Board, shall, by giving written reasons for the dissatisfaction, return the decision to the Tender Board for review.

(5) Where the Accounting Officer is not satisfied with decision under subsection (4) of this section shall refer the matter to the Authority.

(6) The Accounting Officer shall, in discharging of the procurement functions, be responsible for all procurement decisions made by the procuring entity.

Tender
Board.

37.-(1) There shall be a Tender Board in each procuring entity which shall be composed of:

- (a) a chairperson among the heads of departments;
- (b) two heads of departments or units; and
- (c) two senior officers, one among them shall have legal knowledge.

(2) The chairperson and the members referred to under subsection (1) of this section, shall be appointed by the Accounting Officer from the respective procuring entity.

(3) The Accounting Officer shall inform the Authority on the composition of the Tender Board within three working days from the date of appointment.

(4) An officer of the Procurement Management Unit and Internal Audit Unit shall not be eligible to be appointed as a member of the Tender Board.

(5) The Head of Procurement Management Unit shall be the Secretary of the Tender Board.

(6) Members of the Tender Board shall, before commencing of the meeting, declare by signing a form of conflict of interest that they do not have a conflict of interest in the agenda of the meeting.

(7) Where a member of the Tender Board has a conflict of interest with the agenda relating to procurement, such member shall not participate in deliberation and decision making on that agenda.

(8) Any member of the Tender Board who contravenes the provisions of subsection (6) or (7) of this section, commits an offence.

38.-(1) The functions of the Tender Board shall be, to:

- (a) review and approve annual procurement plan based on its budget or updated annual procurement plan, if any;
- (b) ensure that, all procurement proceedings are conducted in accordance with the approved procurement plan;
- (c) approve procurement notice, bidding documents, procurement methods, contract documents, evaluation committee, evaluation criteria, evaluation report, negotiation committee and its agenda, due diligence and post qualification;
- (d) receive and open bid;
- (e) deliberate recommendations from the Procurement Management Unit;

Functions
of the
Tender
Board.

- (f) recommend award of contracts to the Accounting Officer;
- (g) assess and approve variation or addendum for awarded contract;
- (h) ensure that, the procurement proceedings adhere to the criteria, process and procedures before approving evaluation or negotiation report in public procurement;
- (i) review and approve of quarterly procurement implementation report; and
- (j) ensure compliance with this Act, regulations and guidelines.

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

Proceedings
of the
Tender
Board.

39. The provisions relating to the proceedings of the Tender Board shall be prescribed in the Second Schedule of this Act.

Establish-
ment of
Procure-
ment
Manage-
ment Unit.

40.-(1) There shall be a Procurement Management Unit in every procuring entity which shall be composed of appropriate number of staff with required knowledge based on core functions of procuring entity.

(2) Without prejudice the provisions of subsection (1) of this section, the Procurement Management Unit may consist of procurement and other technical specialists together with required supporting staff.

(3) The Ministry shall recruit and manage procurement officers in procuring entity for the performance of procurement functions.

(4) The Procurement Management Unit shall be headed by a person with relevant academic and professional qualifications and experience of not less than five years in procurement functions.

(5) The Head of the Procurement Management Unit shall report directly to the Accounting Officer of the procuring entity.

41. The Procurement Management Unit shall have the functions to:
- (a) manage all procurement activities of the procuring entity;
 - (b) prepare bid documents, general procurement notice, specific procurement notice, list of awarded contracts, quarterly and annually procurement performance and implementation reports which shall be approved by the Tender Board;
 - (c) prepare and submit to the management meeting quarterly report on the implementation of the annual procurement plan;
 - (d) implement approved procurement plan and other decisions of the Tender Board;
 - (e) recommend procurement method, Evaluation Committee and Negotiation Committee members to the Tender Board for decision;
 - (f) consolidate the procurement needs from User Departments;
 - (g) coordinate the preparation of statements of requirements from User Departments;
 - (h) keep and maintain records of all procurement process and register of all contracts awarded;
 - (i) prepare contract documents and issue approved contract documents;
 - (j) review evaluation, negotiation, due diligence or post qualification reports before submitting to the Tender Board; and
 - (k) perform any other function as may be required from time to time by the Accounting Officer.

42. There shall be a User Department in each procuring entity which shall have the functions to:

- (a) initiate procurement requirements with its budget estimates and forward them to the Accounting Officer for approval;
- (b) liaise with and assist the Procurement Management Unit throughout the procurement process to the point of contract placement;
- (c) in consultation with relevant authority or professional expert, prepare technical specifications to be submitted to the Procurement Management Unit;
- (d) verify the fulfilment of the required bidder's performance before payment;
- (e) report any breach from the terms and conditions of an awarded contract to the Procurement Management Unit;
- (f) prepare a statement of requirements for procurement as part of the budget process, which shall be submitted to the Procurement Management Unit for compilation of annual procurement plan; and
- (g) submit details of any required contract amendments to the Procurement Management Unit for action.

43.-(1) There shall be an Evaluation Committee which shall be an Ad-hoc Committee composed of not less than three members depend on the value and complexity of the procurement requirements.

(2) The members shall possess appropriate level of expertise and experience, depending on the type, value and complexity of the procurement requirement as provided in the regulations.

(3) The members of the Evaluation Committee may be appointed from outside of the procuring entity where the required skills and experience are not available within the procuring entity.

(4) All members of the Evaluation Committee shall sign a form to declare that, they do not have a conflict of interest in the evaluation proceedings.

(5) Where a member of the Evaluation Committee has a conflict of interest with in the evaluation, such member shall not participate in such evaluation.

(6) Any member of the Evaluation Committee who contravenes the provisions of subsection (4) or (5) of this section, commits an offence.

44. The Evaluation Committee shall have the functions to:

Functions
of
Evaluation
Committee.

- (a) assess the compliance of the bid evaluation criteria stated in standard bidding documents;
- (b) assess the ability of the bidder to perform the proposed contract in accordance with the objectives of the procuring entity;
- (c) conduct evaluation of the bids and submit the evaluation report to the Procurement Management Unit for review before submission to the Tender Board; and
- (d) perform any other function as may be assigned to it by the Tender Board.

45.-(1) There shall be a Receiving and Inspection Committee which shall be an ad hoc Committee for inspection and receiving of goods.

Receiving
and
Inspection
Committee.

(2) The members of the Receiving and Inspection Committee shall be recommended by the Procurement Management Unit and approved by the Accounting Officer.

(3) The Receiving and Inspection Committee shall have the functions to:

- (a) inspect, and where necessary, test the received goods to ensure their compliance with specification, terms and conditions of the contract; and

- (b) recommend and submit inspection report to the Accounting Officer of the respective procuring entity on acceptance or rejection of the inspected goods.

(4) The Receiving and Inspection Committee shall inspect the goods, prior to their final acceptance, at any reasonable time and place, either:

- (a) during manufacture;
- (b) prior to shipment; or
- (c) on delivery.

(5) The Receiving and Inspection Committee shall, during inspection of goods, ensure:

- (a) the correct quantity of goods has been received with their completeness;
- (b) the goods meet the specifications and technical standards defined in the contract;
- (c) the goods have been delivered on time,
- (d) all required deliverables have been submitted; and
- (e) all required manuals or documentation have been submitted.

Independence in performance of functions.

46. Subject to the provisions of this Act, the Accounting Officer, the Tender Board, the Procurement Management Unit, the User Department, the Evaluation Committee and the Receiving and Inspection Committee shall act independently in relation to their respective functions and powers.

Disagreement.

47. Where there is disagreement between the Accounting Officer, the Tender Board, the Procurement Management Unit, the User Department or the Evaluation Committee, the disagreement shall be resolved in accordance with the procedures prescribed under the regulations.

48.-(1) A procuring entity shall maintain records of its procurement proceedings for a period specified in the relevant laws.

(2) The records referred to under subsection (1) of this section, shall be prescribed in the regulations.

PART EIGHT PUBLIC PROCUREMENT PROCEDURES

49.-(1) A procuring entity shall, in each financial year and by a date determined by the Paymaster General, prepare its Annual Procurement Plan in accordance with the budget preparation procedures issued by the Minister and submit it to the Paymaster General and the Authority.

Annual Procurement Plan.

(2) The Paymaster General shall, where applicable, use such plan to allocate and disburse funds to procuring entity for its execution.

(3) A procuring entity shall plan its procurement in a rational manner and, shall:

- (a) aggregate its requirements where applicable, within the procuring entity to obtain value for money;
- (b) use framework contracts, wherever appropriate, to provide an efficient, cost effective and flexible means to procure works, services or goods that are required continuously or repeatedly over a set period of time;
- (c) not split a procurement to defeat the use of the appropriate competitive procurement method; and
- (d) integrate its procurement budget with its expenditure program.

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

(5) The procuring entity may, on a quarterly basis or wherever necessary basing on the justifiable reasons, review and update its procurement plan.

(6) The procuring entity shall notify the Paymaster General and the Authority on any changes made to its annual procurement plan approved by the Tender Board and submit the updated plan to the Authority and to the Paymaster General.

(7) The procuring entity shall display its approved annual procurement plan and the updated plan on the Authority's bid portal or using any other method as may be prescribed by the Authority.

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

Application of public procurement procedures.

50. All public procurement shall be conducted in accordance with the procedures laid down in this Act.

Application of e-Procurement System.

51. -(1) Subject to the provisions of this Act, all procuring entity shall use the electronic procurement system established by the Authority.

(2) The Authority shall, after consultation with the Zanzibar e-Government Authority, issue guidelines in special circumstances where the use of the electronic procurement system is technically impracticable or for the confidentiality issues or where the public interest may be affected through the use of the electronic procurement system.

(3) The system design and application procedures shall be in accordance with the provisions of this Act.

(4) There shall be a user application manual and guidelines on the electronic procurement system to be developed by the Authority.

Communication.

52.-(1) All communications between the procuring entity and bidder relating to procurement shall be made in writing.

(2) Where communication is made in any form other than written shall later be reduced in writing.

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

53.-(1) Subject to the provisions of this Act, a bidder who intends to participate in the public procurement shall be registered by the Authority.

Registration of bidders.

(2) A bidder who is not registered under subsection (1) of this section shall not be considered in procurement proceedings by any procuring entity.

(3) Notwithstanding with the provisions of subsections (1) and (2) of this section, where a bid is advertised through international competitive bidding or single source method, a bidder shall not comply with requirement of registration.

(4) Once a bidder is selected as lowest evaluated bidder under subsection (3) of this section, before signing contract, such bidder shall comply with all relevant registration requirements.

54.-(1) The procurement shall be initiated upon confirmation of availability of the funds in a particular budget period or at the time the contract commitment is made.

Initiation of procurement requirements.

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

(3) The initiation of procurement shall, in writing, be addressed to the Accounting Officer and the Accounting Officer shall direct the Procurement Management Unit for action.

55.-(1) The procuring entity shall issue a statement of requirements in the form of:

Statement of requirements and Industrial Standards.

- (a) specifications;
- (b) terms of reference;
- (c) scope of works;

- (d) drawings;
- (e) schedule of requirements;
- (f) bills of quantities; or
- (g) any information relating to requirement specified in this subsection, as may be appropriate.

(2) A statement of requirements shall give a precise and comprehensive objective description of the procurement activity for creating fair and open competition.

(3) The procuring entity shall provide bidding documents which include:

- (a) detailed description of the subject matter of the procurement;
- (b) the manner in which the bids should be presented;
- (c) bid validity period; and
- (d) any other information relating to such procurement.

(4) The procuring entity shall, at all times, use industrial standards codified by internationally recognized trade association and professional regulatory body or relevant authority.

Market
price index.

56.-(1) The Authority shall, in preparing market price index under provisions of this Act, set the standard goods, works and services with known market prices as a reference guide.

(2) The procedures of preparing the market price and price reasonableness analysis shall be prescribed in the regulations.

(3) For the purpose of this section the word “price reasonableness analysis” means a review of the prices proposed by a bidder to ascertain whether the prices offered in the bids are fair to a procuring entity and to the bidder.

57.-(1) The procuring entity shall specify internationally accepted standards which promote the broadest possible competition and where such international standards do not exist or are inappropriate, the national standards may be specified, in all cases.

(2) Subject to the provisions of subsection (1) of this section, the procurement documents shall state workmanship, all equipment or material meeting other standards that are equivalent to the specified national standards.

(3) The procuring entity shall not procure goods by using trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item of a particular manufacturer or owner.

(4) Where it is necessary to procure goods under subsection (3) of this section, the procuring entity shall seek permission to the Authority stating reasons to justify its intention.

58.-(1) The procuring entity shall use the standard bidding documents provided by the Authority as models for drafting all solicitation documents for each individual procurement requirement.

(2) All solicitation documents shall contain:

- (a) detailed terms and conditions which shall apply to any resulting contract; and
- (b) 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) The procuring entity shall not alter, change or replace any of the general conditions of contract contained in the standard solicitation documents provided by the Authority without the prior approval of the Authority.

Publication of procurement opportunities.

59. The procedures for publication of procurement opportunities shall be prescribed in the regulations.

Selection of bidders.

60. All methods of selection of the bidders shall allow fair and equitable selection and ensure maximum competition.

Bidding period.

61. The procuring entity shall ensure that the bidding period is sufficient to allow the bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition.

Amendment of bid document.

62.-(1) The procuring entity may, on its own initiative or in response to a request for clarification by a bidder, modify the bid documents at any time prior to the deadline for bid submission.

(2) Where the procuring entity modifies the bid documents and considers necessary, it may extend the submission date to enable the bidders to obtain the modified bid document.

Bid submission.

63.-(1) The method for bid submission shall be specified in the bidding documents and prescribed in the regulations by the type, complexity and evaluation method of the procurement being opted by the procuring entity.

(2) The procuring entity shall require the bidders to submit sealed written bids unless provided otherwise in this Act.

Modification, substitution and withdrawal of bids.

64.-(1) A bidder may modify, substitute or withdraw his bid at any time before the deadline for bid submission using the method prescribed in the regulations.

(2) There shall not be any alterations or changes in the substance of bids after the date and time of bid is closed.

Bid receipt and opening.

65.-(1) All bids shall be officially received and opened publicly by the Tender Board and may be witnessed by the bidder or his representative or invitee who choose to attend the opening ceremony.

(2) The procedures for receiving and opening of bids shall be prescribed in the regulations.

66. For the procurement of goods, works or non-consulting services, the procuring entity shall request a bid security from the bidder in the manner and procedures as prescribed in the regulations.

Bid security.

67. The bidder participating in the public procurement shall have:

Basic qualifications of bidders.

- (a) a legal capacity to enter into a contract;
- (b) record of not being convicted for the offence in relation with corruption and economic crimes; and
- (c) financial and technical capacity for undertaking the procurement assignment.

68.-(1) The choice of an evaluation methodology shall be determined by the type, value and complexity of the procurement.

Evaluation methodology.

(2) All solicitation documents shall provide comprehensive details of the evaluation methodology and criteria which shall apply.

(3) The evaluation criteria other than that stated in the bidding documents shall not be considered.

69.-(1) A procuring entity may seek for clarification from the bidders on their bids where necessary for effective evaluation to clarify details that were not apparent or could not be finalized at the time of evaluation.

Clarification of bid received.

(2) The procedures for seeking clarification from bidder shall be prescribed under the regulations.

70. The procuring entity may, prior to enter into a contract, carry out negotiations on price as deemed necessary, provided that such negotiation does not affect, in any way, the quality and quantity of the prospective procured goods, works or services.

Negotiation before contract.

Bid
responsi-
veness.

71.-(1) The procuring entity shall regard a bid as responsive if it conforms to all the requirements set out in the bidding documents.

(2) The procuring entity may regard a bid as responsive if it contains:

- (a) a minor deviation that does not materially alter or depart from the statement of requirements, terms and conditions set out in the bidding documents for attaining the objective of the procurement; and
- (b) errors that can be corrected without material altering the substance of the bid.

(3) The Authority shall issue guidelines on the standard determination of minor deviation.

Best
evaluated
bid.

72. The procuring entity shall award a contract to the best-evaluated bidder ascertained on the basis of the methodology and criteria set out in the bidding documents.

Grounds for
rejection of
bids.

73.-(1) The procuring entity may, notwithstanding any stage reached in the proceedings leading to the signing of the contract:

- (a) either decide to reject all bids at any time and order the proceedings be recommenced, if necessary, using another method; or
- (b) where the procurement is divided into lots, award only certain lots and recommence the remaining lots, if necessary, using another method.

(2) The procuring entity shall, on rejecting the bid in accordance with provisions of subsection (1) of this section, ensure that:

- (a) the bid does not satisfy the criteria for the award of the contract as set out in the bid documents or request for proposal;
- (b) the economic or technical data of the project have been altered;

- (c) exceptional circumstances render normal performance of the contract impossible;
- (d) bids or proposals involve costs substantially higher or abnormally lower than the original budget or estimates;
- (e) the bids received contain serious irregularities resulting in interference with the normal play of market forces;
- (f) funds voted or earmarked for the procurement have been withheld, suspended or have otherwise not been made available;
- (g) none of the technical proposals meets the minimum technical qualifying score; and
- (h) lack of competition.

(3) The procuring entity shall, within three working days from the date of the rejection of any bid or proposal, notify the bidder who submitted bids or proposals and state the reason for such rejection.

(4) The Accounting Officer shall, within three days from the date of rejection, inform the Authority the reasons for rejection thereto.

(5) The procuring entity shall not incur any liability for rejecting the bid under this section.

(6) Subject to provisions of subsection (2)(i) of this section, lack of competition shall not be determined solely on the basis of the number of bids submitted even when only one bid is received, if:

- (a) the procurement was satisfactorily publicly advertised;
- (b) the qualification criteria were not unduly restrictive; and
- (c) prices are reasonable in comparison to market values.

74.-(1) A bid that has been determined successful pursuant to the provisions of this Act, shall be accepted.

Acceptance
of bid.

(2) The Accounting Officer shall communicate intention to award a contract to all the bidders participated in the tender within three working days after receiving award recommendation from the Tender Board.

(3) The bidder may, within three working days after receiving the intention to award to the successful bidder as provided under subsection (2) of this section, lodge a complaint, if any, for consideration.

(4) Where no complaints have been received pursuant to the provisions of subsection (3) of this section, the Accounting Officer shall issue a notification of award to the successful bidder.

(5) The notification referred to in subsection (4) of this section, shall be in a written form as prescribed in the bidding document.

(6) The successful bidder shall, within three working days from the date of receipt of letter of intention to award contract, submit a letter of accepting to enter into a contract.

(7) Any contract above the minor value thresholds specified in the Third Schedule under this Act shall be vetted by the Attorney General before being signed by the parties.

(8) Any contract with thresholds of the minor value procurement shall be vetted by the legal officer or state attorney of the respective procuring entity before being signed by the parties.

(9) The Accounting Officer shall, within three working days from the date of award contract, notify the Authority the name of the bidder to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made.

75. The procuring entity shall communicate contract award to all the bidders through a written notification stating:

- (a) the bidder that is entitled to the contract award;
- (b) the bidder that had been determined unsuccessful together

with the respective reasons for his unsuccessfulness;
and

(c) the prospective contract price.

76.-(1) A notification of contract award shall not, in any way, form a contract.

Notification of contract award.

(2) An award shall be confirmed by a written contract signed by both parties and shall be disclosed in a manner prescribed in the regulations.

77.-(1) The Accounting Officer shall be overall responsible for the administration of all contracts entered into by the respective procuring entity.

Contract management.

(2) The procedures and manner of handling contract administration shall be prescribed in the regulations.

78.-(1) A procuring entity shall, in respect of a procurement activity, use any of the contract type specified in this section or a combination of any of them by using procedures prescribed in the regulations.

Types of contracts.

(2) The types of contracts shall be:

- (a) lump sum contract;
- (b) time-based contract;
- (c) framework contract;
- (d) percentage based contract;
- (e) cost reimbursable contract;
- (f) target price contract;
- (g) admeasurement contract;
- (h) retainer contract;

- (i) success fee contract; or
- (j) any other type of contract approved by the Authority.

Contractual
arrange-
ments.

79.-(1) The procuring entity may use any contractual arrangement to procure under national and international competitive or any other relevant methods for a contract involving a major specialized works project where it is considered necessary to achieve value for money.

(2) Subject to the provisions of subsection (1) of this section, the contractual arrangements shall include:

- (a) engineering, procurement and construction;
- (b) engineering, procurement, construction and financing;
- (c) build, own, operate and transfer;
- (d) build and transfer;
- (e) build, lease and transfer;
- (f) build, transfer and operate;
- (g) develop, operate and transfer;
- (h) design and build;
- (i) rehabilitate, operate and transfer;
- (j) rehabilitate, own and operate;
- (k) public private partnership; and
- (l) outsourcing.

(3) The procedures to be used in the contracting arrangement under the provisions of subsection (1) of this section, shall be prescribed in the regulations.

Termination
of contract.

80.-(1) A procuring entity may, subject to the procedures specified in the contract, terminate the contract if there are reasonable grounds of termination.

(2) A procuring entity shall, when terminating a contract, submit a report and reasons of any contract termination to the Authority within five working days from the date of terminating the contract.

81.-(1) A contract may, where appropriate to facilitate adaptations to unanticipated events or changes in requirements, permit variation or amendment.

Contract variation and amendment.

(2) Before variation or amendment in the contract, a procuring entity shall submit the proposed variation or amendment to the Attorney General for vetting.

(3) A variation or amendment of the contract shall only be valid after being vetted by the Attorney General and approved by the Tender Board.

(4) The value of variations or amendments of the contract under this section shall not exceed twenty-five percent of the original contract price.

82.-(1) The procuring entity may assign additional work to the original work, at the same rate, value, or proportional basis where there are sufficient grounds to that effect.

Additional works to a contract.

(2) The rate, value or proportional basis referred to under subsection (1) of this section, shall not exceed thirty percent of original contract subject to the approval of the Tender Board.

(3) The procedures for engaging into additional contract shall be prescribed in the regulations.

83.-(1) Where there is any change in the circumstances of a bidder during the procurement process that could materially affect the bidder's capacity to execute the contract, the affected bidder shall notify the procuring entity in writing soon after occurrence of those changes.

Change in bidder's circumstance.

(2) The circumstances, reasons and procedures of bidder incapacity to execute the contract under subsection (1) of this section, shall be prescribed in the regulations.

84.-(1) Subject to the economic and social policies of the Government and the international obligations, preference shall only be given to the Zanzibari bidders, local bidders and diasporas.

(2) The preference schemes shall be applied in respect of:

- (a) goods, works and consultancy services, where the national competitive or international competitive 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) consultancy services, for the quality and cost based selection method and the least cost selection method, where proposals are invited from both domestic 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.

(3) The margin of preference specified in subsection (1) of this section, shall:

- (a) be based on the price only and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a foreign bidder;
- (b) in respect of goods that qualify as domestically manufactured, be related to the percentage of the labour, raw material and components of the goods that originated 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 the Government or by Zanzibari; or
 - (ii) be based on the price only 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 Zanzibari.

(4) The procuring entity shall, when procuring goods, works or services under this section, grant a margin of preference of:

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

(5) Goods qualify for preference, as domestically manufactured goods, under subsection (3)(b) of this section, where:

- (a) labour or value addition to the goods is more than thirty percent of the ex-works of the goods; and
- (b) 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.

(6) The procuring entity may grant preference to a foreign bidder who invest in Zanzibar with a goods, works or services using local contents.

85.-(1) A contractor or a consultant shall qualify for preference as a Zanzibari contractor or consultant under subsection 84(3)(c) of this Act, where:

Qualifica-
tions of
preference.

- (a) contractor or consultant is incorporated or registered in Zanzibar;
- (b) contractor or consultant if an individual, is a Zanzibari;
- (c) the contractor or consultant if a company registered in Zanzibar, more than fifty percent of the shares of the contractor or consultant is owned by Zanzibari; and
- (d) the contractor or consultant if a legal entity, more than fifty percent of the shares of the contractor or consultant is owned by the Government.

(2) A contractor or consultant who qualifies as such under subsection (1)(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.

(3) The procuring 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.

(4) 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 consultant in the joint venture qualifies for preference under subsection (8) of this section; or
- (c) the Zanzibari contractor or 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.

Exclusive preferences.

86.-(1) Where financial resources are provided by a public institution only, each procurement of works, goods or services, that has a value not exceeding a threshold specified in the Fourth Schedule of this Act, shall be reserved exclusively for local bidders.

(2) Where the procuring entity does not proceed with the local bidder stipulated under subsection (1) of this section, and procures on unrestricted basis, the procuring entity shall state the reasons for the unrestricted procurement.

(3) Where procuring entity receives only one responsive bid from a local bidder, the procuring entity may proceed to award that bidder.

(4) Where the procuring entity receives no responsive offers from local bidder, the procurement shall be cancelled and if the requirements are still valid, bid shall be resolicited on unrestricted basis.

87.-(1) The Authority shall specify the public procurement contracts to be subjected to a reservation scheme and designate the particular sectors within a specified geographical area that are eligible to participate in the reservation scheme. Reservation scheme.

(2) A public procurement contract under reservation scheme shall:

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

(3) The procuring 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 by indicating the contract packages, specifications and contracting processes to be included in the bidding documents; and
- (b) deal with only the bidders that are eligible to participate in a reservation scheme.

(4) The bidding documents, contract packages, and specifications to be used under subsection (3) of this section shall be prescribed in the guidelines issued by the Authority.

Preference to special groups.

88.-(1) The procuring entity shall set a percentage of annual procurement for special groups in accordance with the procedures prescribed in the regulations.

(2) For the purposes of this section, “special groups” include women, youth, elderly and persons with special needs.

Procurement of used items.

89.-(1) The procuring entity may procure used items where:

- (a) brand new items or spare part of such kind are not available in the market; or
- (b) a particular type of equipment may have been discontinued, but continuing use of the same type of equipment may be required by the procuring entity to comply with operating and maintenance requirements.

(2) Subject to the provisions of subsection (1) of this section, the procuring entity shall, before procuring used items, seek permission from the Paymaster General.

(3) The Paymaster General may in writing, upon satisfaction on the grounds set out under subsection (2) of this section, grant permission to the procuring entity to procure used items.

Procurement of projects with public interests, national security or strategic.

90.-(1) Notwithstanding the provisions of this Act, the Revolutionary Council may determine projects with public interests, national security or strategic project directly funded by the Government to be awarded in the manner as it may determine.

(2) For the proper implementation of provision of subsection (1) of this section, the Revolutionary Council shall issue directives of procurement for such projects.

Bid processing time.

91. The bid processing time for each procurement method shall be prescribed in the regulations.

PART NINE
PUBLIC PROCUREMENT UNDER PUBLIC
PRIVATE PARTNERSHIP ARRANGEMENT

92.-(1) The involvement of private sector to deliver the public services or infrastructures whether by concession or joint venture or any other model shall be made in accordance with the public private partnership arrangement.

Applicability and approval of Public Private Partnership Projects.

(2) The procuring entity shall not proceed with the procurement through public private partnership arrangement without approval of the project concept by the relevant authorities under the Public Private Partnerships Act, No. 8 of 2015.

93.-(1) Unsolicited proposal shall be processed in accordance with the provisions of the Public Private Partnerships Act, No. 8 of 2015.

Project proposal.

(2) The procuring entity may, upon consultation with the Public Private Partnership Department, acknowledge intellectual rights over the project idea of the original proponent and recognize it in the tendering process.

PART TEN
PROCUREMENT METHODS

94.-(1) The procuring entity which intends to procure goods, works or services, shall apply the procurement methods provided for under the provisions of this Act.

Procurement methods.

(2) The procuring entity shall use the competitive bidding procurement method for procurement of goods, works and services depending on the threshold prescribed under Third Schedule of this Act, except where it is impracticable, the procuring entity may, subject to approval of the Authority, use other alternative procurement methods.

(3) The approval under subsection (2) of this section shall be granted based on the circumstances and procedures prescribed under the regulations.

National
competitive
bidding.

95.-(1) A procuring entity shall, unless provided otherwise under this Act, apply national competitive bidding methods for national bidding depending on the threshold prescribed under Third Schedule of this Act.

(2) An international bidder shall not be prevented from participating in national competitive bidding.

(3) National competitive bidding shall be used for attaining highest competition as much as possible subject to the quality provided basing on value for money, unless there is an emergence situation that does not allow open bidding methods.

(4) National competitive bidding shall be open to all bidders following a public advertisement of a Bid Notice in at least one widely circulated national newspaper.

(5) For purpose of this section, the national competitive bidding means a procurement method in which bidders shall have the right to tender for equal conditions following a domestic public advertisement of a bid notice.

International
competitive
bidding.

96.-(1) The procuring entity may use international competitive bidding to obtain the maximum possible competition and value for money.

(2) International Competitive bidding shall be used where competition shall not be effective without foreign bidders or where foreign bids shall increase value for money.

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

(4) Without prejudice the provisions of this section, the local bidder may participate in open international bidding.

(5) For the purpose of this section “international competitive bidding” means a procurement method which is open for participation on equal terms by all bidders through international advertisement.

97. A procuring entity may engage in procurement by means of national restricted bidding where:

Restricted national bidding.

- (a) the goods, works or service to be procured by reasons of their highly complex or specialized nature available from a limited number of national bidders;
- (b) the cost involving in considering a large number of bids would be disproportionate to estimated value of the procurement;
- (c) there is insufficient time for an open bidding procedure in an emergency situation;
- (d) the nature of the procurement is in the public interest which needs confidentiality; or
- (e) the estimated value of the procurement does not exceed the threshold stated under this Act.

98. A procuring entity may engage in procurement by means of international restricted bidding where:

Restricted international bidding.

- (a) the goods, works or services are available only from a limited number of international bidders;
- (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 this Act.

99.-(1) A procuring entity may involve a community to participate in the procurement of goods, works or services in the circumstances and procedures specified subsection (3) of this section.

Community participation.

(2) A community participation may be used in the procurement of goods, works and services in the following manner:

- (a) direct community participation;

- (b) through special groups available in a particular community; or
 - (c) organized community participation through the appointment of community-based service providers.
- (3) A procuring entity that calls for direct community participation may:

- (a) organize meetings with the community to inform on the activity, the scope of the participation and the benefit of the project to the community;
- (b) explain to the community the document containing obligations of both parties, the amount to be paid to the community, the period in which participants shall be paid, payment modalities and any other details relating to goods, works or services;
- (c) prepare a list of community members committed to participate in the procurement proceedings and each of the community members shall affix the signature to that list;
- (d) identify a contact person for the procuring entity and require the community to elect or nominate a representative for purposes of communication and conducting other transaction processes between the procuring entity and the community;
- (e) avail technical equipment needed for the execution of the community project where applicable;
- (f) in the supervision of works execution, use the procuring entity's public officers and may hire a consultant to offer technical assistance to the community, where appropriate; or

- (g) require a participant to provide full identification and where applicable, the participants' bank account where the payment may be deposited.

100.-(1) A procuring entity may use quotation from the registered bidders for a procurement where: Quotation.

- (a) there is insufficient time for using open or restricted bidding procedures such as in an emergency situation;
- (b) goods or regular equipment to be procured are readily available; or
- (c) the estimated value of the procurement does not exceed the threshold as stated under the Third Schedule of this Act.

(2) The procuring entity shall invite submission of price quotations from at least five reliable bidders by using solicitation documents without advertising the opportunity.

101.-(1) A procuring entity shall, except for complex assignment, use force account to procure works or services directly from the public body where: Force Account.

- (a) quantities of procurement are within the capacity of such public body;
- (b) such work to be performed are located into a remote location for which bidders, other than public bodies or entities are unlikely to bid at reasonably average price;
- (c) the quantities of procurement cannot be defined in advance by a procuring entity;
- (d) there is unforeseen and urgent need to be fulfilled without disrupting on-going operations; or
- (e) delivery delayed by the contractor after the written warnings did not yield any tangible results.

(2) The procedures to be used in the force account procurement method shall be as prescribed in the regulations.

(3) The procuring entity that uses force account shall ensure that the user department prepares detailed statements on the:

- (a) scope of works or services;
- (b) status of the project;
- (c) justification for use of force account method, and where applicable, a statement that there is an emergency which requires prompt attention;
- (d) list of materials and bills of quantities to be procured;
- (e) whether the procuring entity has officers with relevant experience, qualifications, and competencies to undertake the procurement;
- (f) whether the procuring entity has the relevant equipment and machinery to undertake the procurement; and
- (g) cost analysis of fees or rates.

(4) The User Department shall submit a proposal to Procurement Management Unit for review and after such review, it shall submit its recommendations to the Accounting officer for approval.

(5) The procuring entity shall, for the purposes of force account, ensure that the procurement of the materials or services to be used as inputs is in accordance with the provisions of this Act.

(6) For the purpose of this section “force account” means a process where works are carried out by a procuring entity by using its personnel and equipment or in collaboration with any other public or private entity;

102. The procuring entity may procure goods or services from a manufacturer or authorized dealer in accordance with the circumstances and procedures prescribed in the regulations.

103.-(1) The Accounting Officer may, subject to the emergency situation and for the public interest, use emergency procurement to procure goods, works or services where the value of such procurement exceeds the powers granted under this Act and time does not permit to use the normal procurement procedures.

- (2) The emergency procurement can be justified where:
- (a) Zanzibar is seriously threatened by or actually confronted with a disaster, pandemic diseases, war or force majeure;
 - (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.

(3) The Accounting Officer shall, within seven working days after execution of emergency procurement under the provisions of subsection (1) of this section, submit a report to the Paymaster General explaining the reasons, which induced him to depart from the ordinary course and a copy of such reasons, shall be sent to the Authority.

(4) The Accounting Officer who makes procurement under subsection (1) of this section, shall be held personally liable if the expenditure is proved subsequently to have been unnecessary, extravagant or was occasioned by lack of foresight in not procuring in the right time.

(5) Where the Accounting Officer undertakes an emergency procurement shall, within seven working days from the date of the procurement completion, inform the Tender Board and submit a report to the Authority with reasons justifying such conclusion of contract.

Procurement by Special Departments.

104.-(1) The Special Departments shall, subject to the provisions of this Act, manage their procurement on the basis of a dual list subject to open or restricted procurement methods.

(2) The Special Departments shall comply with the Authority's guidance on the category of items to be procured under the approved procurement methods.

(3) The approval referred to under subsection (2) of this section shall be obtained through consultation conducted annually between the Special Departments and the Authority.

(4) The Ministry responsible for Special Departments shall establish an Ad-hoc Tender Board for the purpose of procurement of classified goods.

(5) The Ad-hoc Tender Board referred to under subsection (4) of this section shall be composed of:

- (a) Director of coordination of Special Departments who shall be a chairperson; and
- (b) One member from each Special Department who shall be appointed by the Accounting Officer of the Ministry responsible for Special Departments, provided that, such member shall not be among Accounting Officers or Heads of Procuring Management Units.

(6) The Accounting Officer of the Ministry responsible for Special Departments shall appoint a head of Procurement Management Unit from any of the Special Departments to be a Secretary of the Ad-hoc Tender Board.

Direct procurement method.

105.-(1) The procuring entity may use direct procurement method where circumstance do not permit competitive method.

- (2) The direct procurement method may be used where:
- (a) the goods, works or services are available from only one provider;
 - (b) there is insufficient time for any other procedure such as in an emergency situation;
 - (c) an existing contract could be extended for additional works, services or goods of a similar nature and no advantage could be obtained by further competition, if the prices on the extended contract are reasonable;
 - (d) additional works, services or goods are required to be compatible with existing goods, works or services and it is advantageous or necessary to purchase the additional works, services or goods from the original supplier, provided the prices on the additional contract are reasonable;
 - (e) it is essential or preferable to purchase additional works, services or goods 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;
 - (f) the value of the new works, services or goods does not exceed fifteen per cent of the value of the original or existing contract and the original or existing contract was awarded through a competitive process; and
 - (g) direct procurement is used more than once, the cumulative value of all new works, services or goods shall not exceed twenty five percent of the value of the original or existing contract.

106.-(1) The procuring entity may use single source procurement method where:

Single
source
procurement
method.

- (a) the goods, works or services are available from only one source;
- (b) the goods, works or services to be produced are available from a particular supplier who has exclusive rights in respect to such goods, works or service;
- (c) the procured goods, equipment, technology or services from a bidder, the procuring entity determines that additional supplies are required to be procured from the bidder and there is need for standardization or compatibility taking into account the effectiveness, reasonableness of prices and suitability to the relative procurement;
- (d) the procuring entity determines that, the use of any other methods of the procurement is not appropriate for the protection of national security or public interest; or
- (e) the situation is one of the emergency or urgency and the use of any method other than single source would be impracticable because of the time needed.

Minor
value
procure-
ment
method.

107.-(1) The procuring entity may use a minor value procurement method where the value of procurement does not exceed the threshold prescribed under the Third Schedule of this Act.

(2) Where a procuring entity engages in minor value procurement under the provisions of subsection (1) of this section, it shall make comparison at least ten quotations.

(3) A procuring entity shall not use minor value procurement for:

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

108.-(1) The procuring entity shall, in selection and employment of consultants, select based on:

Selection and employment of consultants.

- (a) quality cost;
- (b) fixed budget;
- (c) least cost;
- (d) quality;
- (e) consultant's qualifications; or
- (f) individual consultant.

(2) The procuring entity shall prepare terms of references when procuring consultancy services.

(3) A procuring entity shall issue a notice inviting expression of interests for provision of consultancy services which shall:

- (a) contain the name and address of the procuring entity and a brief description of the required services; and
- (b) be published in a newspaper of wide circulation and any other means as may be appropriate.

(4) The procedures for selection and employment of consultant methods under sub section (1) of this section, shall be prescribed in the regulations.

109.-(1) The procuring entity may conduct negotiated procedure with invitation to bid to acquire goods, works or services.

Negotiated procedure with invitation to bid.

(2) The Authority shall issue guidelines for procedures of application and implementation of the method of negotiated procedure with invitation to bid.

(3) Where the procuring entity applies negotiated procedure with invitation to bid, shall consider the following conditions:

- (a) open and competitive procedure or restricted procedure were initially applied;

- (b) all bids received were non-responsive, provided that, the originally defined requirements for participation and technical specifications have not been altered;
- (c) all bidders that participated in the original tender shall be allowed, to supplement their bids to make them acceptable; and
- (d) the price offered shall not be improved than the price offered in the original tender.

(4) The procuring entity may reduce the number of bids which require negotiation by means of applying requirements, specifications and criteria determined in the call for competition, where:

- (a) nature of the relative goods, services or works, as well as the related risks, it is not possible to estimate the procurement value in advance; or
- (b) in the cases of procurement of services, if the nature of these services is such that their specifications may not be sufficiently precisely determined so to facilitate conducting of open or restricted procedure and there are no conditions to conduct competitive dialogue.

(5) The procuring entity shall ensure that, in the due course of the negotiated procedure, the contracted price does not exceed the comparable market price, and check the quality of procured subject with due diligence.

Non-
Consultancy
Services.

110. The procuring entity shall procure non-consultancy service using the methods provided under this Act.

Approval
for
alternative
method or
procedure.

111.-(1) Where a procuring entity intends to use the method or procedure other than those prescribed under this Act, shall apply in writing to the Authority for approval of such selected alternative method.

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

- (a) exceptional requirements make it impracticable or uneconomical to comply with this Act;
- (b) 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) Without prejudice the provisions of subsection (2) of this section, the Authority may accredit an alternative method or procedure to a procuring entity.

(4) The Authority shall accredit an alternative method or procedure where a procuring entity:

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

(5) An application for approval shall be made subject to the procedures prescribed in regulations.

PART ELEVEN OFFENCES AND PENALTIES

112. A person who:

- (a) fails, refuses or delays to give required information, books of accounts, records, reports or any other document;

Offences
and
penalties.

- (b) fails or refuses to answer summons or give evidence to the Authority;
- (c) connives or colludes to commit a corrupt conduct or a fraudulent practice;
- (d) misleads or allows the mislead to any organ or person in the procurement process;
- (e) advertises, invites, calls for tenders or provides information relating to tender without authorization by the respective approving authority;
- (f) signs a contract contrary to the provisions of this Act;
- (g) being an employee of the procuring entity, accepts any payment in any procurement transaction from the bidder;
- (h) interferes with or exerts undue influence on any officer or employee of the Authority or a procuring entity in the performance of his functions or exercise of power under this Act;
- (i) obstructs or hinders any member of the Board or staff of the Authority from carrying out a duty or exercising a power under this Act;
- (j) lies or misleads staff of the Authority on carrying out function or exercising a power conferred under this Act;
- (k) accepts inducements or gifts which is not authorized by law; or
- (l) allows or offers hospitality or anything with vested interests to influence or be perceived to influence in his functional duty's decisions,

commits an offence and shall, upon conviction, be liable to a fine of not less than Three Million Shillings or imprisonment for a term not less than six months or both such fine and imprisonment.

113. A person who contravenes any provisions of this Act commits an offence and shall, where no specific penalty is provided for such offence, upon conviction, be liable to a fine not less than One Million Shillings or imprisonment for a term not less than three months or both such fine and imprisonment.

General
penalty.

114. Where a person is convicted of an offence under this Act, the Court may, in addition to the penalty imposed, order to confiscate the property or money acquired in connection of that offence.

Additional
penalty.

PART TWELVE MISCELLANEOUS PROVISIONS

115.-(1) Notwithstanding the provisions of this Act, a procuring entity may, subject to the approval of the Authority, delegate procurement activities to any national or international institution to procure on its behalf.

Delegation
of procure-
ment
activities.

(2) The approval under subsection (1) of this section shall be granted based on the criteria and procedures prescribed under the regulations.

116. The Authority shall impose fees and charge for services rendered as prescribed in the regulations.

Fees and
charges.

117. A bidder who is aggrieved by a decision of the Accounting Officer may, within three working days from the date when the bidder receives notification of intention to award, lodge complaint to the Accounting Officer of the procuring entity for review in accordance with procedures prescribed under the regulations.

Review
of the
Accounting
Officer.

118.-(1) Where the Accounting Officer does not make decision within the period stipulated under regulations or the bidder is not satisfied with the decision made by the Accounting Officer under this Act, the bidder may appeal to the Authority.

Appeal
to the
Authority.

(2) The appeal under subsection (1) of this section, shall be made in accordance with procedures prescribed under the regulations.

Suspension
of procure-
ment
process.

119. During all stages of administrative reviews, the related tender process shall be suspended at the point where it reaches, whereby no further steps shall be approached until final decision is attained.

Prohibition
of entering
into a
contract.

120.-(1) The procuring entity shall not enter into contract or take part in any procurement proceedings with a:

- (a) member of the Tender Board, the member of the Evaluation Committee or an employee of the respective procuring entity;
- (b) person appointed to politically or administratively control of the procuring entity including a Minister, the Accounting Officer or a member of the governing body of the respective procuring entity; and
- (c) company, where a person specified in paragraph (a) or (b) of this section has a controlling interest.

(2) A person referred to under this section shall reveal any personal interest that may impinge on the business dealings of that person with the procuring entity.

(3) A person who contravenes the provisions of this section, commits an offence.

Misleading
or
fraudulent
infor-
mation by
the bidder.

121. Where it is proved that, a bidder is involved in a misleading or fraudulent practice in any public procurement proceedings, the procuring entity shall:

- (a) disqualify the bidder from the public procurement proceedings; and
- (b) recommend to the Authority to suspend the bidder in accordance with the procedures prescribed in the regulations.

122. A staff of Authority shall not be personally liable for any matter performed or omitted in good faith during the discharging of the functions or powers conferred upon him under this Act. Immunity.

123.-(1) The Minister shall issue the Public Procurement Code of Ethics which shall be complied by every public officer or any other person who engages in public procurement activities. Public Procurement Code of Ethics.

(2) The public officer or any other person shall, in ensuring the compliance of Public Procurement Code of Ethics referred to under subsection (1) of this section, sign a specific declaration form.

124.-(1) Notwithstanding the provisions of any other law, the Authority shall, after conducting an investigation and is reasonably satisfied that, there is a breach of this Act, regulations or any guidelines: Cancellation of procurement proceedings.

- (a) suspend any procurement activity;
- (b) direct the procuring entity to take such action as are necessary to rectify the contravention; or
- (c) terminate the procurement proceedings.

(2) The Authority shall, within four working days prior to issuing a cancellation of the procurement proceeding, give the procuring entity or any other person who may be affected by the decision an opportunity to present its defense.

(3) The Authority shall incur no liability towards the procuring entity or any other person interested in the bid under review or investigation by virtue of invoking its powers under this section.

125.-(1) The Authority may give directives to any procuring entity for the purpose of executing the functions and powers conferred under this Act. Recommendations of the Authority.

(2) Where there is serious breach of this Act, regulations or guidelines under this Act, the Authority may:

- (a) direct the procuring entity to take such corrective action as may be necessary in the circumstances, to rectify the breach;
- (b) instruct the procuring entity to take such necessary measure against the staff in accordance with the provisions of the Public Service Act, No. 2 of 2011;
- (c) recommend to a competent authority to take appropriate action to a person who breach the provisions of this Act; or
- (d) transfer temporarily, the specific procurement activities from one procuring entity to another procuring entity.

(3) The procuring entity shall, within five working days, respond in writing on the action taken or provide an explanation if no action made under subsection (2) of this section.

Suspension
of bidders.

126.-(1) The Authority may, upon application by the procuring entity or on its own motion, suspend a bidder from engaging in any public procurement process for a period prescribed under the regulations.

(2) Subject to the provisions of subsection (1) of this section, the Authority shall exercise such suspension, where the bidder:

- (a) is found to have a record of unsatisfactory performance by any competent authority;
- (b) has been convicted of a corrupt conduct or a fraudulent practice;
- (c) fails to perform the obligations specified in the contract;
- (d) is suspended by the professional body under which the bidder is regulated; and
- (e) is found to have faulted on the obligations specified under any law, national or international standards, or against public interest.

(3) A bidder who has been blacklisted from taking part in public procurement by a foreign country, international organization or other institutions shall automatically be blacklisted from participating in public procurement.

(4) For purpose of this section, the word “bidder” includes directors of a company or firm.

127.-(1) Subject to the provisions of this Act, any public body may participate in public or private procurement proceedings where it deems appropriate.

Participation of public body in procurement proceedings.

(2) A public body which participates in bid floated by another public body or private entity for purposes of procuring works, goods and services shall ensure:

- (a) the economy and efficiency in the use of public funds; and
- (b) the offered price in such bid is based on current market rates.

(3) The offer shall be approved by the Accounting Officer before it is submitted in response to the invited bids.

(4) The public body shall maintain all necessary records for inspection by the Authority, the Controller and Auditor General or any other body with interest on efficient use of public funds.

(5) Without prejudice to the provisions of subsection (4) of this section, the public body shall furnish to the Authority the name of the client, date of entering into a contract and contract amount for publication in the journal and tenders portal.

(6) The procedures to be used under this section shall be prescribed in the guidelines.

International
obligation.

128.-(1) Where there is a conflict between the provisions of this Act and obligation of the Government arising out of an agreement with Foreign Country, International Organization or Agencies, the international obligation shall prevail.

(2) Where an agreement referred to in this section contains preferences in favor of Zanzibari or local bidders, a procuring entity shall ensure that, the applicable preferences are clearly stated in the bidding documents.

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

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

Guidelines.

129. The Authority shall issue guidelines for proper implementation of provisions of this Act.

Regulations.

130.-(1) The Minister may make regulations for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, the Minister may make regulations prescribing:

- (a) method for bid submission;
- (b) procedures for modifying, substituting or withdrawing bid;
- (c) procedures for receiving and opening of bids;
- (d) procedures and manner of requesting bid security;

- (e) procedures for publication of procurement opportunities;
- (f) procedures for seeking clarification from the bidder;
- (g) procedures of suspending a bidder;
- (h) structure of Contract Management Committee;
- (i) procedures of preparing market price and price reasonableness analysis;
- (j) procedures and manner of handling contract administration;
- (k) procedures to be used in contracting arrangement;
- (l) procedures for engaging into additional contract;
- (m) procedures for annual procurement for special groups;
- (n) procedures and circumstances of applying alternative procurement method;
- (o) procedures of applying force account procurement;
- (p) procedures and circumstances of procurement from manufacturer or authorized dealer;
- (q) procedures for selection and employment of consultant;
- (r) rates of fees and charge; and
- (s) procedures of lodging complaints and appeal.

131.-(1) The Public Procurement and Disposal of Public Assets Act, No. 11 of 2016 is hereby repealed. Repeal and saving.

(2) Notwithstanding the repeal under subsection (1) of this section, anything done under the repealed Act before the commencement of this Act, shall continue and be deemed to have been done under the provisions of this Act.

FIRST SCHEDULE

PROCEEDINGS OF THE BOARD [Made under section 15]

- | | |
|-------------------------|--|
| Vice Chairperson. | 1. The Board members shall elect one member among them to be a Vice Chairperson of the Board. |
| Tenure of members. | 2. Save for ex-officio member, the Chairperson and other members of the Board shall hold the office for a term of three years from the date of their appointment and may be re-appointed for another term only. |
| Meetings of the Board. | <p>3.-(1) The Board shall ordinarily meet once in every three months and may convene for extraordinary meeting at any time when need arises for the discharge of its functions.</p> <p style="padding-left: 40px;">(2) The Chairperson shall preside all meeting of the Board, and on his absence, the Vice Chairperson shall preside the meeting of the Board and if the Chairperson and the Vice-Chairperson are absent, the members present shall elect one member among themselves to preside the meeting.</p> |
| Quorum. | 4. More than half of the total number of the members shall constitute quorum at the meeting of the Board. |
| Decisions of the Board. | 5. Decisions of the Board shall be made by consensus, where there is no consensus, the decisions shall be made by votes and where there is an equal vote, the Chairperson shall have a casting vote. |
| Procedures of meetings. | 6. Subject to the provisions of this Act, the Board shall have power to regulate its own procedures. |
| Co-opted member. | 7. The Board may co-opt any person to attend in any deliberation of the meeting of the Board as an expert but the co-opted member shall have no right to vote. |

8. The minutes of the members of the Board shall be confirmed by the Board at the next meeting and signed by the Chairperson and the Secretary.

Minutes of the meetings of the the Board.

9. The Board may, for the purpose of facilitating the performance of its functions, establish committees as it may consider necessary.

Committees of the Board.

10.-(1) The Board may, if deems fit for the proper discharging of its functions, delegate some of its functions to the committee of the Board.

Delegation of the functions of the Board.

(2) Where the Board delegates its functions under sub section (1) of this section, it shall give directives in writing as may be necessary to ensure the proper performance of the functions.

11. The member shall cease to hold office upon the occurrence of the following:

Cessation of membership.

- (a) resignation;
- (b) if he is absent without reasonable excuse for three consecutive meetings of the Board;
- (c) if he becomes incapacitated to perform his duties by reasons of physical or mental health;
- (d) if he ceases to be a representative of the institution which nominated that member;
- (e) if he is terminated by the Minister where he does not meet the expectation of the Authority; or
- (f) death.

12.-(1) The member of the Board who has direct or indirect personal interest in a matter being considered or about to be considered by the Board shall, as soon as possible, after the relevant facts have come to his knowledge, disclose the nature of his interest at the beginning of the meeting of the Board.

Disclosure of conflict.

(2) A disclosure of interest under subsection (1) of this section, shall be recorded in the minutes of the meeting and the member making such disclosure shall not:

- (a) be present during the deliberation of the Board for the making of the determination; or
- (b) influence any other member in the making the determination.

Allowances
for
Members.

13. Members of the Board shall be entitled to be paid such allowances in accordance with Public Service Act, No.2 of 2011.

SECOND SCHEDULE

PROCEEDINGS OF THE TENDER BOARD [Made under section 39]

1. The chairperson and other members of the Tender Board shall hold office for a term of three years from the date of appointment and may be eligible for re-appointment for another term only. Tenure of Tender Board members.
- 2.-(1) Meetings of the Tender Board may be convened by the chairperson when the needs arise. Meetings of the Tender Board.
- (2) All meetings of the Tender Board shall be presided by the chairperson, in the absence of the chairperson, the members present at a meeting shall elect one of the members to be chairperson for that meeting.
- (3) Minutes of each meeting of the Tender Board shall be recorded by the Secretary in a proper form and shall be confirmed and signed by the chairperson and the Secretary at the next following meeting.
3. More than half of the members of the Tender Board shall form a quorum for a meeting. Quorum.
4. Decisions of the Tender Board shall be made by consensus, where there is no consensus, the decisions shall be made by votes and where there is an equal vote, the chairperson shall have a casting vote. Decisions of the Tender Board.
5. Subject to the provisions of this Act, the Tender Board shall conduct its meetings subject to the procedures prescribed by the Authority. Procedures of meetings.
6. The Tender Board may co-opt any person to attend in any deliberation of the meeting of the Tender Board as an expert but the co-opted member shall have no right to vote. Co-opted member.

7. A member of the Tender Board shall cease to be a member if he:

- (a) resigns;
- (b) contravenes Public Procurement Code of Ethics;
- (c) becomes incompetent;
- (d) fails to attend three consecutive meetings of the Tender Board without reasonable cause;
- (e) is convicted of an offence involving disciplinary or moral turpitude; or
- (f) becomes incapable by reasons of physical or mental health.

THIRD SCHEDULE

THRESHOLD AND METHODS OF PROCUREMENT [Made under section 74(7), 93(2), 94(1), 99(1)(c) and 106(1)]

PROCUREMENT CATEGORIES	THRESHOLDS IN TZS (INCLUDING TAXES)	METHODS OF PROCUREMENT
Goods	Less or equal to 150,000,000.00	Minor value
	More than 150,000,000.00 or equal to 400,000,000.00	Quotation
	More than 400,000,000.00 or equal to 3,500,000,000.00	National Competitive Bid (NCB)
	Above 3,500,000,000.00	International Competitive Bid (ICB)
Works	Less or equal to 300,000,000.00	Minor value
	More than 300,000,000.00 or equal to 1,000,000,000.00	Quotation
	More than 1,000,000,000.00 or equal to 15,000,000,000.00	National Competitive Bid (NCB)
	Above 15,000,000,000.00	International Competitive Bid (ICB)
Consultancy service	Less or equal to 60,000,000.00	Minor value
	More than 60,000,000.00 or equal to 100,000,000.00	Quotation
	More than 100,000,000.00 or equal to 500,000,000.00	National Competitive Bid (NCB)

	Above 500,000,000.00	International Competitive Bid (ICB)
Non-consultancy service	Less or equal to 50,000,000.00	Minor value
	More than 50,000,000.00 or equal to 80,000,000.00	Quotation
	Above 80,000,000.00	National Competitive Bid (NCB)

FOURTH SCHEDULE

EXCLUSIVE PREFERENCE [Made under section 85(1)]

PROCUREMENT CATEGORIES	THRESHOLDS IN TZS (INCLUDING TAXES)	CATEGORIES OF BIDDERS
Goods	Less or equal to 5,000,000,000.00	Local bidders
	Above 5,000,000,000.00	All bidders
Works	Less or equal to 10,000,000,000.00	Local bidders
	Above 10,000,000,000.00	All bidders
Consultancy service	Less or equal to 500,000,000.00	Local bidders
	Above 500,000,000.00	All bidders
Non-consultancy service	Less or equal to 500,000,000.00	Local bidders
	Above 500,000,000.00	All bidders

OBJECTS AND REASONS

The object of this Bill is to repeal the Public Procurement and Disposal of Public Assets Act, No. 11 of 2016 and enact the Public Procurement Act for the purpose of regulating and controlling the public procurements. In this new enactment the current Procurement Authority will be reformed with the new set up to strengthen the implementation of procurement activities within the Government.

This Bill addresses challenges in the implementation of public procurement activities that affect the Government's goals in delivering rapid development to citizens. Therefore, this Bill seeks to set measures, methods and procedures for procurement that will facilitate the acquisition of goods, works and services and reducing costs and time for the Government. Additionally, this Bill aims to create a framework for managing the implementation of procurement contracts and preventing procurement that do not meet required standards.

This Bill also intends to do away with the issue of management of disposal of public assets from the Zanzibar Public Procurement Regulatory Authority. The said issue is fully managed in the current Treasury Office as provided for under the Office of the Treasury Registrar and Public Assets Management Act, No. 6 of 2021. According to the said Act, No. 6 of 2021, the Treasury Office is assigned the duty and responsibility to oversee all matters related to the disposal of public assets in Public Institutions. Therefore, the newly Zanzibar Public Procurement Regulatory Authority to be established in this Bill will only focus on the management of procurement matters.

Furthermore, the Bill intends to make provisions relating to regulation of all procurement experts within the Government. In so doing therefore, all procurement staff will be under the supervision of the Ministry responsible for Finance.

This Bill is divided into twelve parts.

Part One is about preliminary provisions which provide for a short title and commencement, application and interpretation of some important words used in the Bill.

Part Two provides for the establishment of the Zanzibar Public Procurement Regulatory Authority, seal and logo of the Authority, objectives of the Authority, functions and powers of the Authority as well as procurement of the Authority.

Part Three is about the management and administration of the Authority whereby the Board of Directors of the Authority has been established which shall be the main Organ for the management of the Authority. This part also covers the provisions relating to the functions and powers of the Board, appointment of the Director General, qualifications and functions of the Director General, structure of the Authority and staffs of the Authority.

Part Four explains about the provisions relating special procurement audit, investigation and report where the Authority is given power to conduct special audit or investigation on any matter relating to procurement where necessary.

Part Five provides for the financial provisions that are funds and resources of the Authority, budget, opening bank account, account and audit, financial management of the Authority and the annual Financial Report of the Authority.

Part Six is about basic principles of public procurement. It describes the principles which a person is required to adhere in the procurement process. Those principles are non-discrimination, transparency, accountability and fairness, competition, confidentiality, economy and efficiency, and sustainable procurement and environmental conservation.

Part Seven provides for provisions relating to procuring entity. It provides for composition of procuring entity, Accounting Officer, Tender Board, its functions and its proceedings, Establishment of Procurement Management Unit and its functions, User Department, Evaluation Committee and its functions, Receiving and Inspection Committee, independence in performance of functions and disagreement and procurement records.

Part Eight is about public procurement procedures where by provisions of annual procurement plan, application of public procurement procedures, application of e-Procurement Procedures, communication, registration of bidders, initiation of procurement requirements and statements of requirements and industrial standards are provided. This Part also provides for, market price index, technical specifications, solicitation document, publication of procurement opportunities,

selection of bidders, bidding period, amendment of bid document, bid submission, modification, substitution and withdrawal of bids, bid receipt and opening, bid security, basic qualification of bidders, evaluation of methodology, clarification of bid received and negotiation before contract.

Also this part provides for provisions of bid responsiveness, best evaluated bid, ground for rejection of bids, acceptance of bids, communication of contract award, contract management, types of contracts, contractual arrangements, termination of contract, contract variation and amendment, additional works to a contract, change in bidder's circumstance, preference scheme, exclusive preferences, reservation scheme, preference to special groups, procurement of used items, procurement of projects with public interests, national security or strategic and bid processing time.

Part Nine explains about public procurement under public private partnership arrangement where it provides for applicability and approval of public private partnership projects and project proposal.

Part Ten provides for procurement methods which includes national competitive bidding, international competitive bidding, restricted national bidding and restricted international bidding. Also, this part has provisions of community participation, quotation, force account, procurement from manufacturer or authorized dealer, emergency procurement, procurement by special departments, direct procurement method, single source procurement method, minor value procurement method, selection and employment of consultants, negotiated procedure with invitation to bid, non-consultancy services and approval for alternative method or procedure.

Part Eleven provides for provisions relating to offences and penalties.

Part Twelve is about miscellaneous provisions. It explains about delegation of procurement activities, fees and charges, review of the accounting officer, appeal to the Authority, suspension of procurement process, prohibition of entering into a contract, misleading or fraudulent information by the bidder, immunity, Public Procurement Code of Ethics, cancellation of procurement proceedings, recommendations of the Authority, suspension of bidders, participation of public body in procurement proceedings, international obligation, guidelines, regulations and repeal and saving.

Finally, there are four Schedules.

First Schedule provides for proceedings of the Board.

Second Schedule provides for proceedings of the Tender Board.

Third Schedule provides for Threshold and Methods of Procurement.

Fourth Schedule provides for Exclusive Preference.

ZANZIBAR
05th November, 2024

(HON. DR. SAADA MKUYA SALUM)
MINISTER OF STATE, PRESIDENT'S OFFICE,
FINANCE AND PLANNING
ZANZIBAR

