

GOVERNMENT NOTICE NO. 333 published on 30/12/2016

THE PUBLIC PROCUREMENT ACT,
(CAP. 410)

REGULATIONS

(Made under section 105)

THE PUBLIC PROCUREMENT (AMENDMENT) REGULATIONS, 2016

PART I
PRELIMINARY PROVISIONS

- Citation
1. These Regulations may be cited as the Public Procurement (Amendment) Regulations, 2016 and shall be read as one with the Public Procurement Regulations, 2013 hereinafter referred to as the “principal Regulations”.
- G.N.No.
446 of 2013
- Amendment of
regulation 2
2. The principal Regulations are amended in regulation 2 (1) by deleting:
- (a) paragraph (d); and
 - (b) the word “and” appearing in paragraph (c) and inserting that word at the end of paragraph (b).
- Amendment of
regulation 3
3. The principal Regulations are amended in regulation 3 by deleting:
- (a) definitions of the terms “closed framework agreement”, “contracting authority”, “original project proponent”, “private party”, “solicited project proposal”, “solicitation for expression of interest”, and “unsolicited project proposal”;
 - (b) the words “at an agreed price” appearing in the definition of the term “framework agreement”;
 - and
 - (c) the words “consultancy” appearing in the definition of the term “minor value” and substituting for it the word “services”.

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G.N. No. 333 (contd.)

Amendment of
regulation 4

4. The principal Regulations are amended in regulation 4 (2) by adding immediately after paragraph (d) the following:

“(e) conformity to the established and approved standards.”

Amendment of
regulation 8

5. The principal Regulations are amended in regulation 8 by deleting the words “provision of consultancy services” appearing in the third line.

Amendment of
regulation 9

6. The principal Regulations are amended in regulation 9 by:

(a) inserting between the words “organisation,” and “civil society organisations,” appearing in subregulation (1) (b) the words “special groups,”;

(b) deleting the word “seat” appearing in subregulation (11)(a) and substituting for it the word “seal”.

Amendment to
regulation 13

7. The principal Regulations are amended in regulation 13(1)(a) by deleting the word “fourteen” and substituting for it the word “seven”.

Amendment to
regulation 16

8. The principal Regulations are amended in regulation 16 by deleting:

(a) subregulations (3) and (4) and re-numbering subregulations (5), (6), (7) and (8) as subregulations (3),(4),(5) and (6) respectively;

(b) the words “after approval from the Authority” appearing in the last line of subregulation (3) as renumbered; and

(c) sub regulation (4) as renumbered and substituting for it the following:

“(4) The procuring entity shall not incur liability solely by virtue of invoking sub-regulations (1) towards tenderers who submitted tenders”.

Amendment of
regulation 17

9. The principal Regulations are amended in regulation 17 by deleting:

(a) subregulation (1) and substituting for it the following:

“(1) A procuring entity may reject a submission if it has determined that the price in combination with other constituent elements of the submission is abnormally low in relation to the subject matter of the procurement and raise concerns as to the ability of the tenderer that presented that submission to perform the procurement contract.”;

(b) subregulation (4) and re-numbering subregulation (5) and (6) as subregulations (4) and (5) respectively; and

(c) subregulation (4) as re-numbered and substituting for it the following:

“(4) The procuring entity shall not incur liability solely by virtue of invoking subregulation (1) towards tenderers who submitted tenders”.

Amendment of
regulation 22

10. The principal Regulations are amended in regulation 22:

(a) in subregulation (2) by deleting the phrase immediately after the word “procured” and substituting for them the following:

“in conformity to the established and approved standards.”;

(b) by inserting immediately after sub-regulation (3) the following new subregulation:

“(4) Where there is no established and approved standards, no reference to a particular trade mark, name, patent, design, type, specific origin or producer shall be issued.”;

- (c) by renumbering sub regulations (4), (5), (6), (7) and (8) as sub regulations (5), (6), (7), (8) and (9) respectively; and
- (d) in subregulation (5) as renumbered by inserting between the words “standardized” and “trade terms” the word “goods”.

Addition of regulations 22A and 22B

11. The principal Regulations are amended by adding immediately after regulation 22, the following:

“Established and approved procurement standards

22A.-(1) The procuring entity shall not, unless otherwise provided under the Act or these Regulations, procure goods which do not conform to the established and approved standards issued by relevant Government organs and be made available to the Authority for use by a procuring entity.

(2) Notwithstanding sub-regulation (1), procurement of certain goods for Government use may subject to section 65B(3) of the Act, be procured without established and approved standards after obtaining an approval from the minister responsible for approving Government standards.

(3) Where certain goods are to be procured without observing the approved standards, the procuring entity shall seek approval from the Authority.”

“Established and approved standards for Government buildings and furniture

22B.- (1) The established and approved standards for construction of Government buildings and procurement of furniture, shall be as issued by the Minister responsible for works and made available to the Authority.

(2) Subject to sub-regulation (1), such standards shall be in a detailed specification of design for buildings and furniture for use in the Government.”

Amendment of regulation 29

12. The principal Regulations are amended by deleting subtitle (b) appearing immediately after regulation 29(6) and substituting for it the following:

“(b) preference and exclusive preference to local persons, special groups or firms.”

Addition of regulations 30A, 30B, 30C and 30D

13. The principal Regulations are amended by adding immediately after regulation 30, the following:

“Promotion of special groups

30A.- (1) Without prejudice to Regulation 31 and subject to section 64 of the Act, the special group shall be eligible for preference scheme if it:

- (a) is registered and recognized by relevant special groups supporting entities;
- (b) has been entered in the special register of the Authority and the Agency upon being submitted by the relevant special groups supporting entity; and
- (c) has at least seventy percent membership of the members forming such special group

and headed one hundred percent by the relevant special group.

(2) For the purpose of this regulation, "special group supporting entity" includes ministries, agencies, government organizations, departments responsible for the development and empowerment of women, youth, elderly and persons with disabilities.

Registration for special groups

30B.-(1) A special group wishing to be granted exclusive preference under these regulations shall be registered by the relevant special group supporting entities in a manner to be determined by it before being forwarded by such entity to the Authority for the purpose of being recorded in the roll.

(2) A relevant special group supporting entity shall, before issuing a certificate of registration, ensure necessary training for the better carrying out their functions has been offered to them by it.

(3) The Authority may request details of the special groups for the purpose of justifying its eligibility for exclusive preference scheme.

(4) A procuring entity shall not award a contract to a special group which is not recorded in the roll of the Authority.

Exclusive Preference to special groups

30C.- (1) A procuring entity shall grant an exclusive preference of thirty percent in its annual procurement to goods, works and services for special groups situated within its jurisdiction.

(2) Subject to sub-regulation (1), a procuring entity shall give reason for its failure to meet an exclusive preference.

(3) Respective accounting officer who contravene this regulation shall be liable for administrative actions.

Payments for special groups

30D.- (1) The special groups shall be timely paid for the performed contract for the purpose of ensuring their sustainability.

(2) Subject to sub-regulation (1), the procuring entity shall ensure the allocation or commitment of funds prior to procurement proceedings.”

- Amendment of regulation 31 14. The principal Regulations are amended in regulation 31 by deleting figure "54" and substituting for it the figure "54 (3)".
- Revocation of regulations 35,36 and 37 15. The principal Regulations are amended by revoking regulations 35,36 and 37.
- Amendment of regulation 39 16. The principal Regulations are amended in Regulation 39(2) by deleting the words "greater than sixty percent" and substituting for them the words "seventy five percent"
- Amendment of regulation 43 17. The principal Regulations are amended by deleting regulation 43 and substituting for it the following:
"Capacity building of local firms 43.-(1) Subject to section 55D of the Act, a procuring entity shall, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.
(2) Reserved contracts for capacity building shall not be subjected to competitive tendering and in such case the procuring entity shall use negotiated procurement methods stipulated in these Regulations.
(3) The relevant statutory bodies shall ensure that necessary support is provided to the local firms involved in the capacity building scheme to enable them perform in accordance with the terms of contract."
- Amendment of regulation 44 18. The principal Regulations are amended in regulation 44 by deleting figure "10(3)" appearing in subregulation (2) and substituting for it the figure "10(4)".

Amendment of regulation 56

19. The principal Regulations are amended in regulation 56 by adding immediately after sub regulation (2) the following:

“(3) Notwithstanding the provision of subregulation (1) (b), such number of staff may vary when the need arise as the accounting officer may determine”

Amendment of regulation 59

20 The principal Regulations are amended in regulation 59(4) by deleting the words “within twenty one working days” and substituting for them the words “within fourteen working days”.

Revocation of regulation 61

21. The principal Regulations are amended by revoking regulation 61.

Amendment of Regulation 63

22. The principal Regulations are amended by deleting regulation 63 and substituting for it the following:

“Emergency procurement

63.-(1) Subject to the provisions of the Act, where public interest demands the emergency procurement of any goods, services or works, the accounting officer shall-

- (a) evaluate the need for the emergency procurement and decide the preferred procurement method in order to guarantee economy and efficiency;
- (b) ensure the criteria prescribed under section 65 (2) of the Act are complied with;
- (c) identify, specify and prioritize the immediate procurement activities

which may be used in the period of the emergency;

(d) where possible, identify other government bodies that can provide immediate assistance; and

(e) specify the time frame within which the emergency procurement will be undertaken.

(2) Upon satisfying the requirements under sub regulation (1), the accounting officer shall proceed to procure the goods, works or services in accordance with the method of procurement selected and pursuant to section 65 (4) of the Act.

(3) The accounting officer shall submit an application for retrospective approval to the Paymaster General and state the circumstances which precluded him from complying with normal procurement process within seven working days from the date of award.

(4) Upon receipt of an application for the retrospective approval, the Paymaster General shall seek advice of the Authority.

(5) Subject to sub regulation (4), the Authority shall, in collaboration with the Government Assets Management

Department and the department responsible for technical audit of the Ministry responsible for finance or, where necessary, with any other competent body, advise the Paymaster General on the appropriate action to be taken.

(6) Where the Paymaster General acts upon the advice given under sub-regulation (5), he shall not be held personally liable for his actions.”

Amendment of regulation 64

23. The principal Regulations are amended in regulation 64 by deleting the words “and the Agency” appearing in the last line of subregulation (1).

Amendment of regulation 67

24. The principal Regulations are amended in regulation 67 by deleting the figure “63(6)” and substituting for it the figure “63(3)”.

Amendment of regulation 68

25. The principal Regulations are amended in regulation 68(1) by deleting the words “project work” and substituting for them the word “procurement”

Amendment of regulation 69

26. The principal Regulations are amended in regulation 69(6) by deleting the words “as provided by the Authority and updated from time to time” and substituting for them the words “specified by the relevant public bodies and updated from time to time, and made available to the Authority”.

Amendment of regulation 76

27. The principal Regulations are amended in regulation 76 by deleting the words “, non-consultant services or public private partnership”.

Amendment of regulation 83

28. The principal Regulations are amended in regulation 83(1), by inserting immediately after the words

“shall not” the phrase “, except otherwise provided under these Regulations.”

Amendment of
regulation 86

29. The principal Regulations are amended in regulation 86(1) by deleting the words “public body” and substituting for them the words “procuring entity”

Amendment of
regulation 93

30. The principal Regulations are amended in regulation 93:

(a) by deleting sub-regulation (2), and substituting for it the following:

“(2) Any debarment by the Authority shall be pursuant to section 62 and 83 of the Act”.; and

(b) in subregulation (3) by:

(i) deleting the words “Subject to the provision of the Act” appearing in the opening words and substituting for them the words “Without prejudice to sub-regulation (2).”;

(ii) deleting the words “one year and not exceeding five years” appearing in paragraph (d) and substituting for them the words “ten years”; and

(iii) deleting paragraph (e).

Amendment of
regulation 105

31. The principal Regulations are amended in regulation 105(1) by deleting the words “twenty eight days” and substituting for them the words “seven working days”.

Amendment of
regulation 106

32. The principal Regulations are amended in regulation 106 by:

(a) deleting sub-regulation (1) and (2) and substituting for them the following:

“(1) An accounting officer shall, upon receipt of an application for administrative review, suspend the procurement or disposal proceedings of the

- tender in dispute, until he delivers a written decision on the complaint.”;
- (b) by renumbering subregulations (3) to (10) as subregulations (2) to (9) respectively;
 - (c) deleting the words “institute an investigation” appearing in subregulation (2) as renumbered and substituting for them with the words “constitute an independent review panel”;
 - (d) deleting subregulation (4) as renumbered and substituting for it the following:
 - “(4) In constituting an independent review panel pursuant to sub-regulation (3), the accounting officer shall consider their expertise and experience on the subject matter of the tender.”;
 - (e) deleting sub-regulation (5) as renumbered and substituting for it the following:
 - “(5) An accounting officer shall, within seven working days after receipt of the complaint or dispute, deliver a written decision to a complainant and other tenderers.”;
 - (f) deleting sub-regulation (8) as renumbered and substituting for it the following:
 - “(8) Where the accounting officer does not issue a decision within the time specified in sub-regulation (6), the tenderer submitting the complaint or dispute shall within seven working days after such specified time, institute proceedings under section 97 of the Act, and upon instituting such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.”;
 - (g) deleting sub-regulation (9) as renumbered and substituting for it the following:
 - “(9) Where the complainant is not satisfied with the decision of the accounting officer or, where the accounting officer

does not issue a decision within the specified time, the complainant shall submit his complaint or appeal to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or from such date the decision ought to be issued.”; and

(h) adding immediately after sub-regulation (9) as renumbered the following:

“(10) The Authority shall issue guideline for the form and manner of conducting administrative review by the procuring entity.”

Amendment of
regulation 107

33. The principal Regulations are amended in regulation 107 (1), by:

- (i) deleting paragraph (b);
- (ii) renaming paragraph (c) as paragraph (b);
- and
- (iii) deleting the closing words and substituting for them the following:

“shall be referred to the Appeals Authority within seven working days from the date when the tenderer received the decision of the accounting officer or, in case no decision is rendered after the expiry of the time stipulated under regulation 106(5) or when the tenderer becomes aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to section 97 (3) of the Act.”

Amendment of
regulation 108

34. The principal Regulations are amended in regulation 108 by adding immediately after the word “Authority” the words “ in collaboration with Attorney General’s Chambers and other Professional Bodies”.

Amendment of
Regulation 109

35. The principal Regulations are amended by deleting regulation 109 and substituting for it the following:

“Submission of
contract
documents

109. The Accounting Officer shall, upon request, send copies of all contracts to the Authority, the Attorney General’s Chambers, the Controller and Auditor General, the Internal Auditor General, the Government Asset Management Division or the Tanzania Revenue Authority.”

Amendment of
regulation 110

36. The principal Regulations are amended in regulation 110 by:

(a) adding immediately after sub-regulation (2) the following new subregulations:

“(3) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(4) A contract amendment shall not increase the total contract price by more than fifteen percent of the original contract price without the approval of budget approving authority”; and

(b) renumbering sub-regulations (3),(4),(5),(6),(7),(8) and (9) as subregulations (5),(6),(7),(8),(9),(10) and (11) respectively.

Amendment of
regulation 112

37. The principal Regulations are amended in regulation 112 (2) by deleting the words “employment of consultant” appearing in paragraph (c) and substituting for them the words “non- consultancy services.”

Amendment of
regulation 115

38. The principal Regulations are amended by deleting regulation 115 and substituting for it the following:

“Public bodies
participating in
tenders floated
by public body
or private entity

115.-(1) A public body which participates in tenders floated by another public body or private entity for purposes of carrying out works contracts or obtaining goods and services shall ensure-

- (a) the economy and efficiency in the use of public funds;
- (b) an approval of budget and schedule of requirements for the purpose of carrying out works contracts or obtaining goods and services; and
- (c) the offer price in such tender is based on current market rates.

(2) The offer shall be approved by the accounting officer before it is submitted in response to the invited tender.

(3) The public body shall, prior to participation in the tenders floated by public bodies or private entity, ensure they have obtained an

approved shortlist of manufacturers, dealers, suppliers and service providers for supply of items and provisions of services that falls within their expected contractual obligations.

(4) Public body shall, during the execution of the awarded contract:

- (a) obtain from the shortlisted manufactures, dealers and service providers price against the items and services provided in the approved schedules of requirements;
 - (b) approve the offers which provide competitive advantage to it;
 - (c) obtain approval from the accounting officer to purchase various items from the schedule of requirements against the approved offer; and
 - (d) sign purchase agreement for execution of the contract.
- (5) The accounting

officer shall maintain all necessary records on how the offer price was arrived at and used in the execution of the contracts for inspection by the Authority, Controller and Auditor General or any other body with interest on efficient use of public funds.

(6) The accounting officer shall furnish the Authority with the name of the client, date of entering into a contract and contract amount for publication in the Journal and Tenders Portal”.

Amendment of regulation 122

39. The principal Regulations are amended in regulation 122 by deleting the words “fourteen days” appearing in subregulation (1) and substituting for them the words “seven working days”.

Amendment of regulation 123

40. The principal Regulations are amended in regulation 123:

- (a) in subsection (1), by deleting the words “seven days” and substituting for them the words “three working days”; and
- (b) in subregulation (3), by deleting the words “seven days” and substituting for them the words “three working days”.

Amendment of regulation 130

41. The principal Regulations are amended in regulation 130:

- (a) in subregulation (1), by deleting the words “at the lower prices than current market prices.”; and
- (b) in subregulation (2), by adding immediately after the words “Agency” the words “in collaboration with the Authority”.

Amendment of
regulation 131

42. The principal Regulations are amended in regulation 131:

- (a) in subregulation (4) by deleting the words “call off order” appearing in the third line of paragraph (b) and substituting for them the words “local purchase order”;
- (b) by deleting sub-regulation (5) and substituting for it the followings;

“(5) The procuring entity shall conduct mini competition on prices for items or services required at least three randomly selected tenderers awarded framework agreement and seek Tender Board approval before issue of the local purchase order to the tenderer offering the lowest price within the prevailing market price.”

Amendment of
regulation 132

43. The principal Regulations are amended in regulation 132:

- (a) in subregulation (1), by:
 - (i) deleting the words “call off order” appearing in the first line of paragraph (a) and substituting for them the words “local purchase order”;
 - (ii) deleting the words “framework agreement and call off order” appearing in the third line of paragraph (b) and substituting for them the word “local purchase order”;
 - (iii) deleting the words “call off order” appearing in the last line of paragraph (e) and substituting for them the words “local purchase order”; and
 - (iv) inserting the word “annual”

- immediately after the word “pay” appearing in paragraph (h).
- (b) by deleting sub-regulation (2) and substituting for it the following;
- “(2) “The procuring entity shall be responsible for-
- (a) effecting payments for goods and services delivered and accepted;
- (b) claiming for damages caused by delayed delivery or any other act; and
- (c) reporting to the Agency and the Authority any breach of contract or unsatisfactory performance by a tenderer under framework agreements.
- Revocation of regulation 133 44. The principal Regulations are amended by revoking regulation 133.
- Amendment of regulation 135 45. The principal Regulations are amended in regulation 135(2), by deleting the word “competitive” appearing on third line and substituting for it the word “market”.
- Amendment of regulation 136 46. The principal Regulations are amended in regulation 136:
- (a) in subregulation (1), by inserting between the words “specifications” and “which”, the words “in conformity to the established and approved standards pursuant to sub-regulation (2),” ; and
- (b) in subregulation (2), by inserting immediately after the word “engineering,”, the words “prescribed standards,”
- Amendment of regulation 137 47. The principal Regulations are amended in regulation 137:
- (a) in subregulation (2), by:
- (i) deleting the words “or closed” appearing in paragraph (b);
- (ii) inserting immediately after paragraph (b) the following:

- “(c) conducting inspection prior and after the service and shall issue a certificate of approval, except that no fee shall be charged for such inspection”;
- (iii) re-naming paragraphs “(c)” and “(d)” as paragraphs “(d)” and “(e)” respectively; and
- (iv) adding immediately after subregulation (2), the following:
 - “(3) Without prejudice to sub-regulation (1) and (2), procuring entities with established workshops, facilities, qualified personnel and equipment may carry out repair and maintenance of their own motor vehicles and heavy plants.”
- (b) by renumbering subregulation (3) and (4) as (4) and (5) respectively;
- (c) by deleting sub-regulation (4) as renumbered and substituting for it the following:
 - “(4) Subject to sub regulation (2)(a), where the agency is unable to carry out the repair and maintenance due to non-availability of spare parts, technical knowhow or other resource constraints, it may procure such services from service providers awarded open framework agreements in consultation with the procuring entity:
 - Provided that the fee to be charged shall be as prescribed in the circular to be issued by the minister responsible for electrical and mechanical engineering for the inspection conducted prior and after the service and shall issue a certificate of approval.”; and
- (d) by deleting subregulation (4) as renumbered and substituting for it the following:
 - “(4) Every procuring entity shall maintain a record of maintenance, repairs

and replacement of each motor vehicle, piece of plant and equipment, maintenance, repair and installation of electrical, air conditioning and refrigeration, and electronics services for inspection by the ministry responsible for electrical, machinery and mechanical engineering, the Controller and Auditor General, the Authority and the agency.”

Amendment of regulation 138

48. The principal Regulations are amended in regulation 138(1), by deleting the word “standards” and substituting for it the phrase “in conformity to the established and approved standards.”

Amendment of regulation 146

49. The principal Regulations are amended in regulation 146 by inserting between the words “specifications” and “for” the phrase “in conformity to the established and approved standards,”

Amendment of regulation 147

50. The principal Regulations are amended in regulation 147 by inserting between the words “shall” and “prepare” the phrase “establish and approve standards and”

Addition of new regulation 149A

51. The principal Regulations are amended by adding immediately after regulation 149 the following:

“Procurement directly from manufacturers, dealers or service providers

149A.- (1) A procuring entity shall, in its annual procurement plan, identify goods or services to be procured directly from the manufacturer, dealer or service provider.

(2) Where goods or services procured subject to sub-regulation (1), procuring entity shall, prior to procurement, ensure:

- (a) goods or services procured comply to the established and approved standards except where such standards are not available;
- (b) the need for after sale services and the entire product life cycle is considered; and
- (c) procure goods or services by placing a direct order which shall be effected by terms and conditions.

(3) Subject to sub-regulation (2)(c), where the terms and conditions provided by the manufacturer, dealer or service provider differ with those provided by the procuring entity, such procuring entity may seek legal guidance of the Attorney General's Chambers.

(4) Where there is more than one manufacturer, dealer or service provider, a procuring entity shall:

- (a) ensure best value for money by inviting quotations from each manufacturer, dealer or service provider; and

(b) evaluate all quotations received and where necessary, negotiate with the manufacturer, dealer or service provider with a view to ensure compliance with the requirements for the goods or services.

Amendment of regulation 150

52. The principal Regulations are amended in regulation 150(1) by deleting the word “services” and substituting for it the words “non consultancy services”.

Amendment of regulation 151

53. The principal Regulations are amended in regulation 151(2) by deleting the word “services” wherever it appears in paragraphs (b), (c) and (d) respectively and substituting for it the words “non consultancy services”.

Addition of regulation 151A

54. The principal Regulations are amended by adding immediately after regulation 151 the following:

“National, international and restricted competitive tendering on fixed budget

151A.-(1)

The national, international and restricted competitive tendering on fixed budget method may be used when the procurement budget is fixed.

(2) The invitation for tender shall indicate the available budget and require the tenderer to bid within the budget.

(3) The schedule of requirements shall be in a manner that ensures the budget is sufficient for execution of the contract.

(4) Tender shall be subjected to evaluation.

(5) Tender that exceeds the indicated budget shall be rejected.”

Amendment of regulation 152

55. The principal Regulations are amended in regulation 152:

- (a) in subregulation (1), by inserting between the words “communities” and “or” appearing in paragraph (d) the words “special groups”; and
- (b) in subregulation (2), by adding immediately after the word “firms” the words “or special groups”

Amendment of regulation 153

56. The principal Regulations are amended in regulation 153 by deleting subregulation (1) and (2) and substituting for them the following::

“(1) A procuring entity may engage in procurement by means of two-stage tendering in accordance with regulation 154, or request for proposals in accordance with regulations 155, 156 and 157 if-

- (a) it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or, in the case of services, to identify their characteristics and, in order to obtain the most satisfactory solution to its procurement needs;
 - (i) it seeks tenders, proposals or offers as to various possible means of meeting its needs; or,
 - (ii) it is necessary for the procuring entity to negotiate with tenderers

- because of the technical character of the goods or works, or because of the nature of the services;
- (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs; or
 - (c) the tendering proceedings have been engaged in but no tenders were submitted or all tenders were rejected by the procuring entity pursuant to regulation 16, and when, in the judgement of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract.

(2) A procuring entity may engage in competitive dialogue for particularly complex procurement if-

- (a) it is not objectively able to:
 - (i) define the technical means capable of satisfying the needs or objectives;
 - (ii) specify the legal or financial make-up of a project; or
- (b) it considers that the use of the open or restricted procedure will not allow the award of the contract.”

Amendment of
regulation 155

57. The principal Regulations are amended by deleting regulation 155 and substituting for it the following:

155.-(1) Requests for proposals shall be addressed to at least three tenderers.

(2) The procuring entity shall publish in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international

circulation a notice seeking expressions of interest in submitting a proposal, unless for reasons of economy or efficiency the procuring entity considers it undesirable to publish such a notice; the notice shall not confer any rights on tenderers, including any right to have a proposal evaluated.

(3) The procuring entity shall establish the criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of the proposals.

(4) The criteria referred to in subregulation (3) shall concern:

- (a) the relative managerial and technical competence of the tenderer;
- (b) the effectiveness of the proposal submitted by the tenderer in meeting the needs of the procuring entity; and
- (c) the price submitted by the tenderer for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods or works.

(5) A request for proposals issued by a procuring entity shall include at least the following information:

- (a) the name and address of the procuring entity;
- (b) a description of the procurement need including the technical and other parameters to which the proposal must conform, as well as, in the case of procurement of works, the location of any works to be effected and, in the case of services, the location where they are to be provided;

(c) the criteria for evaluating the proposal, expressed in monetary terms to the extent practicable, the relative weight to be given to each such criterion and the manner in which they will be applied in the evaluation of the proposal; and

(d) the desired format and any instructions, including any relevant timetables applicable in respect of the proposal.

(6) Any modification or clarification of the request for proposals, including modification of the criteria for evaluating proposals referred to in sub-regulation (4), shall be communicated to all tenderers participating in the request-for-proposals proceedings.

(7) The procuring entity shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing tenderers.

(8) The procuring entity may engage in negotiations with tenderers with respect to their proposals and may seek or permit revisions of such proposals, provided that the following conditions are satisfied:

(a) Any negotiations between the procuring entity and a tenderer shall be confidential;

(b) Subject to regulation 15, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party;

(c) The opportunity to participate in negotiations is extended to all tenderers that have submitted proposals and whose proposals have not been rejected.

(9) Following completion of negotiations, the procuring entity shall request all tenderers remaining in the proceedings to submit, by a

specified date, a best and final offer with respect to all aspects of their proposals

(10) The procuring entity shall employ the following procedures in the evaluation of proposals:

- (a) only the criteria referred to in subregulation (4) of this regulation as set forth in the request for proposals shall be considered;
- (b) the effectiveness of a proposal in meeting the needs of the procuring entity shall be evaluated separately from the price;
- (c) the price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

(11) Any award by the procuring entity shall be made to the tenderer whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals set forth in the request for proposals, as well as with the relative weight and manner of application of those criteria indicated in the request for proposals.

Amendment of
Regulation 156

58. The principal Regulations are amended by deleting regulation 156 and substituting for it the following:

“Conducting
simultaneous
negotiations

156.-(1) Where the procuring entity uses a selection procedure with simultaneous negotiations, it shall issue the request for proposals to prequalified, pre-selected or shortlisted tenderers that best

meet the qualification criteria specified in the prequalification or pre-selection documents.

(2) A procuring entity shall pre-select tenderers that acquired the best rating, up to the maximum number indicated in the prequalification or pre-selection documents but shall not be less than three, wherever possible.

(3) A procuring entity shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive.

(4) Where a maximum limit on the number of tenderers that can be invited to participate in the dialogue has been established and the number of responsive proposals exceeds that limit, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals.

(5) A procuring entity shall invite each tenderer that presented a responsive proposal, within any applicable maximum number of tenders, to participate in the simultaneous negotiations.

(6) A procuring entity shall ensure that the number of tenderers invited to participate in the simultaneous negotiations, which shall be at least three, is sufficient to ensure effective competition.

(7) The negotiations shall be conducted by the same representatives of the procuring entity on a concurrent basis.

(8) In the course of the negotiations, a procuring entity shall not modify the subject matter of the procurement, any qualification or evaluation criterion or any minimum requirements established pursuant to regulations 116 and 121(2) of these Regulations any element of the description of the subject matter of the procurement or any term or condition of the procurement contract that is not subject to the dialogue as specified in the request for proposals.

(9) The procuring entity may however seek or permit revisions of such proposals, provided that the opportunity to participate in negotiations is extended to all such tenderers.

(10) Following completion of negotiations, the procuring entity shall request all tenderers remaining in the

proceedings to submit a best and final offer with respect to all aspects of their proposals. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers.

(11) In the evaluation of proposals, the price of a proposal shall be considered separately and only after completion of the technical evaluation.

(12) No negotiations shall take place between the procuring entity and tenderers with respect to their best and final offers.

(13) The successful offer shall be the offer that best meets the needs of the procuring entity as determined in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals.”

Amendment of
regulation 158

59. The principal Regulations are amended by deleting regulation 158 and substituting for it the following:

“Competitive
negotiations

158.-(1) Under a competitive dialogue procedure, selection is made of those who respond to invitation and the procuring entity enters into a dialogue with potential bidders to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.

(2) The number of candidates invited to participate in a dialogue shall not be less than three, provided that a sufficient number of suitable candidates is available.

(3) During the competitive dialogue procedure the procuring entity:

- (a) may discuss all aspects of the contract with the participants;
- (b) shall ensure equality of treatment and shall not provide information in a discriminatory manner; and
- (c) shall not reveal to the other participants solutions proposed or confidential information communicated by a participant without the participant's agreement.

(4) The procuring entity shall pursue the dialogue until it identifies the solution suitable for meeting its needs and requirements.

(5) A typical dialogue may consist of three stages; outline solutions, detailed solutions and refined solutions upon its completion.

(6) Following completion of dialogue, the procuring entity shall request all tenderers remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their refined proposals to be evaluated on

the basis of the award criteria laid down in the tender notice or in the bidding document.

(7) In any event, the procuring entity shall make sure in all cases that the number of candidates invited to tender is sufficient to ensure genuine competition.

(8) Negotiations shall not take place between the procuring entity and tenderers in respect of the best and final offers submitted by the tenderers.

(9) The successful offer shall be the offer that best meets the needs of the procuring entity.

(10) The Authority shall issue a guideline for conducting a competitive dialogue procedure.”

Amendment of
regulation 159

60. The principal Regulations are amended in regulation 159 by deleting the word “services” wherever it appears and substituting for it the words “non-consultancy services.”

Amendment of
regulation 160

61. The principal Regulations are amended in regulation 160 by deleting:

- (a) the word “services” wherever it appears and substituting for it the words “non-consultancy services”; and
- (b) sub regulation (2) and substituting for it the following:

“(2) The procuring entity shall evaluate any quotation received and, where necessary, negotiate with the supplier with a view to ensuring that the requirement for the goods or non-consultancy services are complied with, and the price quoted is not

excessive and is in line with reasonable expectations.”

Amendment of regulation 164

62. The principal Regulations are amended in regulation 164(6) by:

- (a) deleting the word “to” immediately after the word “Notwithstanding” appearing in subregulation (6); and
- (b) adding immediately after sub regulation (6) the following:

“(7) The provisions of section 60(3) of the Act, shall not apply for the purpose of this regulation”.

Amendment of regulation 166

63. The principal Regulations are amended in regulation 166(3) by deleting the word “services” and substituting for it the words “non-consultancy services”.

Amendment of regulation 167

64. The principal Regulations are amended in regulation 167:

- (a) in subregulation (1), by deleting the opening phrase and substituting for it the following:

“(1)The force account may be used upon satisfying any of the following conditions; and

- (b) by deleting sub-regulation (2), and substituting for it the following:

“(2) Force account means a process where works are carried out by a public or semi public departments or agencies by using its personnel and equipment or in collaboration with any other public or private entity.”

Amendment of regulation 168

65. The principal Regulations are amended in regulation 168 by adding immediately after the word “component” appearing in subregulation (2) the phrase “under supervision of respective procuring entity”.

- Amendment of regulation 170
66. The principal Regulations are amended in regulation 170:
- (a) in subregulation(3), by deleting paragraph (b) and substituting for it the following:
 - “(b) conduct mini competition among suppliers identified by the Agency and pay directly;” and
 - (b) by renumbering sub- regulations (3), (3), (5) and (6) as sub-regulations (3), (4), (5) and (6) respectively;
 - (c) deleting sub-regulation (4) as re-numbered; and
 - (d) renumbering sub-regulations (5) and (6) as renumbered, as sub-regulations (4) and (5) respectively.
- Revoking of regulation 171
67. The principal Regulations are amended by revoking regulation 171
- Amendment of regulation 199
68. The principal Regulations are amended in regulation 199(2) by deleting the word “may” and substituting for it the word “shall”.
- Amendment of regulation 202
69. The principal Regulations are amended in regulation 202 by deleting the “marginal note” and substituting for it the following:
“Evaluation committee for goods,works and non-consultancy services”
- Amendment of regulation 217
70. The principal Regulations are amended by deleting regulation 217 and substituting for it the following:
- “Use of INCOTERMS in evaluation and comparison of tenders
217. The evaluation and comparison of tenders for the supply of goods shall be on the INCOTERMS prices as specified in the tender document for imported goods and for the goods offered from

within the United Republic of Tanzania, together with prices for any required installation, training, commissioning and other similar services.”

Amendment of regulation 222

71. The principal Regulations are amended in regulation 222(1) by deleting the figure “176(2)” and substituting for it the figure “221(2).”

Amendment of regulation 225

72. The principal Regulations are amended in regulation 225:

(a) in subregulation (1), by adding immediately after paragraph (f) the following:

“(g) the reduction of price in case of procurement of goods, works or non-consultancy services;” ;

(b) by renaming paragraphs (g) and (h) as paragraphs (h) and (i) respectively.

(c) in subregulation (2), by:

(i) deleting paragraph (c); and

(ii) renaming paragraph (d) as paragraph (c).; and

(d) in subregulation (3), by deleting the words “Notwithstanding sub regulations (1) and (2).”.

Amendment of regulation 231

73. The principal Regulations are amended in regulation 231 by deleting the words “fourteen days” appearing in subregulation (1) and substituting for them the words “seven working days”.

Amendment of regulation 232

74. The principal Regulations are amended in regulation 232 by deleting sub-regulation (1) and substituting for it the following:

“(1) The accounting officer shall send a copy of the award letter to the Authority, the Controller and Auditor General, the Attorney General’s Chambers, the Government Asset

Management Division, the Internal Auditor General and the Tanzania Revenue Authority .”

Amendment of regulation 233

75. The principal Regulations are amended in regulation 233:

(a) by deleting sub-regulation (1) and substituting for it the following:

“(1) Without prejudice to the provisions relating to vetting of the contract, where a tender is accepted by the accounting officer, the procuring entity and the person whose tender is accepted shall enter into a formal contract for supply of goods, provision of services or undertaking of works within fourteen working days after fulfilling all conditions prior to the signing of contract.”;

(b) in subregulation (3), by adding immediately after the word “tenderer” the words: “and a formal contract is signed by parties.”

Amendment of regulation 235

76. The principal Regulations are amended by deleting regulation 235 and substituting for it the following:

“Copies of acceptance notices to be forwarded to the Authority

235. For the purpose of enabling information on tender award to be published, recorded and distributed, procuring entities shall, within fourteen working days of sending an acceptance notice to the tenderer, ensure that copies of acceptance notices, suitably notated with the number of tenders received, the range of tenders, the estimates and completion time are submitted to the Authority .”

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

- Amendment of regulation 252
77. The principal Regulations are amended in regulation 252 by deleting
- (a) the marginal notes and substituting for it the following:
“Appointment of a works or non-consultancy services supervisors”;
 - (b) the word “work” appearing in subregulation (1) and substituting for it the word “works”;
 - (c) the word “ works” appearing subregulation (2) and substituting for it the word “duty”.
- Amendment of regulation 254
78. The principal Regulations are amended in regulation 254 by inserting between the word “of” and article “an”, appearing in subregulation (1) the words “direct application or”.
- Amendment of regulation 255
79. The principal Regulations are amended in regulation 255 by inserting between the word “of” and the article “an”, appearing in subregulation (1) the words “direct application or”.
- Revocation of regulation 270,271 and 272
80. The principal Regulations are amended by revoking regulation 270,271 and 272 respectively.
- Amendment of regulation 296
81. The principal Regulations are amended in regulation 296 by deleting the word “may” appearing in subregulation (2) and substituting for it the word “shall”.
- Amendment of regulation 297
82. The principal Regulations are amended in regulation 297 by deleting marginal notes and substituting for it the following;
“Evaluation committee for consultancy services”
- Amendment of regulation 301
83. The principal Regulations are amended in regulation 301 by deleting the words “two weeks” appearing in subregulation (1) and substituting for them the words “seven working days”.

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

- Amendment of regulation 346
84. The principal Regulations are amended in regulation 346:
- (a) in subregulation (3), by deleting-
 - (i) the word “tenderer’s” appearing in the first line and substituting for it the word “tenderers”; and
 - (b) the words “unless the allocated size exceeds the assigned limit” and substituting for them the words “until closing date and time”.
- Addition of regulation 354A
85. The principal Regulations are amended by adding immediately after regulation 354 the following:
- “Vetting of e-auctions contracts 354A. Contract awards under e-auctions shall be subject to vetting in accordance with the Act.”
- Amendment of regulation 356
86. The principal Regulations are amended in regulation 356:
- (a) in subregulation (1), by inserting the “comma (,) and words “works and service” immediately after the word “goods” appearing in the second line; and
 - (b) in subregulation (2), by inserting the words “works and service” immediately after the word “goods” appearing in the second line
- Amendment of the First Schedule
87. The principal Regulations are amended in the First Schedule by deleting the words “at least” wherever they appear.
- Amendment of the Second Schedule
88. The principal Regulations are amended by deleting Second Schedule and substituting for it the following:

SECOND SCHEDULE

FEES FOR SERVICES RENDERED BY THE AUTHORITY

(Made under regulations 21, 41(2) and 345(8))

	1.	Annual Procurement Plan	Fees in T.shs.
	1.1	Advertising of Annual Procurement Plan	500,000
	2.	Advertising of Tenders	250,000
	3.	Posting Tender Disclosure Information	
	3.1	Minor Value Procurement	25,000
	3.2	Quotations	50,000
	3.3	Single Source	250,000
	3.4	Restricted Tendering/Selection	250,000
	3.5	Open Tendering/Selection	250,000
	4.	Registration for e - PPs	

Amendmen
to of Fifth
Schedule

89. The principal Regulations are amended in the Fifth Schedule by deleting:

- (a) figure "10%" appearing in third column and substituting for it the figure "5%"
- (b) the phrase "2% of each call-off order value" appearing in the second column and substituting for it the words "TZS 100,000/= per annum per agreement"

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

- Amendment of Sixth Schedule
90. The principal Regulations are amended in the Sixth Schedule by deleting:
- (a) in Category A:
 - (i) the figure “75,000,000/-” appearing in the second column and substituting for it the figure “90,000,000/-”;
 - (ii) the figure “750,000,000/-” appearing in the third column and substituting for it the figure “900,000,000/-; and
 - (b) in the Category F:
 - (i) the figure “2,500,000/-” appearing in the second column and substituting for it the figure “3,500,000/-”;
 - (ii) the figure “50,000,000/-” appearing in the third column and substituting for it the figure “60,000,000/-”.

- Amendment of Seventh Schedule
91. The principal Regulations are amended in the Seventh Schedule by deleting it and substituting for it the following:

SEVENTH SCHEDULE

(Made under regulations 149A, 150, 151, 163,165, 166 and 167)

METHODS OF SELECTION AND LIMIT OF APPLICATION PER CONTRACT FOR GOODS, WORKS, NON-CONSULTANCY SERVICES AND DISPOSAL OF PUBLIC ASSETS

	Method of tendering	Goods	Works	Non Consultancy Services	Disposal of Public Assets
	International competitive tendering	No limit	No limit	No limit	No limit
	National competitive tendering	Up to Tshs 5,000,000,000	Up to Tshs 15,000,000,000	Up to Tshs 5,000,000,000	Up to Tshs 5,000,000,000
	Restricted tendering	No limit, but shall be justified.	No limit, but shall be justified.	No limit, but shall be justified.	No limit, but shall be justified.
	Competitive quotations (Shopping)	Up to Tshs 120,000,000	Up to Tshs 200,000,000	Up to Tshs 100,000,000	Not applicable
	Single source procurement	No limit, but shall be	No limit, but shall be	No limit, but shall be	Not applicable

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

		justified.	justified.	justified.	
	Minor value procurement	Up to Tshs 10,000,000	Up to Tshs 20,000,000	Up to Tshs 10,000,000	Not applicable
	Micro value procurement	Up to Tshs 5,000,000	Up to Tshs 10,000,000	Up to Tshs 5,000,000	Not applicable
	Force Account	Not applicable	No limit, but shall be justified	Not applicable	Not applicable
	Direct from Manufacturer, dealer or service provider procurement	No limit, but shall be justified	No limit, but shall be justified	No limit, but shall be justified	Not applicable

Amendment of Eighth Schedule

92. The principal Regulations are amended in the Eighth Schedule by deleting it and substituting for it the following:

EIGHTH SCHEDULE

(Made under regulations 68(3), 120, 163, 187 and 286(6))

MINIMUM PROCUREMENT PROCESSING TIME FOR TENDERERS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

	Time given under this Schedule is intended to give bidders adequate time to prepare their bids and shall not be reduced by PEs under any circumstances, except where a tender has been rejected provided that:- (i) during retendering there are no major changes which necessitate preparation of new tenders; and (ii) the same tenderers are invited, in which case the minimum processing time may be reduced by half. Minimum Time for Preparation and Submission of Prequalification Documents and Tenders for Tenderers		
	Serial Number	Method of procurement	Period (calendar days)
	PREQUALIFICATION STAGE		
	1	International competitive tendering	21
	2	National competitive tendering	14
	TENDERING STAGE		
	3	International competitive tendering	21

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

	4	National competitive tendering	14
	5	Restricted international competitive tendering	14
	6	Restricted national competitive tendering	7
	7	International shopping	8
	8	National shopping	4
	9	Where large works are involved	90

Amendment of Twelveth Schedule

93. The principal Regulations are amended in the Twelveth Schedule by deleting it and substituting for it the following:

TWELVETH SCHEDULE

(Made under regulations 68, 280 and 295)

STANDARD PROCUREMENT PROCESSING TIME FOR CONSULTANCY SERVICES

Times under categories 1 and 2 are intended to give bidders adequate time to prepare their bids and shall not be reduced by PEs under any circumstances, except where a tender has been rejected provided that:-

- (i) during retendering there are no major changes which necessitate preparation of new proposals; and
- (ii) the same tenderers are invited, in which case the minimum processing time may be reduced by half.

	S/No	Activity	Time (Calendar days)	
			National Competitive Selection	International Competitive Selection
			7	21
		(ii) Invitation of Application for prequalification up to the submission of the same by Consultants	21	30
	2	Preparation and submission of proposals by the consultants	21	30

The Public Procurement (Amendment) Regulations, 2016

G.N. No. 333 (contd.)

94. The principal Regulations are amended in the Fourteenth Schedule by deleting:

Amendment of
Fourteenth
Schedule

(a) titled "General" appearing in table (a) and substituting for it the following :

(a) General

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

(b) the percentage "5% to 15%" appearing in the serial number 4 of table (b), and substituting for them the percentage "15%"

Amendment of
Sixteenth
Schedule

95. The principal Regulations are amended in the Sixteenth Schedule by-

(a) revoke the Sixteenth Schedule; and

(b) re-numbering the Seventeenth Schedule, the Eighteenth Schedule and the Nineteenth Schedule as the Sixteenth Schedule, the Seventeenth Schedule and the Eighteenth Schedule respectively.

Dar es Salaam
01st December, 2016

PHILIP ISDOR MPANGO
Minister for Finance and Planning