



THE CENTRAL TENDER BOARD ACT, 2002

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ACT NO. 5 OF 2002

I ASSENT


{ AMANI ABEID KARUME }
PRESIDENT OF ZANZIBAR
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

 12TH JUNE
....., 2002

**AN ACT TO ESTABLISH THE CENTRAL TENDER BOARD
IN ZANZIBAR AND OTHER RELATED MATTERS**

ENACTED by the House of Representative of Zanzibar

**PART I
PRELIMINARY PROVISIONS**

Short title and
commencement.

1. This Act may be cited as the Central Tender Board Act 2002, and shall come into operation on such date as the Minister may by notice published in the *Gazette*, appoint.

Application.

2.(1) This Act shall apply to all procurement undertaken by a procuring entity except where it is provided otherwise in this Act.

(2) This Act, shall not apply to:-

- (a) parastatal organization companies or corporation whose share capital owned by Government in anyway is less than 50% subsidy or subvention and is specified in the Regulations as being a Government Department for the purposes of this Act;



- (b) procurement of goods and services involving military equipment and arms for the Special Departments.

Interpretation.

3.(1) In this Act unless the context requires otherwise:-

"Accounting Officer" means a Government officer appointed in accordance with the provisions of Financial Administration Act No.8 of 1996 to hold a vote and account for all monies expended from that vote;

"Appointing Authority" means:

- (i) The President of Zanzibar and Chairman of the Revolutionary Council, in case of the Chairman of Central Tender Board;
- (ii) The Minister in case of the member of Central Tender Board;
- (iii) The Minister responsible, in case of a Chairman for the Ministerial Tender Committee and the Chairman for Parastatal Tender Committee.

"Approving Authority" means an accounting officer, a Ministerial Tender Committee, a Parastatal Tender Committee or the Central Tender Board when approving procurement that is undertaken by a procuring entity under its jurisdiction;

"Board" means the Central Tender Board established under section 5 of this Act;

"Competitive selection" means the method of procurement whereby limited number of consultants or providers of services are invited by the procuring entity to compete with each other in submitting either on the basis of quality alone or on the basis of a combination of quality and cost;



"Competitive tendering" or "tendering" means the method of procurement whereby suppliers, contractors or consultants are invited by the procuring entity to compete with each other in submitting priced tenders for goods, works or services;

"Consultant" means a company, corporation, organization, partnership or individual person engaged in or able to be engaged in the business of providing services in architecture, economics, engineering, surveying or any field of professional services, and who is, according to the context, a potential party or the party to a contract with the procuring entity;

"Contractor" means a company, corporation, organization, partnership or individual person engaged in civil, electrical or mechanical engineering or in construction or building work of any kind including repairs and renovation, and who is, according to the context, a potential party or the party to a procurement contract with the procuring entity;

"Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value or service to influence the action of public officer in the procurement process or contract execution;

"Department" in relation to a Ministry of Government or other public authority or public body, includes any division or unit by whatever name known of that Ministry, authority or other body;

"Fraudulent practice" means misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government and includes collusive practices among tenderers (prior to or after submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;



"Goods" means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible asset and intellectual property, as well as services incidental to their supply;

"Government" means the Revolutionary Government of Zanzibar;

"Government Stores" means unallocated stores providing goods or/and service to Government institutions;

"Limit of authority" means the maximum value of any single contract, or consultancy that is found to be the lowest after consideration of all relevant factors and the calculation of any weighing for these factors, provided that such factors have been specified in the tender documents;

"Minister" means the Minister for the time being responsible for matters relating to finance;

"Ministerial Tender Committee" means a Tender Committee established under section 10;

"Minor value" means an amount of money up to Tanzania Shilling Ten Million for the procurement of goods, works and services of a minor nature;

"Parastatal organization" means-

- (i) a body corporate established by or under any Act;
- (ii) any corporation registered under the Companies decree Cap. 153 in which not less than fifty percent of the share capital is owned by the Government or by another parastatal organization, or in the case of a company which is limited by guarantee, where the Government has undertaken to meet fifty percent or more of the liabilities of that company; or



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

"Parastatal Tender Committee" means a Tender Committee established under section 11;

"Person" is an individual or a body co-operate;

"Pre-qualification" means a formal procedure whereby suppliers, contractors or consultants are invited to submit details of their resources, and capabilities and are screened prior to invitation to tender on the basis of meeting the minimum criteria to invitation to tender on the basis of meeting the minimum criteria on experience, resources, capacity and financial standing;

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

"Principal Secretary" means: the Principal Secretary of Ministry responsible for Finance;

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

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity;

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

"Procurement contract" means any license, permit, or other concession or authority issued by a public body or entered into between a public body and a supplier,



contractor or construction or other related works or for the supply of any goods or services;

"Procuring entity" means ministry, department, agency or parastatal organization;

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

"Procurement proceedings" means the proceedings to be followed by a procuring entity or any approving authority when engaging in procurement;

"Public body or public authority" means:-

- (i) The Government;
- (ii) Ministry, department or agency of government;
- (iii) Any body corporate or statutory body or authority established for the purposes of the Government;
- (iv) Any company registered under the Companies Decree Cap 153, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in the position to influence the policy of the company;
- (v) Any local government authority;
- (vi) Any parastatal organization;

"public officer or officer" means:-

- (i) any person holding or acting in an office of emolument in the service of the Government;
- (ii) a person holding or acting the office of Minister in the Government;



- (iii) an employee of any body corporate such as is referred to in the definition of public body or public authority;
- (iv) any person conducting negotiations, for in relation to a public contract, or a prospective public contract on behalf of a public body;
- (v) a person who is a consultant to a public body or public authority;

"secretary" means the Secretary of the Central Tender Board appointed under section 9 and includes secretary of the appropriate Tender Committee;

"services" means any procurement other than goods or works, which involve the furnishing of labor, time or effort including the delivery of reports, drawings or designs, or the hire or use of vehicles, machinery or equipment;

"successful tender" means the tender selected by the procuring entity as:-

- (i) offering the lowest evaluated cost, in case the method of procurement used was competitive tendering; or
- (ii) being the most responsive to the needs of the procuring entity and to the advantage of the Government, in case the method of procurement used was competitive quotations, single source procurement, competitive selection or where goods or services of minor value were procured;

"supplier" means a company, corporation, organization, partnership or individual person supplying goods or services, hiring equipment or providing transport services and who is, according to the contract, a potential party or the party to a procurement contract with the procuring entity;



"tender" means an offer, proposal or quotation made by a supplier, contractor or consultant in response to a request by a procuring entity;

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

"works" means:

- (i) all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure, road or airfield;
- (ii) any other civil works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing;
- (iii) services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, satellite photography or seismic investigations;

Provided that, contracts which include the provision of works and services shall be regarded as works contracts if the total value of the works is greater than the value of the services covered by the contract;

(2) For purposes of this Act, a person is presumed to be an associate if:

- (a) in the case of a public officer, that person is the public officer's husband, wife or relative, or a husband or wife of the relative of the public officer;
- (b) that person is in partnership with the public officer; or
- (c) in the case of a body corporate, the public officer is a controller of the body corporate or the public officer and the persons who are his associates together are controllers of it.



(3) In this section, "**relative**" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent and references to a husband or wife and a reputed husband or wife, and for the purposes of this subsection, a relationship shall be established as if an illegitimate child, step child or adopted child of a person had been a child born to the person in wedlock.

International
Obligation.

4. To the extent that this Act conflicts with an obligation of the Government under or arising out of:-

- (a) any treaty or other form of agreement to which the Government is a party with one or more other states or political sub-divisions of such states; or
- (b) any grant agreement entered into by the Government with an inter-governmental or international financing institution in which the United Republic of Tanzania is the beneficiary;

the requirement of such treaty or agreement shall prevail, but in all other respects, the procurement shall be governed by this Act.

PART II CENTRAL TENDER BOARD AND OTHER PROCUREMENT AUTHORITIES

Establishment

5.(1) There is hereby established within the Ministry for Finance the Central Tender Board.

- (2) The Board shall:-
 - (a) be a body corporate with perpetual succession and a common seal;
 - (b) in its corporate name be capable of suing and be sued;
 - (c) for and in connection with the purposes of this Act, be capable for holding, purchasing and otherwise acquiring and disposing of movable or immovable property.



Composition
appointment and
procedures
of the
Central Tender
Board.

6. The composition of the Central Tender Board, the method of Appointment of Members and the procedures to be followed by the Board shall be set out in the First Schedule to this Act.

Functions of the
Central Tender
Board.

7. The Board shall, on behalf of the Government:-

- (a) oversee and monitor the conduct of procurement by Ministries and Parastatal Organizations including the conduct of procurement by local authority with a view of ensuring the full compliance;
- (b) advise the Government on all matters regarding procurement and the operation of the Government's procurement system and make recommendation as it deems fit;
- (c) approve the issue of tender or the use of alternative method of procurement as may be prescribed in the regulations;
- (d) receive tender and hold tender openings in public, review tender evaluations and recommendations made by procuring entities, and where appropriate, authorize awards of contract;
- (e) review all applications for variations addenda to amendment which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the Board, in all cases where the value of goods, works or services being procured by ministries, and parastatal organizations exceed the limit of authority of such ministerial or Parastatal Tender Committees or otherwise as the Minister may direct"



- (f) review and approve sales by tender being made by Ministries and Parastatal Organizations where the estimated value of the goods or any other forms of property that are being sold, exceeds the limit of the authority of a ministry or Parastatal Tender Committee, as the case may be, or otherwise as the Minister may direct.

Central Tender
Board
Secretariat.

8.(1) There shall be a Secretariat of the Board within the Ministry of Finance which shall assist the Board in its daily discharge of its functions.

(2) The Secretariat shall consist of procurement and other Technical specialists together with the necessary supporting staff.

(3) The Secretariat shall advise and assist Ministries and Parastatals on tendering matters.

(4) The composition of the Secretariat, and the appointment of members and the procedure to be followed by the Secretariat shall be prescribed in the Regulations made by the Minister.

Secretary
of the Board.

9.(1) There shall be a Secretary to the Board who shall perform the functions conferred on him by this Act and such other functions as may be conferred up on him by the Board.

(2) The Secretary shall be appointed by the Minister on such terms and conditions as the Minister determines.

(3) The Secretary shall be appointed from among the persons who possess qualifications in either engineering, architecture, law, materials management, quantity surveying, business administration, economics or in related fields and who have had substantial experience or training in such fields including proven record on procurement experience.

(4) The Secretary shall attend all meetings of the Board but shall not vote on any matter under discussion.



(5) The Secretary shall be responsible for the administration of the day-to-day affairs of the Board.

Ministry
Tender
Committee

10.(1) There shall be in each Ministry of Government a Tender Committee for procurement of goods, services and works, of the respective Ministry.

(2) The composition of a Tender Committee in each ministry or independent department of the Government and the method of appointment of members, and the procedures to be followed by such Tender Committee, shall be as prescribed in the Second Schedule to this Act.

(3) A ministry or independent department tender Committee shall:-

- (a) approve the issue of tenders or the use of alternative method of procurement as prescribed in the regulations, receive tenders and hold tender openings in public, review tender evaluations and recommendations made by a department of that ministry or independent department, and, where appropriate, authorize awards contract;
- (b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the ministry or independent department tender committee, in all cases where the value of goods, works or services being procured by such ministry or independent departments exceed the limit of authority of the Accounting Officer and is within the authority of that ministry or independent department tender committee.

(4) The Accounting Officer of each ministry shall undertake the procurement in accordance with the limits of the authority set out in the Regulations.



(6) An Accounting Officer may delegate to a Head of department within the same ministry department, his authority to procure up to a limit not exceeding that which is specified in the Regulations and such delegation shall be made in writing and for a period not exceeding the period the Accounting Officer shall himself serve in that position.

Parastatal
Tender
Committee

11.(1) There shall be in every governing body of a Parastatal organization a Parastatal Tender Committee.

(2) Where the organizational structure of a particular Parastatal body is too small to be able to constitute a tender committee in accordance with this section, the Minister shall prescribe the procedures to be followed by such a Parastatal Organization.

(3) The composition of a parastatal tender committee and the method of appointment of members and the procedure to be followed by such a tender committee shall be prescribed in the Third Schedule to this Act.

(4) A parastatal tender committee shall:-

- (a) approve the issue of tenders or the use of alternative method of procurement as prescribed in the Regulations, receive tenders and hold tender openings in public, review tender evaluation and recommendations made on that behalf and where appropriate authorize awards of contract;
- (b) review all applications for variations, addenda or amendments which exceed the laid-down limits to on-going contracts where the original contract has previously been approved by the Parastatal tender committee, in all cases where the value of goods, works or services being procured within that Parastatal, exceed the limit of the Chief Executive Officer and is within the authority of that Parastatal tender committee.



Award of contracts.

12. (1) Notwithstanding any other enactment, no public body shall:-

- (a) advertise, invite, solicit or call for tenders or proposals in respect of a contract unless authorized by the appropriate Central Tender Board;
- (b) award any contract unless the award has been approved by the appropriate Central Tender Board.

(2) No person or firm shall sign a contract with any public Body Unless the award has been approved by the appropriate Central Tender Board.

(3) Where any tender submitted in response to a call of tenders made by a Tender Committee exceeds the prescribed limit.

(4) Where it comes to the knowledge of a Central Tender Board or Tender Committee that a contract has been awarded or is about to be awarded in breach of this Act or Regulations made thereunder, the tender board or tender Committee shall forthwith report the matter to the Controller and Auditor General and to the Principal Secretary of the Ministry for Finance, recommending actions as it may deem appropriate.

Powers of Central Tender Board.

13.(1) In the exercise of their powers under this Act, Boards may:-

- (a) call for such information and documents as they may require from any public body;
- (b) commission any study(ies) relevant to the determination of award of contracts;
- (c) request any professional or technical assistance from any appropriate body or person in Zanzibar or elsewhere; and
- (d) do all such acts and things as they may consider incidental or conducive to the attainment of their objects.



(2) The Central Tender Board or Tender Committee may:-

- (a) require the chairman, accounting officer or chief executive officer of a public body:-
 - (i) to furnish any information or produce any records or other documents relating to a contract;
 - (ii) to answer all relevant questions;
- (b) examine such records or other documents and take copies or extracts therefrom.

(3) Any person to whom a request is made under subsection (2) and who:-

- (a) fails to comply with the request, or
- (b) refuses to answer or willfully gives any false or misleading answer to any question lawfully put by a Central Tender Board; *commits an offence.*

Central Tender Board and procuring entities to strive to achieve standards.

14.(1) In the execution of their duties, Central Tender Board and procuring entities shall strive to achieve the highest standards of equity, taking into account:-

- (a) Local suppliers, contractors or consultants;
- (b) equality of opportunity to all prospective, suppliers, contractors or consultants;
- (c) fairness of treatment to all parties; and
- (d) the need to obtain the best value for money in terms of equity price, quality and delivery having regard to set specifications and criteria.



(2) The Central Tender Board and procuring entities shall prepare and update suppliers list for items commonly used by them and that list shall be made available to the Minister and Principal Secretary.

PART III PROCUREMENT

Duties of
Procuring
Entities.

15.(1) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods, works or services it shall be the duty:-

- (a) in respect of a warrant holder, the Accounting Officer designated as such for that head of expenditure under the Financial Administration Act No.8 of 1996; and
- (b) in respect of a Parastatal body, the chief executive officer of that Parastatal body;

to ensure that such procurement of good, works or services is in accordance with the procedures prescribed by or under this Act or Regulations.

(2) The auditor of every public body shall, in his annual report, state whether or not section 15 (1) of this Act has been complied with.

(3) Subject to the provisions of subsection (4) of this section, every Accounting Officer or chief executive officer shall be accountable for failing to comply with the provisions of subsection (1).

(4) Where an Accounting Officer or chief executive officer satisfies the Central Tender Board that he had, in accordance with the provisions of any rules or Regulations made under this Act, delegated his functions under subsection (1) to any other person or committee, then such other person or every member of such committee shall also be accountable for the failure to comply with the provisions of subsection (1).



(5) Where an Accounting Officer or chief executive officer satisfies the Central Tender Board that he is, under the provisions of any written law, subject to the control or direction of any other person, board, committee or other body and that it was such control or direction of such other person, board, committee or other body which caused the failure to comply with the provisions of subsection (1), then such other person or every member of such board, committee or other body shall be accountable for such failure to comply.

(6) In respect of any failure to comply with the provisions of subsection (1), the respective Tender Committee shall take such appropriate corrective or punitive measures as it may consider necessary.

Procurement
From Government
Stores Department.

16.(1) Where financial resources are exclusively provided by the Government a procuring entity shall procure from the Government Stores any item included in the approved current Stores Vocabulary unless such items are not available.

(2) Where items are not available from in the Government Stores a certificate of non-availability from such Government Stores shall be obtained.

(3) The Government Stores Department shall periodically publish in the official Gazette and in local newspapers of wide circulation the names and quantities of items available on the Stores Vocabulary.

Language.

17.(1) Except as provided for in sub-section (2) of this section, pre-qualification documents and tender documents shall be written in English and tenders shall be invited in that language.

(2) In case a procuring entity has limited participation in the procurement to Tanzania nationals, tender documents may be written in either Kiswahili or English and tenderers may be requested to tender in either language.



Tender
Securities.

18. Where the procuring entity requires suppliers, contractors or consultants who are submitting tenders to provide any form of tender security, or any form of guarantee or bond against satisfactory performance of the contract, such requirement shall apply equally to all suppliers, contractors or consultants.

Rejection
of all tenders.

19.(1) Tender documents and request for proposals may provide that procuring entities may reject all tenders or all proposals.

(2) The rejection of all tender or all proposals under this section shall only be justified where:-

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

(3) Lack of competition shall be determined solely on the basis of the number of tenderers or persons who made proposals, the minimum of which is three, and where all tenders or proposals are rejected, the procuring entity shall review the causes justifying the rejection and shall consider:-

- (a) making revision to the conditions of contract, design and specifications, scope of the contract, or a combination of these before inviting new tenders; or
- (b) revising the request for proposals (including the short list) and the budget.

(4) Where the rejection of all tenders or all proposals is due to lack of competition, wider advertising shall be considered and where the rejection is due to most or all of the tenders or



proposals being non-responsive, new tenders or new proposals may be invited from the initially pre-qualified firms, or with the prior agreement of the Central Tender Board, from only those who submitted tenders or proposals in the first instance.

(5) The Central Tender Committee shall seek prior approval from the Central Tender Board before rejecting all tenders or all proposals, soliciting new tenders or proposals or entering into negotiations with the lowest evaluated tenderer;

20.(1) Subject to the provisions of section 19, the tender or proposal that has been ascertained to be the successful tender or proposal pursuant to section 31 (a) of this Act shall be accepted;

(2) The procuring entity on whose behalf the tenders, offers or proposals were invited shall be notified by the Central Tender Board of the tender board's acceptance of the tender, offer or proposal and the notice of acceptance shall be given, by the procuring entity, promptly to the supplier, contractor or consultant who submitted the tender, offer or proposal;

(3) The notifications referred to in subsection (2) of this Section shall be in writing and signed by authorized officers.

(4) Where a tender, offer or proposal has been accepted by the Central Tender Committee, the procuring entity on whose behalf the invitation for tender, offer or proposal was issued and the person whose tender, offer or proposal has been accepted shall enter into a formal contract for the supply of goods, services or the undertaking of works, as the case may be.

(5) A formal contract shall be in such form and shall contain such terms, conditions and provisions as contained in the solicitation documents, request for proposals or tender dossiers.

(6) Any formal contract arising out of the acceptance of a tender, offer or proposal under this Act shall be ratified by The Attorney General Chamber before being signed by the parties.

Acceptance
of tender
and entry
into force of a
procurement
contract.



(7) The procurement contract shall enter into force when a written acceptance of the tender has been communicated to the successful supplier, contractor or consultant.

(8) The tender committee shall publish in the official *Gazette* the name of the person or body to whom the contract is awarded, the amount of tender or proposal and the date on which the award was made.

Records
Information
and notices.

21.(1) Each procuring entity and each approving authority shall maintain a record of procurement proceedings in which each is involved, including decisions taken and the reasons for it and such record shall be kept for a period of not less than five years from the date of completion of the contract and be made available within a reasonable time during that period to the Minister and the Controller and Auditor-General or any other officer authorized by accounting authority.

(2) The record referred to in subsection (1), may under special circumstances be kept beyond the period specified in that subsection.

(3) A list of those submitting tender and the prices tendered, as read out at the time of opening the tenders in public, may be made available to tenderers and to the general public;

PART IV METHODS OF PROCUREMENT

Selection
of methods
of procurement.

22.(1) Except as provided in this Act, a procuring entity engaging in the procurement of goods, works or services shall apply competitive tendering, using the methods prescribed in the Regulations depending on the type and value of the procurement and in any case, the successful tender shall be the tender offering the lowest evaluated cost.

(2) In circumstances where:-

(a) suppliers, contractors or consultants have already been pre-qualified; or



- (b) there is an urgent need for the goods, works, or services such that it would be impracticable to engage in open national or international tendering on competitive selection;

the procuring entity may either restrict the issue of tenders in accordance with the procedures set out in the Regulations or engage in procurement as provided for in Section 23 provided that:

- (i) the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor caused by dilatory conduct on its part; and
- (ii) the procuring entity shall include in the records required under section 21 of this Act, reasons for its decision and the circumstances on which it relied to justify the restriction.

Single source
Procurement.

23. A procuring entity may engage in single procurement and contract directly with a supplier, contractor or consultant for goods, work or services in accordance with conditions prescribed in the Regulation.

Procurement
of minor value.

24. Goods, works and services of minor value may be procured directly by a procuring entity without seeking competition in accordance with the procedure prescribed in the Regulations.

Use of
procurement
Agent

25. A procuring entity may appoint a procurement agent on competitive basis to carry out procurement proceedings on its behalf, as long as:-

- (a) all the procurement proceedings are undertaken in accordance with the provisions of this Act;
- (b) a procuring entity authorizes a procurement agent to place any contract on its behalf where the value of the goods, works or services procured does not exceed the limit of authority of that entity and that any procurement that exceeds the limit of authority shall be reviewed and approved by the appropriate approving authority before any contract is placed; and



- (c) the procurement agent has been procured in accordance with the provisions of this Act.

Invitation
to tender and
advertising

26.(1) On and upon commencing competitive tendering proceedings, The Central Tender Board shall prepare a tender notice inviting suppliers or contractors to submit priced offers for the supply of the goods or for undertaking the works required and such tender notice shall be submitted within reasonable time before the planned issue of the tender to the Secretary of the Central Tender Committee whose limit of authority is appropriate to the estimated value of the goods or works required.

(2) The approved tender notice shall be advertised by the procuring entity at least twice in one or more newspapers of national circulation and in the case of international tendering, a similar notice may be published in appropriate foreign or International publications or professional journals which are likely to be and read by the greatest number of potential suppliers or contractors.

(3) Any tender notice shall be published in sufficient time, as pre-scribed in the Regulations, to enable prospective tenderers to obtain tender documents and prepare and submit their responses before the deadline for receipt of tenders.

(4) The time specified for the opening of the tenders submitted shall be the same as the deadline for receipt of tenders or immediately thereafter, and shall be announced, together with the place for tender opening, in the invitation to tender.

Issue of tender
Documents.

27.(1) The Central Tender Board shall provide tender documents immediately after first publication of the tender notice to all suppliers or contractors who respond to the tender notice and pay the requisite fee, if required, for which a receipt shall be given.

(2) All prospective tenderers shall be provided with the same information, and be assured of equal opportunities to obtain additional information.



Validity of tender and tender securities.

28. The procuring entity shall require tenderers to submit documents, their tender documents and securities valid for period specified in the tendering and such period shall be sufficient to enable the procuring entity to complete the comparison and security evaluation of the tenders and for the Central Tender Board or Tender Committee to review the recommendations and give its approval for the contract or contracts to be awarded whilst the tenders are still valid.

Receipt of Tenders and tender opening.

29.(1) The Central Tender Board and the Tender Committee that approved the issue of the tender documents shall receive tenders in a locked tender box.

(2) The Secretary to the Central Tender Board or the Tender Committee shall, on request, give each bidder a receipt showing the time and the date that the tenders were received, and any tender received after the deadline shall be returned unopened to the tenders.

(3) All tenders submitted before the deadline shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender. Proceedings and the tender opening shall take place at, or immediately after, the deadline and date given in the tender documents for the receipt of tenders and the names of all those present at the tender opening and the organizations they represent shall be recorded by the secretary of the Central Tender Boards.

(4) The names and addresses of each tenderer and the total amount of each tender, and of any alternative tenders, if they have been requested or permitted, shall be read out by the Chairman of the meeting and recorded by the Secretary to the Central Tender Boards or Tender Committee or his delegate, as each tender is opened.

(5) After the public opening of tenders, information relating to clarification and evaluation of tenders and recommendations concerning awards shall not be disclosed to tenders or other persons not officially concerned with the process until the award of a contract is notified to the successful bidder.



Evaluation
and comparison
of tenders.

30.(1) The Central Tender Board shall evaluate on a common basis tenders that have not been rejected in order to determine the cost to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs, but the lowest submitted price, may not necessarily be the basis for selection for award of a contract.

(2) Any relevant factor or factors in addition to price to be considered in tender evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated tender shall be specified in the tender documents for goods and equipment but the tender evaluation for works shall be undertaken strictly in monetary terms and completion period.

(3) Any procedure for evaluation not predetermined before tender value will automatically be disqualified.

(4) The Central Tender Board shall prepare a detailed report on the evaluation and comparison of tenders, setting out the specific reasons on which its recommendations for the award of each contract are based.

Approval of
Award of
Contract

31. The Central Tender Board shall review the evaluation and recommendations made by Tender Committee and:-

- (a) approve the recommendation and accept the tender and award a contract in the form specified in the tender documents; or
- (b) refuse to approve the recommendation but authorize the procuring entity to an alternative tender and award a contract; or
- (c) refuse to authorize acceptance of any of the tenders and instruct for retendering or other action.

Selection of
Consultants.

32. The Central Tender Board may, when selecting consultant use any one of the following principal selection methods:-



- (a) selection based solely on technical quality by evaluation of the firms competence, the staff seconded to the assignment and the technical value or quality of the proposal; or
- (b) selection based on the technical quality with price consideration; or
- (c) selection based on the lowest price after establishing compatibility of technical proposals and the service to be provided.

Contract.

33.(1) The Central Tender Board or Tender Committee shall use the appropriate Standard form of contract appended to the Regulations with minimum changes acceptable to the respective Central Tender Board or Tender Committee as necessary to address specific project issues, and any such changes shall be introduced only through contract data sheets, or through special conditions of contract and not by introducing changes in the wording of the general conditions of contract included in the standard form.

(2) Notwithstanding the provisions of subsection (1), where the Standard Form of contract are not appropriate, procuring entities shall use their contract forms acceptable to the Central Tender Board.

Negotiation and award of contract

34.(1) Negotiations shall include discussions of the terms of reference, the methodology staffing, procuring entity's inputs and special, conditions of contract and the discussions shall not substantially alter the original terms of reference or the terms of the contract.

(2) Where the negotiation under subsection (1) fail to result in an acceptable contract, the Central Tender Board shall terminate the negotiations and after consultation with the appropriate Tender Committee, invite the next ranked firm for negotiations.



(3) After negotiations are successfully completed, the Central Tender Board shall within seven days notify other firms on the short list that they were unsuccessfully.

PART V AUTHORISATION OF CONTRACTS

Limits of
Authority.

35.(1) A Central Tender Board shall enter into procurement contract only when:-

- (a) the value of any single such contract exceed Tanzania Shilling Twenty Million below which for the Ministerial Tender Committee shall enter into procurement contract, as prescribed in the Regulations; or
- (b) the procurement has been reviewed and award of the procurement contract has been endorsed by an approving authority whose limit of authority, as prescribed in Regulations, appropriate to the value of the contract.

(2) Upon determination that the value of the goods, works or services being procured would exceed its limit of authority, a procuring entity or an approving authority shall refer the procurement to the approving authority with the appropriate higher limit of authority.

(3) A procuring entity shall not divide its procurement for the purpose of avoiding review and approval by the approving authority whose limit of authority would be appropriate for total requirement.

Alteration and
amendment.

36. A procurement contract shall not be altered or amended in any way after it has been signed by both parties unless such alteration or amendment is:-

- (a) to the benefit of the Government or not disadvantageous to the Government; and



Additions to
Contract value.

- (b) endorsed by Approving Authority that reviewed and approved the original procurement.
37. Any additions to the value of a procurement contract:-
- (a) shall be reviewed and agreed by the Central Tender Board that endorsed the original contract provided such increased value does not exceed its authority; and
 - (b) all contract amendments resulting in the revised contract value exceeding the approving authority limit shall be reviewed and approved by the next higher approving authority.

PART VI PROHIBITION

Fraud and
Corruption

38.(1) The Central Tender Board as well as tenderers supplies, contractors and consultants under public financed contracts shall proceed in a transparent and accountability manner during the procurement and execution of such contracts.

(2) Where a Central Tender Board or an approving authority is, after appropriate investigation, satisfied that any person or firm, to which it is proposed that a tender be awarded, has engaged in corrupt or fraudulent practices in competing for the contract in question, the procure entity or authority may:

- (a) reject a proposal for award of such contract;
- (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.

(3) The procuring entity or an approving authority may, after determination by a court of law or following a special audit by the Controller and Auditor-General, carried out on directions of the Minister after consulting or being reported by a commission of which in accordance to this section he is empowered to form and elect members, and being satisfied that ethics have been violated



and corrupt or fraudulent practices were engaged in by any person or firm during the procurement, award of contract or the execution of that contract:

- (a) cancel the portion of the funds allocated to a contract for goods, works or services;
- (b) declare any person or firm ineligible for a period of ten years to be awarded a public financed contract.
- (4) Any member of the procuring entity or approving authority who engages in corrupt or fraudulent practices during the procurement proceedings or the execution of the public financed contract shall be dealt with in accordance with section 39 of this Act.
- (5) The Central Tender Board shall, in any tender forms for public contracts, include an undertaking of the tenderer to observe the country's laws against fraud and corruption (including bribery) in competing for and executing a contract.

Conducts
influencing
Public Officers

39.(1) No person, whether such person has made an offer or not, with intent to gaining any advantage or concession for himself or any other person shall:-

- (a) offer any member or an associate of a member of a Central Tender Board or its committee or any employee or an associate of an employee of a tender board or its committee or any consultant or an associate of any consultant or a person or an associate of any person providing services, a gift of money or other valuable thing; or
- (b) approach any member or any associate of a member of a Central Tender Board or its committee or any of its officer or an associate of any officer with respect to any matter that is before the Central Tender Board or committee or that is expected to come before a Central Tender Board or a committee.



(2) No member of the Central Tender or Tender Committee or an approving authority or any public officer or other Government authority shall accept a gratuity in any form, any offer of employment or any other thing, service or value as an inducement with respect to an act or decision, by the Central Tender Board or by other approving authority in connection with any authority approving procurement proceedings or tender, and a procuring entity or by the approving authority in connection with any procurement or tender; and a Central Tender Board shall promptly reject a tender of any supplier, contractor or consultant who gives, agrees to give or offers, directly or indirectly, any such inducement.

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

(4) A Central Tender Board shall not include in any tender document any condition or specification such as to favour any one supplier, contractor or consultant.

(5) Any member of a Central Tender Board or a member of its staff shall declare any interest that they may have in any supplier, contractor or consultant, and shall take no part, nor seek to influence in any way, procurement proceedings in which that supplier, contractor or consultant is involved or liable to become involved.

(6) A supplier, contractor or consultant whose tender or proposal has been rejected or revoked on the grounds of inducement and corrupt practices shall not be able to qualify or pre-qualify in any procurement proceedings during the ten years following the date of the notice of such rejection or revocation.

(7) Any rejection or revocation on the grounds of inducement or corrupt practices shall be notified to the Secretary of the Central Tender Board who shall in turn take effect to notify all Government procuring entities and approving authorities for the purposes of effecting the provision of subsection (6).



Disclosure of
Payment made
Commission etc.

40.(1) A supplier, contractor or consultant, in relation to the public contract shall, within thirty days after the execution of the contract, furnish in writing to the Central Tender Board and the Zanzibar Revenue Board and Tanzania Revenue Authority Zanzibar:-

- (a) stating particulars of any consideration given or to be given to any person or organization for the purpose of or as a commission for obtaining the contract; and
- (b) giving the names of the person to whom and the organization to which any such consideration was or is to be given.

(2) If no such consideration is to be given to any person or organization, a statement furnished pursuant to subsection (1) shall so state.

(3) Where in relation to a public contract, and where a body corporate is a contractor, then:-

- (a) if the consideration for the contract exceeds in value or total, two percent of the contract value, the statement furnished pursuant to subsection (1):-
 - (i) shall be signed by the Chief Executive of the body corporate; and
 - (ii) if the contract is a subsidiary of another body corporate, shall also be signed by the Chief Executive of the other body corporate; and
- (b) in any case other than that which is referred to in paragraph (a), the statement of furnished shall be signed by an officer of the body corporate deputed to do so.



(4) The provisions of the Companies Decree Cap. 153 in relation to the determination of whether a body corporate is the subsidiary of another body corporate shall apply.

Conduct of directors, servant or agents.

41.(1) Any conduct engaged in or on behalf of body corporate -

- (a) by a director, servant or agent of the body corporate within the scope of the actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement the director, servant or agent is within the scope of the actual or apparent authority, shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(2) Any conduct engaged in or on behalf of a person other than a body corporate:-

- (a) by a servant or agent of the person within the scope of actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first mentioned person, when the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent.

Penalties.

42.(1) Any person convicted of an offence against section 13 of this Act is liable to a fine not less than five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.



(2) Any person who contravenes the provisions of section 39 of this Act commits an offence and is liable upon conviction to imprisonment for a term of five years or for a fine of shillings five million or to both.

Institution of
criminal
Proceedings.

43. The measures provided by this Act shall not preclude the institution of criminal proceedings pursuant to the Penal Decree, the Prevention of Corruption Act, 1972 or any other written Law against any person discharging functions or exercising under this Act or Regulations made under this Act.

PART VII MISCELLANEOUS PROVISIONS

Regulations.

44.(1) The Minister may make regulations for the better carrying out of the provisions of this Act, and such Regulations shall include yearly review of the limits of authority for each procuring entity and approving entity.

(2) All Regulations and directions made in connection with this Act shall be published in the official *Gazette*.

Settlement of
Complaints or
disputes by
procuring
entities and
approving
Authority.

45.(1) Complaints or disputes between procuring entities and suppliers, contractors or consultants which arise in respect of procurement proceedings and awards of contract and which cannot be resolved by agreement shall mutual be reviewed and decided upon a written decision by the Accounting Officer of procurement has the ministry which is procuring the goods, works or services, unless the been reviewed and approved by an approving authority, in which case that approving authority shall review and decide on the dispute and give reasons for its decision in writing.

(2) The head of the procuring entity or of the approving authority shall not entertain a complaint or dispute:-

- (a) unless it is submitted within twenty eight days from the date the supplier, contractor or consultant submitting it become aware of the circumstances giving rise to the complaint or dispute or when that supplier, contractor or consultant should have



become aware of those circumstance, whichever is earlier;

(b) after the procurement contract has entered into force.

(3) Unless the complaint or dispute is resolved by mutual agreement of the supplier, contractor or consultant that submitted it and the procuring entity shall within 30 days after the submission of the complaint or dispute deliver a written decision which shall:-

(a) state the reasons for the decision; and

(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

(4) The decision of the procuring entity or approving authority shall be final unless the supplier, contractor or consultant applies for administrative review by the Central Tender Board pursuant to section 8 of this Act except for complaints or disputes made against the Central Tender Board which shall be submitted to the Minister in accordance with section 47 of this Act.

Administrative
Review.

46.(1) A supplier, contractor or consultant who is aggrieved by the decision of a procuring entity or an approving authority may refer the matter to the Central Tender Board for review and administrative decision.

(2) The decision of the Central Tender Board shall be final unless an action is commenced under section 47 of this Act.

Review by the
Minister.

47.(1) Complaints or disputes not amicably settled by the Central Tender Board and disputes against the Central Tender Board shall be referred to the Minister.

(2) Upon receipt of a complaint or dispute, the Minister shall give notice of the complaint or dispute to the procuring entity or the approving authority.

(3) The Minister shall, within thirty days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.



(4) The decision of the Minister shall be final unless an action is commenced under section 48 of this Act.

Judicial Review

48. The Court of competent jurisdiction shall have Jurisdiction over actions pursuant to complaints or dispute claimed by suppliers, contractors or consultants and petitions for judicial review of decision made by bodies or failure of those bodies to make a decision within the prescribed time-limit, pursuant to sections 46 and 47.

Disapplication of other laws.

49. Upon the coming into operation of this Act, all laws sections of laws, regulations or rules relating to public procurement practice that shall conflict with this Act or a section in this Act shall cease to have any effect, power, function, authority or duty in relation to any matter connected with procurement of goods, service or works.

FIRST SCHEDULE

[Under section 6]

COMPOSITION, APPOINTMENT AND PROCEDURES OF THE CENTRAL TENDER BOARD

Composition and appointment of the Central Tender Board.

1. The Central Tender Board shall consist of the following members:-

- (a) a Chairman, who shall be a Professional in economics, Marketing, Materials Management or Finance and who shall be appointed by the President;
- (b) Principal Secretary Ministry of State (P.O) Constitutional Affairs and Good Governance;
- (c) seven profession members, being experts or specialists in procurement and finance, who shall be appointed by the Minister.



Tenure of Office.

2.(1) The Chairman and member of the Board shall be appointed for a period of three years and shall be eligible for reappointment for a further period of three years.

(2) Any member of the Board may resign upon giving one month notice in writing to the Appointing authority.

(3) If any member other than ex-officio is absent from three consecutive meeting of the Board without providing reasonable excuse, the Board shall advise the appointing authority to terminate the appointment of that member and appoint another member in his place.

Alternate Members.

3. A member of the Board who is representing an institution mentioned in section 1(b) of this schedule, may delegate his position to another representative of similar profession and qualification or by giving notice to the Secretary of the Board stating whether the representation is for a partial or full assignment.

Attendance by non-Members.

4. The Board may invite Government officer of ministries or departments whose procurement is under consideration or any other person with a legitimate in the procurement being reviewed to attend its meetings for the purpose of assisting the Board, but such persons shall have no vote.

Meetings.

5.(1) An ordinary meeting of the Board shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and place of such meeting which shall be sent to each member at his usual place of business or residence not less than two full working days before the date of such meeting and the Board shall meet at such times and such places being not less than once in a month as the Chairman may determine.

(2) The Chairman, or in his absence or inability to act, Secretary, shall convene a special meeting of the Board upon receipt of a request in writing signed by not less than three members of the Board, save that such requests shall not be made without justifiable cause.



- Quorum. 6.(1) One half of the members of the Board shall form a Quorum for a meeting of the Board:-
- (i) in the absence of the Chairman, the members present at a Meeting of the Board shall elect one of the members to act as Chairman for that meeting and the member who is elected shall be responsible for reporting the findings of such meeting to the Chairman;
 - (ii) at any meeting of the Board, a decision of the majority of the members present shall be recorded as a decision of the Board, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it recorded in the minutes of that meeting.
- Minutes. 7. Minutes of each meeting of the Board shall be recorded by the Secretary in a proper form and shall be confirmed by the Board and signed by the Chairman and the Secretary at the next following ordinary meeting of the Board and filed at the offices of the Central Tender Board.
- Notification of decisions 8. Notification of decisions made by the Board and all other communications sent on its behalf shall be signed by the Secretary or by an officer of the Secretariat of the Board who has been authorised in writing by the Secretary to act on his behalf and the Secretary shall communicate the decisions, including any refusal and the grounds for the refusal, to the Accounting Officer or Chief Executive Officer within seven days from the date of the meeting when such a decision was made.
- Proceedings. 9. The Board shall have power to regulate its own proceedings.
- Sub-committees. 10. The Board may establish subcommittees and appoint members, of such subcommittees, persons who are not, members of the Board for the purposes of advising the Board on any specific matter.



Fees and allowances.

11. The Minister may prescribe fees and allowances which may be payable to the Chairman and members of the Board.

SECOND SCHEDULE

(Under Section 10(2))

COMPOSITION, APPOINTMENT AND PROCEDURES OF MINISTRY TENDER COMMITTEES

Composition and appointment.

1.(1) A ministry tender committee shall consist of:

- (a) the chairman who shall be appointed by the Minister responsible for that Ministry;
- (b) the Chief Accountant of that Ministry;
- (c) the heads of not more than four key departments;
- (d) procurement specialist of that Ministry;
- (e) a government officer who holds a post not lower than a Director or the equivalent, from Ministry for Finance who shall be appointed by the Minister responsible for finance.

(2) The Secretary, shall be a Government Officer of that Ministry who is a specialist in procurement and shall be appointed by the Minister responsible for that Ministry.

Attendance by non-members.

2. The committee may invite Government Officers of that Ministry or of another ministry to attend its meetings for the purpose of assisting the committee, but such person shall have no vote.

Meetings.

3. Meeting of the committee shall be convened by the Chairman, or in his absence or inability to act, the Secretary, by a notice specifying the date, time and places, being not less than once in a month as, the Chairman may determine.



Quorum.

4.(1) One half of the members of the committee shall form a quorum for a meeting of the committee.

(2) In the absence of the Chairman, the members present at a meeting of the committee shall elect one of the members to act as Chairman for that meeting and the member who is so elected shall be responsible for reporting the findings of such meeting to the Chairman.

(3) At any meeting of the committee, a decision of the majority of the members present and voting shall be recorded as a decision of the committee, save that a member who dissents from that decision shall be entitled to have his dissenting decision and the reasons for it to be recorded in the minutes of that meeting.

Minutes.

5. Minutes of each meeting of the committee shall be recorded by the Secretary in a proper form and shall be confirmed by the committee and signed by the Chairman and the Secretary at the next following meeting of the committee.

Notification of decisions.

6. Notification of decisions made by the committee and all other communications sent on its behalf shall be signed by the Secretary or by the Principal Secretary of that Ministry.

Regulation of Proceedings.

7. The committee shall conduct its proceedings in accordance with the prescribed Regulations.

Subcommittees

8. A ministry tender committee may establish sub-committees and appoint members, of such sub-committees, persons who are, or are not, members of the ministry tender committee for the purposes of advising the committee any specific matter.



THIRD SCHEDULE

(under section 15)

COMPOSITION, APPOINTMENT AND PROCEDURES OF PARASTATAL TENDER COMMITTEE

Composition
and appointment.

1.(1) The tender committee for a parastatal organisation shall consist of eight members appointed by the Board of Directors.

Provided that:

- (a) five of the members shall be heads of departments from the departments of the parastatal organisation of which one shall be head of the procurement or purchasing department; and
- (b) two shall be from outside the parastatal organisation whereby one of them shall be from Ministry responsible for Finance.

(2) The Chairman of the Committee shall be appointed by the Minister responsible for that ministry.

(3) The head of the department responsible for procurement or purchasing and supply in a parastatal organisation shall be the Secretary to tender committee.

Proceedings.

2.(1) Except as provided for in the Regulations, a parastatal tender committee, shall determine its own procedures for tender.

(2) A parastatal tender committee shall meet at such times and places being not less than once in a month as the Chairman may determine.

(3) A parastatal tender committee may establish sub-committees which shall consist of persons who are, or are not, members of the committee for the purpose of advising the committee on any specific matter.



(4) A parastatal tender committee shall cause minutes of the proceedings of every meeting to be kept and such minutes shall be transmitted to the Central Tender Board as soon as practicable after the meeting at which they were confirmed.

(5) A parastatal tender committee may invite any person, whose presence is in its opinion, desirable to attend and to participate in the deliberations of the meeting of the committee but such a person shall have no vote.

(6) The Secretary of the parastatal tender committee shall communicate all decisions to heads of departments or organizations, including any refusal and the grounds for the refusal within seven days of the decision.

(7) At any meeting of the parastatal tender committee, one half of the members shall constitute a quorum and the decision of the majority of the members present and voting shall be recorded as the decision of the committee.

Passed in the House of Representatives on the 22nd day of April, 2002.


{ **KHAMIS JUMA CHANDE** }
CLERK OF THE HOUSE OF REPRESENTATIVES