

GOVERNMENT NOTICE NO.49 published on 17/02/2017

THE FERTILIZER ACT
(CAP.378)

THE FERTILIZER (BULK PROCUREMENT) REGULATIONS, 2017

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THE FERTILIZER ACT

(CAP.378)

THE FERTILIZER (BULK PROCUREMENT) REGULATIONS, 2017

(Made under section 51)

PART I
PRELIMINARY PROVISIONS

Citation	1. These Regulations may be cited as the Fertilizer (Bulk Procurement) Regulations, 2017.
Application	2. These Regulations shall apply to the importation of fertilizer through Bulk Procurement System of Fertilizer.
Interpretation	3. In these Regulations unless the context otherwise requires-
Cap.378	“Act” means the Fertilizer Act;
Cap.130	“approved specification” means any specification or standard pursuant to the Standards Act, or any other standards that are widely used in the fertilizer industry practices;
	“Authority” means the Tanzania Fertilizer Regulatory Authority established under the provisions of the Act;
	“Board” means the Board established under section 3 of the Act;
	“Bulk Procurement System” means a system established under these Regulations to govern the importation of fertilizer in bulk quantity ;
	“bulk quantity” means a single lot of fertilizer imported under Bulk Procurement System;
	“buyer” means a fertilizer dealer who buys a fertilizer product from an importer under Bulk Procurement System;
	“Code of Conduct” means a set of principles, values, standards or rules of behaviour which guide decisions and

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- procedures for the employees of the Authority as approved by the Minister;
- “correspondence bank” means a locally registered bank engaged by a buyer which has a corresponding relationship with importer banker;
- “Director” means an Executive Director of the Authority;
- “Fertilizer Industry Practices” means any action related to a fertilizer intended to preserve of quality product and meeting generally accepted health, safety and environmental requirements;
- “importer” means a company which won a particular bulk procurement tender floated by the Authority to import fertilizer under Bulk Procurement System;
- “inspector” means an inspector appointed in accordance with the provisions of the Act to verify quality and quantity of fertilizer product imported under Bulk Procurement System;
- “Minister” means the Minister responsible for Agriculture;
- “Permanent Secretary” means the Permanent Secretary of the Ministry responsible for Agriculture; and
- “Tender Committee” means a Committee established under the provision of regulation 11.

PART II

ADMINISTRATION OF FERTILIZER BULK PROCUREMENT SYSTEM

Functions of the
Authority

- 4.-(1)The Authority shall, in addition to functions stipulated under section of 4 of the Act , perform the following functions:
- (a) collect the procurement requirements of fertilizer from the registered fertilizer dealers;
 - (b) ensure that before accepting the procurement requirements by the fertilizer dealer all levies and fees charged by the Government institution are full paid;
 - (c) initiate, conclude and administer contracts with fertilizer importers and fertilizer dealers;
 - (d) conduct competitive bidding for the procurement of fertilizer in bulk;
 - (e) report to the Board and the Ministry on Bulk Procurement system activities on a quarterly basis

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- or as may be required;
- (f) relay information, in a timely manner, related to the fertilizer business to the Ministry, fertilizer dealers and other relevant institution when requested;
- (g) forecast supply and demand of fertilizer;
- (h) coordinate diligent receipts by fertilizer buyers from the delivery vessels;
- (i) maintain records of the shipments and performance;
- (j) coordinate invoicing and collection of payments for the respective shares of fertilizer imported by fertilizer dealers;
- (k) make orders and undertake any function that aims at improving efficiency procurement of fertilizer;
- (l) liaise with the Ministry on issues related to the importation of fertilizer; and
- (m) perform any other functions as may be assigned to it by the Board or the Minister for the betterment of the fertilizer industry.

(2) The Authority may appoint or designate any competent office or officer to undertake administration of Bulk Procurement System.

Registration and
pre-qualification
of fertilizer
Importer/dealer
G.N .No. 350
of 2011

5.-(1) A fertilizer dealer shall, subject to the procedures prescribed by the Act and the Fertilizer Regulations, 2011, register with the Authority in order to import a fertilizer under Bulk Procurement System.

(2) Every fertilizer importer who intends to participate in a competitive bidding for the supply of fertilizer under Bulk Procurement System shall be required to apply to the Authority for pre-qualification before being shortlisted.

(3) The procedure and conditions for pre-qualification of importer shall be in the manner prescribed in the Bulk Procurement System implementation Guidelines prepared by the Authority.

Authority to
prepare report

6.(1) The Authority shall prepare and submit to the Board annual report for the operations of the Bulk Procurement System which shall consist of among other things, the following-

- (a) the available fertilizer stocks in the country;

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- (b) demand forecast for the coming season;
 - (c) payment status for all importers;
 - (d) operational challenges for that particular season;
- and
- (e) any other information as may be deemed necessary.
- (2) The Board shall upon review of the report submitted under sub regulation (1), provide any appropriate advise to the Authority and submit the said report and its advise to the Minister accordingly.
- (3) A report prepared under this regulation may be updated from time to time as the need arises.

PART III IMPORTATION OF BULK FERTILIZER

Efficient
procurement

- 7.-(1) A person shall not import fertilizer unless the importation is carried out through efficient procurement in accordance with these Regulations.
- (2) The Authority shall have powers and mandates to regulate and control the importation of fertilizer through Bulk Procurement System under these Regulations.
- (3) The list of fertilizers set out in the First Schedule to these Regulations shall be procured through Bulk Procurement System.
- (4) Notwithstanding the provision of sub regulation (1) and (3) the Minister may in consultation with the Board exempt any of the type of fertilizer from the application of these Regulations where there are public interests, economic and scientific justifications to do so.
- (5) For purposes of this regulation “efficient procurement” means a procurement undertaken by way of Bulk Procurement System in accordance with these Regulations.

The Bulk
Procurement
System for transit
fertilizer

- 8.-(1) The use of Bulk Procurement System for transit fertilizer shall be optional.
- (2) Subject to the provisions of sub-regulation (1), an importer or fertilizer dealer undertaking transit fertilizer business shall ensure that the cargo imported is within the specifications of the country to which the product is destined.
- (3) An importer or fertilizer dealer intending to import fertilizer for transit shall at the time of placing an importation

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order, submit to the Authority the name and contacts of the consignee of the transit fertilizer.

(4) The Bulk Procurement System vessels shall only carry products ordered through Bulk Procurement System.

(5) Any importer or fertilizer dealer who intends to use Bulk Procurement System vessel to carry non- Bulk Procurement System transit product shall notify the Authority before importation of fertilizers.

(6) Any person who contravenes the provision of this regulation shall be liable to a fine equal to five percent of the value of the cargo imported or one hundred million Tanzanian shillings whichever is higher.

PART IV

BULK PROCUREMENT PROCEDURES

Obligation to
procure
fertilizer using
Bulk
Procurement
System

9. An importer or fertilizer dealer who intends to import fertilizer shall conclude with the Authority, supply and shipping contract that shall comprise of the terms and conditions which govern the relationship between the Authority and importer, and both shall recognize the contract entered between the Authority and any other related parties in the Bulk Procurement System.

Bidding process

10.-(1) There shall be bidding process under these Regulations.

(2) All matters relating to bidding process under these Regulations shall be as prescribed in the Fertilizer Bulk Procurement System Guidelines prepared by the Authority in consultation with the stakeholders.

Tender
Committee

11.-(1) There shall be a Tender Committee which shall be responsible for opening, evaluating and awarding of fertilizer tender in accordance with the Fertilizer Bulk Procurement System Guidelines.

(2) The Tender Committee shall be appointed by the Board.

(3) The Tender Committee shall comprise of a Chairman and other five members of whom-

- (a) two members representing importers,
- (b) one member representing Tanzania Port Authority;
- and

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(c) two members representing the Authority.

(4) The Board members and pre-qualified fertilizer importer or their affiliates shall not be eligible to be members of the Tender Committee.

(5) A member of the Tender Committee shall hold office for a period of three years and shall be eligible for re-appointment.

(6) In performing its functions under these Regulations the Tender Committee shall-

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

(b) monitor compliance of these Regulations and any guidelines made under these Regulations.

Fertilizer
specifications
Cap.130

12.-(1) Any fertilizer imported into Tanzania shall conform to the approved specifications pursuant to the Standards Act.

(2) The Authority shall ensure that specifications to be used in the tender process strictly conform to the Standards Act.

(3) Any fertilizer which does not meet the approved specifications shall not be offloaded in Tanzania.

(4) Any importer who imports a fertilizer product which is not in conformity with the approved specifications shall be blacklisted and shall not be eligible to bid for importation of fertilizer into Tanzania for a period of not less than one year and not more than five years.

Procedure for
sampling,
testing and
blacklisting

13.-(1) The procedure for sampling, testing and blacklisting of a fertilizer product shall be as prescribed in the Act and under these Regulations.

(2) A fertilizer importer may appoint an inspector to verify on the quality and quantity of any fertilizer received at the port of importation.

(3) In the event that quality of fertilizer results by inspector of the Authority are not in conformity with Tanzania Bureau of Standards results, the latter results shall be final as much as quality of imported fertilizer in Tanzania is concerned.

(4) In the event that fertilizer quantity results by an

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inspector are not equal, the Authority shall take into account or consider results produced by Weights and Measures Agency as final as much as quantity of imported fertilizer in Tanzania is concerned.

(5) A fertilizer importer or dealer shall be required to take all precautions needed, and comply with the acceptable standards and principles when receiving fertilizer from an importer or dealer in order to make sure that they receive or store fertilizer within the approved specifications.

(6) The Authority shall, upon receipt of results which are non-conforming to the standards, blacklist the respective Importer in accordance with the provision regulation 12(4).

(7) Each fertilizer dealer shall be obliged to notify the Authority immediately in the event he becomes aware of any fertilizer which does not conform to specification which is due to or has been imported into Tanzania.

(8) Subject to sub-regulation (7), any fertilizer importer or dealer who does not notify the Authority in the event he becomes aware of the receipt of contaminated product shall be considered to have distorted the Bulk Procurement System.

(9) In the event it is established that the fertilizer importer or dealers have received contaminated fertilizer while upon arrival of the vessel at the port the product was sampled, tested and found to be within the approved specification, a neutral and independent investigation shall be conducted by an independent and neutral investigator, appointed by the Authority in consultation with the fertilizer importer and dealer to determine the cause and point of contamination.

(10) Any person who is found to have contaminated fertilizer upon arrival shall be liable for contamination and to have distorted Bulk Procurement System.

(11) The costs incurred by the Authority during investigation conducted under sub regulation (9) shall be borne by the person who is found to have contaminated the cargo.

(12) A person shall not, other than the Authority or Tanzania Bureau of Standards be allowed to publish, circulate or cause to be published or circulated any information relating to the quality of any fertilizer.

(13) Any person who contravenes the provisions of sub-regulation (12) commits and offence under these Regulations.

Cargo delivery

14.-(1) An importer shall be responsible for the

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procurement, shipping arrangements and the offloading of a fertilizer product or cargo at any port.

(2) A Bulk Procurement System vessel delivering fertilizer product at any port shall, if it arrives within its scheduled delivery date have priority to the offloading point.

(3) A Bulk Procurement System vessel delivering fertilizer product at any port that arrives prior to, or after its scheduled delivery date range shall be accommodated at the offloading point as soon as practicable.

Bulk
Procurement
System
Guidelines

15.-(1) The Bulk Procurement System Guidelines prepared by the Authority under sub regulation 10(2) shall-

(a) stipulate all matters related to invitation to bid, bid evaluation, bids qualification and award of the bid to supply a bulk fertilizer; and

(b) guide all operational matters related to procurement of fertilizer under Bulk Procurement System, including pre arrival checks, pre-discharge operations, discharge operations, post discharge overturn and customs and warehousing.

(2) The fertilizer Bulk Procurement System Guidelines and Tender documents shall not consist of requirements and terminologies which discriminate unfairly against participation by tenderers.

Financing and
payment
procedures

16.-(1) The financing of fertilizer under the Bulk Procurement System shall be borne by fertilizer dealers.

(2) For purposes of procurement of fertilizer under the Bulk Procurement System, procedures stipulated under the Public Procurement Act and regulations shall not apply.

(3) Each fertilizer dealer's banker shall open a letter of credit to the importer's banker or facilitate pre-payment in respect of the cargo specified in the respective supply and shipping contract.

(4) Where a fertilizer dealer fails to open a letter of credit or facilitate pre-payment within the time specified in the shipping and supply contract, such dealer shall be deemed to have distorted the Bulk Procurement System, and upon conviction be liable to penalties prescribed under regulation 18.

(5) Subject to the establishment of a joint financing

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arrangement, a correspondence bank shall, on behalf of the buyer, settle invoices raised in respect of the cargo detailed in the respective supply and shipping contract.

PART V
DISTORTION OF BULK PROCUREMENT SYSTEM

Distortion of
Bulk
Procurement
System

17. For the purpose of these Regulations, a person shall be deemed to have distorted the functioning of the Bulk Procurement System, if such person-

- (a) either individually or collectively with other persons causes the Authority not to execute its functions as required under these Regulations ;
- (b) delays in opening a letter of credit, payment of wharfage and non-compliance with its guidance or directives;
- (c) wilfully and with no justifiable reasons fails to import fertilizer;
- (d) fails or refuses without justifiable cause to receive the ordered cargo of fertilizer;
- (e) acts in a manner which endangers the security of supply;
- (f) fails to make arrangement to receive the ordered quantity; and
- (g) fails or delays to perform any obligation as directed by the Authority aiming at ensuring efficient procurement and managing Bulk Procurement System;
- (h) conduct any malpractice or tempers with any facility during receipt and storing of fertilizer, which shall include but not limited to issuing false reports and information to the Authority in relation to quantity and quality of fertilizer received;
- (i) refuses to obey a lawful order or instruction issued by the Authority; and
- (j) fails to pay fees and levies charged by the Government institutions.

Penalty

18. Any person who distorts the functioning of the Bulk Procurement System or willfully endangers the functioning of the competitive supply system, commits an offence and shall, upon

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conviction be liable to a fine prescribed in the Second Schedule to these Regulations.

Late delivery

19.-(1) Late delivery default arising from causes other than a *forcemajeure* event shall attract a late delivery penalty of 0.5 US Dollars per metric ton per day to be paid by an importer to compensate buyers for compromising their minimum stocks.

(2) The penalty prescribed in subregulation (1), shall be paid to the buyer within seven days from the date of receiving demand note from the Authority.

(3) Notwithstanding the provisions of sub-regulation (1), the lay-time on late arriving vessels shall commence when the vessel berths or arrives at the port of offloading.

(4) The demurrage costs resulting from cascading effect caused by late delivery of the Bulk Procurement System vessel shall be borne by the dealer or importer of the late delivery vessel.

(5) The demurrage costs and its related effects caused by any person shall be borne by such person.

(6) For purposes of this regulation, the cascading effect shall be limited to three subsequent vessels which have to discharge fertilizer after the late delivery vessel.

(7) For purposes of ensuring efficient and effective Bulk Procurement System, the Authority may take necessary measures to minimize cascading effects.

Delivery default

20. Without prejudice to the penalty prescribed in regulation 19(1), an importer whose vessel delays for more than seven days from the last day of the delivery date window shall be deemed to have defaulted on the delivery of the fertilizer cargo and shall be liable to penalties as shall be provided in the shipping and supply contract.

Late payment

21.-(1) A fertilizer dealer who fails to pay for its share of a fertilizer at the due date, exceeding sixty days from the first day of delivery date range, shall be charged a late payment penalty of LIBOR +4% per annum or be barred from participating in the subsequent Bulk Procurement System tender or both.

(2) The penalty prescribed in subregulation (1) shall be paid to the importer within seven days from the date of determination of such failure for onward payment to the importer.

(3) For the purposes of this regulation, the term "LIBOR"

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means the London Inter-bank Overnight Rate.

PART VI
GENERAL PROVISIONS

General
penalty

22.-(1) Any person who contravenes the provisions of these Regulations for which no specific penalty is provided for shall be liable to a fine of not less than ten million shillings.

(2) Any person who employs an agent, clerk, servant or any person, shall be answerable and liable for any acts or omissions of such person in so far as the acts or omissions of that person is concerned.

Compounding
offences

23.-(1) Notwithstanding the provisions of these Regulations relating to penalties, where a person admits in writing that he has committed an offence under these Regulations, the Authority may, at any time prior to the commencement of the hearing by a court of competent jurisdiction, compound such offence and order such person to pay sum of money, not exceeding the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence

(2) Where an offence is compounded in accordance with subregulation (1) and proceeding are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under subregulation (1).

Cap. 20

(3) Where any person is aggrieved by any order under subregulation (1), he may within thirty days, appeal against such order to the High Court and the provisions of the Criminal Proceedure Act shall apply to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

(4) Where the person fails to comply with the order issued under this regulation within thirty days, the Authority:

- (a) shall, in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations; and
- (b) may enforced the order in the same manner as a decree of a court for the payment of the amount stated

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in the order.

Transitional
provision

24. These Regulations shall not operate to affect in a prejudicial way the rights of any person granted or any contract entered prior to the commencement of these Regulations.

Authority to
supplement
procedures

25. Where procedures for any specific matter or thing are not provided for in these Regulations, the Authority shall endeavour to do whatever is necessary and permitted by any written law to effectively and completely adjudicate on the matter or thing.

Standards
of equity

26.-(1) The Authority shall, in the execution of their duties, strive to achieve the highest standards of equity, taking into account-

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

(2) All members of the Tender Committee or officers of the Authority shall, when undertaking or approving procurement, be guided by the following basic considerations-

- (a) the need for economy and efficiency in the use of Bulk Procurement System;
- (b) the best interests in giving all eligible tenderers equal opportunities to compete in procurement or executing contracts under Bulk Procurement System;
- (c) the importance of integrity, accountability, fairness and transparency in the procurement process.

(3) The Authority shall maintain adequate written records of all procurement, selection or disposal proceedings in which it is involved, and such records shall prescribe tenderers who have responded to invitation to tender or expression of interest, the successful tenderers, the unsuccessful tenderers and the reasons thereof.

FIRST SCHEDULE

(Made under regulation 7(3))

**LIST OF FERTILIZERS TO BE PROCURED THROUGH BULK
PROCUREMENT SYSTEM**

1. UREA;
2. Di-Ammonium Phosphate (DAP)
3. Calcium Ammonia Nitrate (CAN);
4. Ammonium Sulphate (SA);
5. NPKs; and
6. Any other fertilizer as the Authority may determine and declare.

SECOND SCHEDULE

M(ade under regulation 18)

PENALTIES FOR THE BREACH OF BULK PROCUREMENT SYSTEM

OFFENCE	PENALTY	ADDITIONAL PENALTY
Delay to open LC or to make pre payment	0.5 USD per metric ton	) Not to be allowed to participate in tenders until when the product paid for and all penalties have been paid) Pay demurrage resulting from failure to open LC
Fertilizer dealer failure to make arrangement to receive the ordered quantity including payment of wharfage	0.5 USD per metric ton	Pay all cost associated with failure to make arrangement to receive/ordered quantity such as demurrage
Fertilizer dealer refusal to take part in day to business of the Authority	three million Tanzanian shillings and one million for each day of continuity of breach	

Fertilizer (Bulk Procurement)

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OFFENCE	PENALTY	ADDITIONAL PENALTY
Failure to make arrangement to receive the ordered quantity	Five million Tanzanian shillings and one million for each day of continuity breach	Pay demurrage resulting from failure to receive the ordered quantity
Importer acts which endangers the security of supply such as late delivery.	0.5 USD per metric ton per day	) Pay demurrage resulting from cascading effect) Invoke the Performance Bond as per the terms and conditions of the contract
Importer bring off specification product	One hundred million Tanzanian shillings	) Invoke the Performance Bond as per the terms and conditions of the contract.) Pay penalties as per the shipping and supply contract) Being blacklisted
Conducting malpractice(s) when receiving fertilizer from the delivery vessel	fifty million Tanzanian shillings	) Suspended to participate in the subsequent Bulk Procurement System tenders

OFFENCE	PENALTY	ADDITIONAL PENALTY
Contaminating fertilizer after being confirmed that the fertilizer conform to the approved specifications	Fifty million Tanzanian shillings	) As stipulated in the shipping and supply contract) Invoke the bank guarantee or performance bond) Pay all cost associated with evacuation of contaminated product

Dar es Salaam,
10th February, 2017

CHARLES JOHN TIZEBA
Minister for Agriculture Livestock and Fisheries