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THE PUBLIC PROCUREMENT ACT,
(CAP. 410)

REGULATIONS

(Made under section 105)

CODE OF ETHICS AND CONDUCT FOR PUBLIC OFFICERS AND TENDERERS
ENGAGING IN PUBLIC PROCUREMENT, 2021

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THE PUBLIC PROCUREMENT ACT,
(CAP. 410)

REGULATIONS

(Made under section 105)

CODE OF ETHICS AND CONDUCT FOR PUBLIC OFFICERS AND TENDERERS
ENGAGING IN PUBLIC PROCUREMENT, 2021

WHEREAS, the Public Service is responsible for providing timely, high quality and cost-effective services to the nation. To achieve this, it must have public officers who are professional, and who observe a high standard of integrity, impartiality and transparency in the performance of their duties. An ethical Public Service is an important component of good governance and as such those involved in public procurement must at all times carryout their responsibilities with the highest sense of probity;

WHEREAS, tenderers who are involved in public procurement are required to carry out their functions and responsibilities in an ethical manner;

MINDFUL THAT, the Code has been developed under the following rule and principles:

- (i) Ethical Rule: these typically take the form of "dos and don'ts" in specific reference to exercising probity when carrying out the procurement function; and
- (ii) Ethical Principle: these are general statements indicating the use of a professional approach in the conduct of public procurement responsibilities;

AND WHEREAS, pursuant to section 102 of the Public Procurement Act, Cap. 410, public officers and experts engaged to deliver specific services under this Act shall subscribe to the code of ethics and conduct, and tenderers shall sign a declaration of compliance for them to be bound by the code;

NOW THEREFORE, I, DR. MWIGULU LAMECK NCHEMBA MADELU, the Minister for Finance and Planning, hereby issue the Code as follows:

PART I
PRELIMINARY PROVISIONS

- | | |
|----------------|---|
| Citation | 1. This Code shall be cited as the Code of Ethics and Conduct for Public Officers and Tenderers Engaging in Public Procurement, 2021. |
| Application | 2. This Code shall apply to all public officers, former public officers referred as such under this Code, experts and tenderers involved in the public procurement. |
| Interpretation | 3. In this, Code unless the context otherwise requires: |
| Cap. 410 | “Act” means Public Procurement Act; |
| Cap. 348 | “Accounting Officer” means a Government officer appointed in accordance with the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention; |
| | “Authority” means the Public Procurement Regulatory Authority; |
| | “Code” means the Code of Ethics and Conduct for Public Officers and Tenderers Engaging in Public Procurement; |
| | “coercive or obstructive practices” means impairing or harming or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action of that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice; |
| | “collusive practices” means a scheme of arrangement between two or more tenderers, with or without knowledge of the procuring entity, designed to establish prices at artificial or non-competitive levels; |

- Cap. 329
- “Competent Authority” means a person, body of person, organs or an agency competent to take actions as may be referred to or directed to it by the authority under this Code;
 - “confidentiality” means a set of rules or a promise that limits access or places restrictions on certain types of information;
 - “conflict of interest” means a situation in which a person or organisation is involved in a multiple interest, financial or otherwise, one of which could possibly corrupt the motivation or decision-making of that individual or organisation;
 - “consultant” means a firm, company, corporation, organisation, partnership or an 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;
 - “corrupt practices” has the meaning as ascribed under the Prevention and Combating of Corruption Act;
 - “ethical behaviour” means concepts of the honesty, integrity, probity, diligence, fairness, trust, respect, consistence, avoiding conflict of interest, and not making; improper use of an individual position;
 - “fraudulent practice” means misrepresentation of facts in order to influence procurement process or the execution of a contract to the detriment of the Government or the Public body 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;
 - “inducement” means a pledge or promise that causes an individual to enter into a particular agreement or action;
 - “integrity” means the quality of being honest and having strong moral principles and uprightness or the state of being whole and undivided;

- “Minister” means the Minister, for the time being, responsible for public procurement matters;
- “potential bidder” means any natural or legal person or group of persons who purchase a tender document with intent to bid in a respective tender;
- “procuring entity” means a public body and any other body or unit established and mandated by Government to carry out public functions;
- “professionalism” means the level of excellence or competence that is expected by a public officer and it involves acting with integrity, providing quality service and have commitment that allows for functionality, transparency and significant savings in public expenditure;
- Cap. 298 “public officer” means a public servant as defined under the Public Service Act, and includes members of evaluation Committee, Project Managers, Negotiation team, Inspection team and any other person appointed or employed by a public body to engage in public procurement process;
- “public procurement” means buying, purchasing, renting, leasing or otherwise acquiring any goods, works or services by a procuring entity and includes all functions that pertain to the obtaining of any goods, works or services, including description of requirements, selection and invitation of tenderers, preparation award, and managing of contracts;
- GN. Nos
446 of 2013
227 of 2018 “Regulations” means the Public Procurement Regulations and the Local Government Authorities Tender Boards (Establishment and Proceedings) Regulations;
- “tenderer” means any natural or legal person or group of such persons participating or intending to participate in procurement proceeding with a view to submitting a tender in order to conclude a contract and includes a supplier, contractor, service provider or asset buyer; and
- “tender” has the meaning as ascribed to it under the Act.

PART II
GENERAL PRINCIPLES OF THE CODE

General
principles

4. A public officer is obliged to serve the public with integrity and impartiality and as such is required to observe the following principles:

- (a) serving the public interest: maintain and strengthen the public trust and confidence in public institutions, by demonstrating the highest standards of professional competence, efficiency and effectiveness, uphold the Constitution of the United Republic of Tanzania and the laws, and seek to advance the public good at all times;
- (b) transparency and accountability: maintain openness in procurement process to all stakeholders to create fairness and effective competition to achieve value for money as a core principle of procurement in accordance with laws and government policies. Public officers be accountable for the decisions made that justify official decisions and actions to a relevant authority;
- (c) integrity: make decisions and act without consideration of private interests. As public service is a public trust, the improper use of a public service position for private advantage is a serious breach of professional integrity;
- (d) legitimacy: power and authority must be exercised impartially, honestly and without fear or favor, for its proper public purpose as appropriate in the circumstances;
- (e) fairness: make official decisions and take action in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only merits of the matter, and respect the rights of affected citizens;
- (f) responsiveness: as a public officer serve the legitimate interests of the public in a timely manner, with appropriate care, respect and courtesy;

- (g) efficiency and effectiveness: obtain best value in expenditure of public funds efficiently; avoid waste and extravagance of resources in public programs and official activities;
- (h) competition: exercise and maximise competition in public procurement proceeding;
- (i) equality: strive to ensure highest standards of equality of opportunity to all tenderers; and
- (j) value for money: ensure maximum benefit from goods, works or services procured with the resources available which is worth the cost incurred on goods, works or services procured.

PART III OBLIGATIONS OF PUBLIC OFFICERS

Legal
obligation
Cap. 410

5.-(1) A public officer engaging in public procurement shall be guided by-

- (a) the Public Procurement Act;
- (b) Public Procurement Regulations;
- (c) Guidelines issued by the Authority;
- (d) Government circulars and directives;
- (e) decisions by Public Procurement Appeal Authority; and
- (f) best practices in public procurement.

(2) Public officers shall adhere to the fundamental principles and obligations enshrined in the Public Procurement Act, the Public Procurement Regulations and the Local Government Authorities Tender Boards (Establishment and Proceedings) Regulations.

Adherence to
expected
standards of
service,
behaviour
and probity

6. Without prejudice to the generality of regulation 5, a public servant shall in the performance of his duties, observe-

- (a) highest standards of service delivery by:
 - (i) acting conscientiously, honestly and loyally in serving the public;
 - (ii) always acting within the ambit of the Act and other relevant laws; and
 - (iii) performing official duties with diligence and productively;

- (b) highest standards of behavior at work by:
 - (i) responding to the public promptly and compassionately; and
 - (ii) treating members of the public with dignity and respect;
- (c) highest standards of probity by:
 - (i) acting responsibly, never seeking to use improper influence;
 - (ii) abiding to applicable guidelines in respect to offers of gifts or other benefits as stipulated in this Code;
 - (iii) avoiding conflict of interest and revealing any personal interest, if any, that may impinge or reasonably be deemed by others to impinge on official business dealings with the private sector; and
 - (iv) not using or attempting to use official positions to secure unwarranted privileges or exemptions for oneself or for others;
- (d) highest standards of ethical behavior by:
 - (i) not using the authority of office for personal gain; and
 - (ii) seeking to uphold and enhance the reputation of the Government by:
 - (aa) maintaining an impeccable standard of integrity in all business relationships both inside and outside the public service;
 - (bb) fostering the highest possible standards of competence; and
 - (cc) optimising the use of resources in order to provide the maximum benefit to the United Republic.

Adherence to
expected
standards of
integrity

7.-(1) A public officer shall, in the performance of official duties, conduct himself with the highest sense of integrity, and in so doing he shall-

- (a) maintain confidentiality and accuracy of information by-
 - (i) not releasing official information in the course of implementing official duties, except when required to do so by operation of law;
 - (ii) respecting the confidentiality of information received in the course of implementing official duties and never to use such information for personal gain;
 - (iii) providing information that are true, fair and not designed to mislead;
- (b) give honest and impartial advice without fear or favor;
- (c) conduct himself in a manner that will not raise suspicion among the public or cause breach of public trust; and
- (d) maintain transparency while uphold the prescribed standards of confidentiality.
- (2) In performing his duties, a public officer shall:
 - (a) avoid engaging in any business arrangement that is likely to prevent the effective operation of fair competition; and
 - (b) use competitive methods for procurement of goods, works, services and disposal of public assets by tender except as provided otherwise by the law.

Protection of
public assets
and records

8. A public officer shall, in performing his duties during procurement process:

- (a) safeguard public assets entrusted to him during procurement process;
- (b) ensure that no damage, loss or misappropriation occurs in the process of storage and disposal of asset by tender; and
- (c) keep and maintain records of procurement or disposal proceedings in a manner that will not prejudice the safe keeping of records.

Disengage-
ment from
corrupt
practices

9. A public officer shall disengage himself from corrupt practices including:

- (a) the solicitation, acceptance, offer or grant, directly or indirectly, by or to oneself, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for oneself or for another person or entity, in exchange for any act or omission in the performance of official duties;
- (b) any corrupt practices described as such under any written law;
- (c) the fraudulent use or concealment of asset derived from any of the acts referred to in paragraphs (a) and (b); and
- (d) participation in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in paragraphs (a) and (b).

Acceptance
of gift or
hospitality

10. A public officer shall refrain from accepting any gift or hospitality, the acceptance of which-

- (a) will make him or is likely to make him be impartial; or
- (b) will affect or is likely to affect his judgment or actions in the performance of his duties.

Avoidance of
conducts
constituting
conflict of
interest

11.-(1) A public officer shall ensure that he does not subject himself to actual, perceived or potential conflict of interest.

- (2) For the purpose of subregulation (1)-
 - (a) “actual conflict of interest” means an act or conduct of a public officer that promotes private interests in the course of implementing responsibilities to the public;
 - (b) “perceived conflict of interest” means an act or conduct that appears to be influenced by a public officer’s interests in implementation of responsibilities to the public; and
 - (c) “potential conflict of interest” means an act or

conduct of a public officer that is likely to influence in the future, private interests in the implementation of his responsibilities to the public.

(3) Save as provided in subregulation (2), a public officer shall refrain from-

- (a) handling or processing of any aspect of procurement cycle of, his private interest or interests of members of his family or any other person whom he has fiduciary relationship;
- (b) having a direct or indirect financial interest with a customer, vendor, supplier, contractor, or consultant, or prospective customer, vendor, supplier, contractor, or consultant, of the organisation or institution in which he is employed or its agent;
- (c) using his position to benefit relatives or their business;
- (d) enjoying an advantage over the general public in the purchase of property of the organisation or institution in which he is employed;
- (e) being engaged in outside activities or interest that impairs or affects his ability to discharge his duties properly;
- (f) making use information acquired by virtue of his position in the organisation in which he is employed to make a profit or gain an advantage;
- (g) engaging in a business transaction involving the organisation or institution in which he is employed or its agent for personal profit or gain;
- (h) accepting or giving money or gifts, hospitality, loans or other special treatment from any competitor, vendor, supplier, contractor, or consultant, as the case may be, of the organisation or institution in which he is employed; and
- (i) compels members of the Tender Board to award tender to a company, organisation or institution contrary to procedures laid down by the law

Disclosure of
conflict of
interest

12. A public officer shall disclose a conflict of interest by-

- (a) reporting to his immediate supervisor regarding any incidence of conflict of interest that comes to his knowledge in the performance of his official duties; and
- (b) making a declaration to the immediate supervisor, the personal interest he has if such interest is contrary to the implementation of official duties.

Avoidance of
conflict of
interest
during post-
employment
period

13. A person who served as a public officer for the purpose of this Code shall, at any time immediately after termination of his service, undertake the following measures-

- (a) upon leaving the public service, the person shall not involve in activities which could lead to the conflict of interest with his former public service employer;
- (b) in the case of a former procurement officer in executive positions or equivalent and two levels below, and others where specified, for a period of six months after leaving the office, shall not-
 - (i) accept appointment to a board of directors of, or employment entities with, which one had significant official dealings;
 - (ii) seek or engage in any private employment that he was associated with when he was public officer or when he had a supervisory role and for which he had direct management;
 - (iii) make representations on behalf of persons to any department or organisation with which one had significant official dealings during the period of six months immediately after the termination of public service; or
 - (iv) give advice to clients using information that is not available to the public concerning the programs or activities of

the ministries, departments, agencies, regional secretariats and local government authorities, where one was employed or with which one had a direct and substantial relationship.

Adherence to
professional
etiquette

14. In exercising public procurement functions, a public officer shall uphold professional and ethical standards provided by public service or relevant professional boards, and for that purpose, the public officers shall:

- (a) adhere to the laws, regulations and policies established by the Government relating to public procurement;
- (b) not participate as a tenderer in the public procurement of the procuring entity in which the public officer is employed;
- (c) provide the required authorisations and assistance to the tenderer; and
- (d) prepare and implement a Procurement Plan in accordance with the Act and Public Procurement Regulations.

Professionalism in
selection of
procurement
methods

15. In the exercise of public procurement functions, a public officer shall select a procurement method which is critical to the success of the procurement process, and which shall be made with a view to maximise competition to the greatest extent possible and for that purpose, the public officer shall:

- (a) use the competitive method of procurement except as provided otherwise by the Act;
- (b) avoid splitting of tender for the sake of deviating from competitive procurement methods; and
- (c) use pre-qualification and post-qualification procedures, where appropriate, to ensure competition among qualified bidders.

Qualification
of tenderer

16. In exercising public procurement functions in qualification process of tenderer, a public officer shall abide with the Act and regulations.

Preparation
of bidding
documents

17. In exercising public procurement functions, a public officer shall prepare bidding documents which summarise the technical and procedural requirements for the submission of bids by eligible and interested tenderer, and in so doing the public officer shall ensure he upholds the following professional approach-

- (a) preparation and issuance of clear detailed standard bidding documents with neutral specification;
- (b) making use of standard bidding documents, in which case a tailored bidding document may be used subject to approval by the Authority;
- (c) ensuring that the scope of work, specifications, statement of the requirement, terms of reference and evaluation criteria are clearly stated in the bidding document;
- (d) provision of sufficient time for bidders to respond to the invitation to bid as provided by the Act;
- (e) allowing tenderers to study alternatives where applicable and recommend solutions, technologies, and products from a range of possible tenderers in the best interest of the Institution; and
- (f) availing description of all terms and conditions concerning the qualification and eligibility of bidders.

Handling of
tender
document
upon receipt

18. A public officer shall, on receipt of tender document, keep and open all submitted tenders in accordance with the Act and regulations.

Evaluation of
bids

19. A public officer engaging in evaluation of bids shall conduct himself in a fair and careful manner to determine the lowest or highest evaluated responsive bid of the procurement process, and in so doing he shall-

- (a) apply procedures which are prescribed in the bidding documents;
- (b) abide with evaluation criteria and procedures of the bidding documents;

- (c) recommend award of the contract to the lowest or highest evaluated bidder as the case may be;
- (d) sign the personal covenant forms before commencing tender evaluation process.

Contract
award

20.-(1) A public officer shall maintain professional conduct by awarding contract-

- (a) to the approved lowest or highest evaluated bidder as the case may be; and
- (b) within the bid validity period.

(2) A public officer shall communicate award to the successful bidder within time prescribed by the Act and regulations.

(3) A public officer shall award tender after-

- (a) approval of the tender board or budget approving authority as the case may be; and
- (b) issuance of the notice of intention to award.

Conduct
during post-
award phase

21. All decisions taken by a public officer shall be based on the provisions of the governing law and within the premise of the contract, and in this regard supervision and management of contract performance by the public officer shall be supported by the following undertakings as evidence of proper conduct by the public officer-

- (a) holding post-award meetings with the successful bidder, where necessary, and devising a specific contract management plan;
- (b) arranging possession of, and access to, the site;
- (c) adherence to the mode of payment as prescribed in the contract;
- (d) monitoring progress, including determination of extent of performance accomplishment, periodically according to the work plan and inspections done and testing of quality;
- (e) management of financial aspects of the contract, including payments to tenderers, budgetary and cost accounting aspects;
- (f) carrying out of appropriate supervision or engaging qualified consultants so to do; and
- (g) maintaining files related to contract

management, preparing periodic reports for the procuring entity and the Authority on the implementation of the contract.

Good
conduct
throughout
procurement
cycle

22. Save as otherwise provided in this Code, a public officer shall, throughout the procurement cycle, exhibit good judgment and responsibility.

PART IV ETHICAL OBLIGATIONS FOR TENDERERS

Ethical
obligations

23. In participating in procurement process, tenderers are obliged to meet the ethical standards prescribed in this Code.

Ethical rules
and practice

24. A tenderer shall observe the following ethical rules and practice during every stage of the procurement cycle:

- (a) maintain integrity and independence in their business or professional judgment and conduct;
- (b) comply with:
 - (i) the laws of Tanzania and regulatory guidance;
 - (ii) accepted business practices in commercial markets; and
 - (iii) contractual obligations;
- (c) avoid associations with businesses and organisations which are in conflict with laws of Tanzania;
- (d) avoid creating variations in subsisting contract for purposes of financial advantage;
- (e) furnish authentic performance security before signing a contract as a case may be;
- (f) sign a contract after award has been accepted;
- (g) comply with bid security requirements or bid security declaration to that effect;
- (h) endeavor to provide goods, works, and services of the contractual quality and within the accepted time;

- (i) perform all contractual obligations timely and efficiently;
- (j) comply with the professional standards of their industry or of any professional body of which they are members; and
- (k) avoid coercive, obstructive, collusive and corrupt practices.

Confidentiality and accuracy of information

25. A tenderer shall:

- (a) respect the confidentiality of information received in the course of performing a contract and shall not use such information for personal gain;
- (b) in the course of procurement processes or the performance of contracts give true, fair information which is not designed to mislead;
- (c) observe communication requirements during the tendering processes as provided for in the Act, Regulations, tender documents and practices;
- (d) respond promptly and courteously to all lawful requests for information, clarifications and complaints in relation to the procurement or a contract; and
- (e) not misrepresent facts in order to influence a procurement process or the execution of a contract.

Respect for responsibilities to public officers

26.-(1) A tenderer shall avoid any action that would jeopardize current or former public officers' ability to respect their obligations under the Act, Regulations and this Code.

(2) Tenderers shall not:

- (a) engage a public officer in activities that might subject him to demands incompatible with their official duties or cast doubt on their ability to perform their duties objectively; and
- (b) hire directly, or through a third party, former public officer during his six months immediately after the termination of public service where this would constitute a violation of post-employment measures under this Code.

Declaration
and
Commitment
to Code

27. A tenderer shall, at any procurement process, fill in and duly sign a Declaration and Commitment to the Code of Ethics for Tenderers engaging in the public procurement as provided for in the Form No. II in the Schedule to this Code.

**PART V
PROHIBITIONS TO PUBLIC OFFICERS**

Prohibitions
to public
officers

28. A public officer engaging in public procurement shall be guided by the Public Procurement Act, Public Procurement Regulations, Guidelines issued by the Authority, Government circulars and directives, decisions by Public Procurement Appeal Authority and best practices in public procurement.

Cap. 298

(2) Without prejudice to the Public Service Act, Public Leadership Code of Ethics Act, Code of Ethics and Conduct for Public Service, a public officer engaging in public procurement is refrained from doing any act under this part.

Inducement

29.-(1) A public officer shall refrain from doing any of the following acts of inducement:

- (a) receiving inducement in any procurement action by a tenderer or associates which may have an effect of influencing a decision; or
- (b) any act or omission which may impair the procurement process.

(2) For the purpose of this Code, inducement includes:

- (a) entertainments with a view of being influenced;
- (b) gratuity in any form; or

Cap. 398

- (c) receiving and accepting gifts contrary to the Public Leadership Code of Ethics Act, and the Code of Ethics and Conduct for Public Service.

Fraudulent
practices

30.-(1) A public officer shall refrain from doing fraudulent practices in procurement process which among others includes:

- (a) alter any document submitted by a tenderer with a view of giving undue advantage to another tenderer;
- (b) change or remove any instrument purporting to represent any right to goods supplied by a tenderer, with knowledge that the goods represented by such instrument do not exist;
- (c) knowingly executes false certification under penalty of lying under oath or certificate is required by law or given in support of a claim, indemnification or other payments;
- (d) removes, alters or spoil any serial or other identification number, or any owner's identification mark, from any property which he does not own;
- (e) knowingly receives counterfeit materials, unacceptable reports on behalf of a procuring entity; and
- (f) accepting sub-standard works, goods and services purporting to be standard.

Confide-
ntiality

31. A public officer shall not:

- (a) disclose confidential information to unauthorised person;
- (b) use procurement information for private gain;
- (c) communicate any information under his custody or pass it to an unauthorised person without approval of the Accounting Officer or relevant authority; and
- (d) take personal advantage of information obtained in the course of official duties and responsibilities before it becomes generally available to the public.

Discrimina-
tion in
procurement
process

32. A public officer in the course of undertaking public procurement shall not do any of the following discriminatory acts:

- (a) refuse to accept submitted tenders;
- (b) restricting participation of tenderers without approval of the Tender Board; and

- (c) unfair treatment of tenderers in the procurement process, including-
 - (i) failure to communicate addenda to all tenderers;
 - (ii) failure to communicate information authorised by Tender Board and the Accounting Officer; and
 - (iii) altering the contents of the evaluation report with intent to favour a bidder.

Corrupt
practices

33.-(1) A public officer in the course of undertaking public procurement shall not engage in any form of corrupt practices.

(2) The following acts may be considered as corrupt practices:

- (a) offering, giving, receiving, or soliciting anything of value to influence the action in a procurement process either direct or indirect;
- (b) soliciting or accepting any advantages as an inducement for or a reward on account of the withdrawal of a tender or refraining from inviting a tender, or a contract;
- (c) authorising payments before completion of scheduled work or services under the contract;
- (d) willfully authorising over payments in a certificate contrary to the actual amount;
- (e) authorising variations without approval of the competent authority;
- (f) failure to evaluate tenders in accordance with the set criteria in the tender document;
- (g) amending evaluation criteria during evaluation process without approval of the tender board;
- (h) making a non-responsive bid responsive;
- (i) disqualifying qualified tenderers unfairly;
- (j) knowingly authorising contract to a tenderer with multiple bids in one tendering process;
- (k) knowingly awarding contract to a blacklisted tenderer;
- (l) failure to manage contract as specified in the contract document;

- (m) signing a procurement contract contrary to the Act;
- (n) knowingly accepting and receiveing counterfeit or substandard goods, works and services contrary to the Act; and
- (o) deliberate failure to take action on misconduct by a tenderer or provision of a contract terms.

Misconduct
in relation to
non-
compliance
with
procurement
practices

34. For the purposes of this Code the following acts may be considered as misconduct in relation to the non-compliance with the procurement practices:

- (a) failure to keep procurement records;
- (b) failure to advertise a tender in accordance with the Act;
- (c) failure to obtain approval where the Act provides so;
- (d) appointing unqualified members of tender board, evaluation, negotiation and inspection committees;
- (e) appointing unqualified Project Managers or Supervisors;
- (f) causing delays in evaluating bids and awarding of contracts;
- (g) failure to submit contracts documents for vetting as prescribed by the Act;
- (h) failure to vet a submitted contract as prescribed by the Act;
- (i) causing unnecessary delay of payments to tenderers;
- (j) misappropriation of retention money;
- (k) misleading the Tender Board or Accounting Officer in making decision;
- (l) assisting the tenderer to bid a tender;
- (m) influencing subordinates under his office by instructing, inducing them to favor or give preferential treatment to service provider;
- (n) unjustifiably procuring common use items and services from unregistered tenderer contrary to the Act;

- (o) tempering with the submitted tenders; and
- (p) rejecting bids on unjustified grounds.

Restriction
during
approval
process

35.-(1) When participating in the approval of any procurement activity with respect to a public procurement, a public officer shall not:

- (a) participate in any manner, as an officer, employee, agent or representative of a tenderer, in any negotiations or technical discussions leading to the award, modification or extension of the contract for such procurement; and
- (b) participate personally or substantially on behalf of a tenderer in the performance of such contract.

(2) The restrictions in subparagraph (1) shall remain in effect for the duration of the procurement proceeding and contract.

Collusion

36. A public officer shall not engage in, or be a party to agreements which may lead to non-competitive tendering process.

Obstructive
practices

37.-(1) A public officer shall not involve in acts which intend to materially obstruct access to the required information in exercising power relating to procurement duties.

(2) For purposes of this Code, the following shall be considered as obstructive practices -

- (a) failure to provide reports to the approving authorities;
- (b) making false statements or reports;
- (c) deliberately destroying reports;
- (d) altering or cancelling of evidence material to the investigation by the procuring entity or other relevant public bodies; and
- (e) concealing necessary information required by authorities provided under the Act.

Splitting of
tenders

38. Contrary to the Act, a public officer shall refrain from doing any act or omission that encourages splitting of

tenders with a view of avoiding competition in a procurement process.

Integration of
procurement
budget

39. In the course of performing his duties under the Act, a public officer shall avoid improper integration of procurement plan.

Anticipation
of contracts

40. A public officer shall not accept tenders, place orders or inception report until necessary approval is obtained from appropriate approving authority.

Tampering
with
submitted
tenders

41. A public officer shall not:
(a) open tender other than in a manner provided under the Act and Regulations;
(b) burn, tear or otherwise destroy any tender;
(c) hide a submitted tender; or
(d) erase or do any other act which falsifies or renders incomplete or misleading any tender.

Handling of
running
contracts

42.-(1) A public officer shall ensure that there are no running contracts within the procuring entity unless there are reasonable grounds which justify the necessity of carrying out such contracts; and

(2) A public officer who knowingly that the existing contract is nearly to expire, but do not inform the Tender Board or the Accounting Officer of such expiry with the purpose of extending the contract shall be liable of misconduct.

Conflict of
interest

43.(1) Public officers shall adhere to standards of conflict of interest set out in the Act, Regulations, Part III of this Code and all principles relating to conflict of interest.

Gifts and
hospitality

44. For the purpose of this Code, a public officer is prohibited from accepting gifts or hospitality from current or potential tenderers.

**PART VI
PROHIBITIONS TO TENDERERS**

- | | |
|---|---|
| Gifts and
hospitality by
tenderer | 45. A tenderer shall not offer gifts or hospitality, whether directly or indirectly, to a public officer that might be viewed as having an influence on a public procurement decision. |
| Influence | 46. Tenderers are prohibited from doing any act which may influence the action of a public officer in the procurement process or contract execution. |
| Misrepresent
ation | 47. Tenderers shall not misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the procuring entity. |
| Improper
inducement | 48. It is forbidden for a tenderer to do anything which is inconsistent with the Act, Regulations, Government circulars, guidelines and any other related laws. |
| Fraudulent
practices and
conduct | 49. Tenderers shall refrain from doing fraudulent practices in procurement process, including: <ul style="list-style-type: none">(a) abetting or colluding with other businesses and organisations with the intention of depriving a procuring entity of the benefits of free and open competition;(b) conniving to interfere with the participation of other tenderers;(c) entering into business arrangements that might prevent the effective operation of fair competition;(d) engaging in deceptive, fraudulent, collusive, coercive or financial practices, such as corruption, double billing, price fixing, underpricing or other improper financial practices;(e) interfering or influencing the procurement processes;(f) doing any act that would jeopardise current or |

former public officer's ability to respect his obligations under the Act, Regulations and this Code; or

- (g) engaging public officer in activities that might subject him to demands incompatible with his official duties or cast doubt on his ability to perform his duties objectively.

Confidentiality by tenderer

50.-(1) Unless otherwise provided by any other law a tenderer shall not disclose any information obtained in the course of participation or performance of a procurement contract to any unauthorised person; and

(2) the obligation under paragraph (1) above shall continue even after the business or contractual relationship with the procuring entity has come to an end.

PART VII COMPLIANCE AND MONITORING

Compliance and monitoring of Code

51. (1) A public officer and a tenderer shall adhere to standards and restrictions imposed by the Act, Regulations and this Code.

(2) A public officer and a tenderer shall cooperate for the purpose of ascertaining the compliance of the Code.

(3) An Accounting Officer or any other relevant authority shall exercise the enforcement of this Code, including taking remedial measures in case of breach of the Code in accordance with the Public Service Act and its Regulations and Public Leadership Code of Ethics Act.

(4) Upon receipt of a complaint against public officer or tenderer on his own motion, the Accounting Officer shall inquire into the allegation of the violation of the Code and take appropriate action including instituting proceedings as provided under the Code or the Public Service Act and its Regulations or the Public Leadership Code of Ethics Act.

(5) An Accounting Officer or any other relevant authority shall, for the purposes of reporting and receiving of complaints on alleged violations of the Code, use the complaints management system as provided under the

Public Service Act, its Regulations and Public Leadership Code of Ethics Act.

(6) A public officer or a tenderer shall not obstruct or hinder authorised persons from carrying out a duty or function or exercising a power relating to the implementation of the Code.

(7) A public officer shall not knowingly or in collusion with other persons lie to or mislead the Accounting Officer or any other relevant authority in carrying out a duty or function or exercising a power relating to the Code.

PART VIII REPORTING, HEARING AND SANCTIONS

Reporting
mechanism

52.-(1) Violation of this Code shall be reported to the Accounting Officer of the procuring entity or any other relevant disciplinary authority by filling in Form No. III provided in the Schedule to this Code.

(2) Where breach of this Code involves the Accounting Officer, the breach shall be reported to the respective disciplinary authority for appropriate actions.

GN. No.
446 of 2013

(3) Where breach of this Code involves a tenderer, the breach shall be reported to the Accounting Officer or, as the case may be, the Authority:

Provided that, where the report is made to the Accounting Officer, he shall within twenty-eight days of receiving the report, initiate debarment process to the Authority pursuant to the Public Procurement Regulation, 2013.

Hearing
mechanism

53.-(1) Upon receipt of a complaint or realisation of misconduct, the procuring entity shall-

- (a) register the complaint;
- (b) carry out investigations into the complaint; and
- (c) take appropriate action under the Public Service Act, Public Service Regulations, Public Leadership Code of Ethics Act and Standing Order.

Cap. 446 (2) Any person who lodges complaints under this Code shall enjoy protection provided under the Whistle Blower and Witness Protection Act.

Sanctions
against
breach of
Code 54.-(1) A public officer who contravenes the provisions of this Code shall be dealt with under the Act, the Public Service Act, the Public Leadership Code of Ethics Act, the Prevention and Combating of Corruption Act or any other relevant law.

(2) A tenderer who fails to comply with this Code shall be dealt with under the Act, the Prevention and Combating of Corruption Act or any other relevant law of the time being in force.

PART IX
MISCELLANEOUS PROVISIONS

Declaration
of
Commitment
to Code 55. A public officer directly involved in the procurement process specified under the Act and Regulations shall fill in and duly sign a Declaration and Commitment Form provided for in Form No. I of the Schedule to this Code.

Review of
Code 56. The Minister may from time to time review this Code.

*Code of Ethics and Conduct for Public Officers and Tenderers Engaging in
Public Procurement*

Gn. No. 804 (Contd.)

FIRST SCHEDULE

(Made under paragraph 55)

FORM NO. I

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS AND CONDUCT FOR
PUBLIC OFFICERS ENGAGING IN PUBLIC PROCUREMENT

I, declare that I have read and fully understood the contents of the Public Procurement Act, its Regulations and the Code of Ethics for public officers and my responsibilities under the Code.

I hereby commit to abide by the provisions of the Code of Conduct for Public Officers

Name:

Position:

Signature:

Office Address:

Phone No:

Email:

Witness

Name:

Signature:

Date:

Qualification:

(COMMISSIONER FOR OATHS)

*Code of Ethics and Conduct for Public Officers and Tenderers Engaging in
Public Procurement*

Gn. No. 804 (Contd.)

SECOND SCHEDULE

(Made under paragraph 27)

FORM NO. II

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS AND CONDUCT FOR
TENDERERS ENGAGING IN PUBLIC PROCUREMENT

(to be submitted as part of any quotation or tender or proposal)

I, declare that I have read and fully understood the contents of the Public Procurement Act, its Regulations and the Code of Ethics for tenderers and my responsibilities under the Code.

I hereby commit to abide by the provisions of the Code of Conduct for Tenderers.

Name:

Position:

Signature:

Office Address:

Phone No:

Email:

Name of the Firm/Company:

Date:

(Company Seal/ Rubber Stamp where applicable)

Witness

Name:

Signature:

Date:

Qualification:

(COMMISSIONER FOR OATHS)

*Code of Ethics and Conduct for Public Officers and Tenderers Engaging in
Public Procurement*

Gn. No. 804 (Contd.)

THIRD SCHEDULE

(Made under paragraph 52(1))

FORM NO. III

COMPLAINTS FORM

Part I: Details of Complainant (optional)

Name of complainant:

Contact details:

Postal address:

Phone No:

Email Address:

Part II: Institution where Complaint is lodged

Name of Procuring Entity where the Complaint has been Lodged:

Part III: Details of Violator of the Code or procurement laws

Name of the person or tenderer involved in alleged breach:

Name of Procuring Entity involved:

Part IV: Nature of allegations

State concisely the allegations date, time, place of the alleged breach, tenderer or public officer involved and malpractices or violations committed or omitted.

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*Code of Ethics and Conduct for Public Officers and Tenderers Engaging in
Public Procurement*

GN. No. 804 (Contd.)

I declare that the information given hereinabove is true to the best of my knowledge.

Name:

Signature:

Date:

Dodoma,
24th November, 2021

MWIGULU LAMECK NCHEMBA MADELU
*Minister for Finance and
Planning*