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THE PUBLIC PROCUREMENT (AMENDMENT) ACT, 2016

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
9th June, 2016

JOHN W. H. KIJAZI
Secretary to the Cabinet

A BILL

For

An Act to amend the Public Procurement Act with a view to enabling efficiency in regulating procurement processes, to ensure value for money in public procurement and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania

**PART I
PRELIMINARY PROVISIONS**

Construction
Cap. 410

1. This Act may be cited as the Public Procurement (Amendment) Act, 2016 and shall be read as one with the Public Procurement Act, hereinafter referred to as the “principal Act”.

**PART II
GENERAL AMENDMENTS**

Amendment of
section 3

2. Section 3 of the principal Act is amended-
(a) by inserting immediately after the definition of the

word “Board” the following new definition:

“budget approving authority” means an organ within the procuring entity responsible for approving its budget;

(b) by deleting the definition of the term “defence and national security organs” and substituting for it the following:

Cap .47 “defence and national security organs” has the meaning ascribed to it under the National Security Council Act;”

(c) in the definition of the word “procurement”, by deleting the words “preparation and award of contracts” and substituting for them the words “preparation, award and management of contracts”;

(d) by inserting in its appropriate alphabetical order, the following new definition:

“ “value for money” means the maximum benefit from goods, works or services procured with the resources available worth the cost incurred;”.

Addition of section 4A

3. The principal Act is amended by adding immediately after section 4, a new section 4A as follows:

“General principles and standards of procurement and disposal by tender”

4A.-(1) All public procurement and disposal by tender shall be conducted in accordance with the basic principles set out in this Act.

(2) Subject to this Act, all procurement and disposal shall be conducted in a manner that maximizes integrity, competition, accountability, economy, efficiency, transparency and achieves value for money.

(3) Procuring entities shall,

in the execution of their duties, undertake 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 regards to prescribed specifications and criteria.”

Amendment of section 6

- 4.** The principal Act is amended in section 6(2) by-
- (a) deleting the words “monitor, evaluate and” appearing in paragraph (b);
 - (b) inserting immediately after the word “procurement” appearing in paragraph (d) the word “policy”; and
 - (c) deleting the words “monitor and evaluate” appearing in paragraph (i) and substituting for them the words “advise on the performance”.

Amendment of section 9

- 5.** The principal Act is amended in section 9(1) by-
- (a) deleting paragraph (d) and substituting for it the following-
 - “(d) in collaboration with the Attorney General’s Office, prepare, update and issue authorized versions of the standardized tendering documents, procedural forms and any other documents to procuring entities;”
 - (b) adding immediately after paragraph (m), the following new paragraphs-
 - “(n) build capacity to stakeholders engaged in

- public procurement issues;
- (o) obtain price information for standardized common use items and services from relevant public bodies with a view to ensuring that the prices conform with the prevailing market prices.”
- (c) renaming paragraphs (n) and (o) as paragraphs (p) and (q) respectively.

Amendment of section 10

- 6.** The principal Act is amended in section 10 by adding immediately after subsection (2) the following new subsection-
- “(3) During the conduct of investigation, the Authority may order the suspension of proceedings or implementation of any matter under investigation”.

Amendment of section 18

- 7.** The principal Act is amended in section 18(1) by deleting the word “tenderers” appearing in paragraph (e).

Amendment of section 20

- 8.** The principal Act is amended in section 20(1) by deleting the words “entities, not of Government” appearing in the fourth line of paragraph (a) and substituting for them the words “non-Government entities”.

Amendment of section 23

- 9.** The principal Act is amended in section 23 by deleting subsection (2) and substituting for it the following-
- “(2) The Chief Executive Officer shall be appointed from amongst professionals with at least ten years experience in either engineering, architecture, law, procurement and supplies management, quantity surveying, business administration, economic development planning or in any other related field, and shall have academic qualifications and experience in such fields including proven record of procurement experience.”

Amendment of section 25

10. The principal Act is amended in section 25 by deleting subsection (5).

Amendment of section 31

11. Section 31 of the principal Act is amended by -
(a) repealing subsection (4); and
(b) renumbering subsections (5) and (6) as subsections (4) and (5) respectively.

Amendment of section 35

12. The principal Act is amended in section 35 by-
(a) deleting subsections (3), (4) and (5); and
(b) renumbering subsection (6) as subsection (3).

Amendment of section 36

13. The principal Act is amended in section 36(l) by-
(a) deleting paragraph (l) and substituting for it the following-

“(l) submitting to the Authority details of procurement contracts awarded and annual procurement plan for the next financial year.”

(b) adding immediately after paragraph (m), a new paragraph (n) as follows:

“(n) save for areas where there is no electronic infrastructure, ensure that all procurement information is promptly posted electronically; and”

(c) renaming paragraph (n) as paragraph (o).

Addition of section 46A

14. The principal Act is amended by adding immediately after section 46, a new section 46A as follows:

“Witnessing of contract signing

46A.-(1) Witnessing of signing of a contract shall be done in accordance with the law or any other relevant legal instrument which establishes the procuring entity concerned.

(2) Where the law or a legal

instrument does not provide for the manner of witnessing the signing of contracts, any person enumerated under the Notaries Public and Commissioner for Oaths Act shall be eligible to witness the signing of contracts.”

Cap.12

Amendment of Part V

15. The principal Act is amended by deleting the title to Part V and substitute for it the following:

“SPECIFIC PRINCIPLES OF PUBLIC PROCUREMENT”

Repeal of section 47

16. The principal Act is amended by repealing section 47.

Amendment of section 50

17. The principal Act is amended in section 50 by-
(a) deleting the words “closed or” appearing in subsection (1);
(b) deleting subsection (3) and substituting for it the following-

“(3) For the purpose of this section, “open framework agreement” means an agreement containing specified terms and conditions but does not contain agreed price.”

Addition of sections 55A, 55B, 55C and 55D

18. The principal Act is amended by adding immediately after section 55, the following new sections-

“Inclusion of local firms and experts in consultancy contracts

55A.-(1) Where consultancy assignments are carried out by foreign firms, procuring entities shall ensure that inclusion of local experts and local firms in the assignments is achieved through apportioning proper weight in the criteria for evaluation to encourage

partnering of foreign and local firms.

(2) A procuring entity shall, for the purpose of subsection (1), assign weights as follows:

(a) in the criteria for participation of local firms, assignment of maximum weight of fifteen percent shall be included in the request for proposal, and firms that demonstrate inclusion of local firms up to fifty percent shall be granted a full score; and

(b) in the criteria for participation of national experts, assignment of maximum weight of ten percent shall be included in the request for proposal, and firms that demonstrate that more than sixty percent of their key staff are Tanzanian shall be granted a full score.

Use of local experts in goods, works and non-consultancy services contract

55B. When applying the margin of preference in respect of works or non-consultancy services, a procuring entity shall comply with the guidelines issued by the Authority, and shall consider-

- (a) in addition to shareholding structure in the joint venture, the extent of inclusion of key local staff in the joint venture;
- (b) the extent of use of materials locally manufactured, produced or mined.

Preference to local goods

55C. In contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the Regulations.

Capacity building of local firms

55D.-(1) A procuring entity may, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.

(2) Where individual firms lack the capacity to execute the contracts, the firms may form joint ventures with a view to enhancing their capacity.

(3) The Minister may make Regulations prescribing procedures for capacity building of local firms under this section.”

Amendment of
section 59

19. The principal Act is amended in section 59 by deleting subsection (6).

Amendment of
section 60

- 20.** Section 60 of the principal Act is amended-
- (a) in subsection (3), by deleting the word “fourteen” appearing in the fourth line and substituting for it the word “seven”;
 - (b) by deleting subsection (4);
 - (c) by renumbering subsections (5) to (14) as subsections (4) to (13) respectively;
 - (d) in subsection (5) as renumbered by changing the reference to subsection (5) as reference to subsection (4);
 - (e) subsection (10) as renumbered, by deleting the words “when a written acceptance of a tender is communicated to the successful tenderer” and substituting for them the words “when the formal contract is signed by parties to the contract”

Amendment of
section 63

21. The principal Act is amended by deleting section 63 and substituting for it the following:

“e-procurement

63.-(1) Procuring entities shall ensure that procurement or disposal by tender is implemented and reported through electronic procedures or manually where electronic facility is not available.

(2) The procedures for conducting e-procurement shall be stipulated in the Regulations made under this Act.”

Amendment of
section 64

- 22.** Section 64 of the principal Act is amended-
- (a) in subsection (2), by-
 - (i) adding the words “including special groups”

- at the end of paragraph (c); and
- (ii) deleting the closing phrase and substituting for it the following:

“the procuring entity shall set aside a specific percentage of the procurement volume in accordance with the procedures set out in the Regulations”.

- (b) in sub-section (3) by adding the following new paragraph-

“(c) “special groups” includes women, youth, elderly and persons with disability”.

Amendment of section 65

23. Section 65 of the principal Act is amended-

- (a) in subsection (1), by deleting the word “urgent” and substituting for it the word “emergency”;
- (b) in subsection (2), by deleting the word “urgent” appearing in paragraph (a) and (b) and substituting for it the word “emergency”
- (c) by deleting subsections (3) and (4);
- (d) by renumbering subsections (5) to (8) as subsections (3) to (6) respectively; and
- (e) in subsection (5) as renumbered by changing the reference to subsection (8) as reference to subsection (6).

Addition of sections 65A and 65B

24. The principal Act is amended by adding immediately after section 65 the following new sections-

“Procurement directly from manufacturer, dealers or service providers

65A.-(1) A procuring entity or the Agency shall, for the purpose of obtaining value for money in terms of price, quality and delivery, procure specialized goods or services directly from a manufacturer, dealer, wholesaler or service provider.

(2) The Minister may make Regulations prescribing-

- (a) items to be procured in terms of subsection (1);
- (b) the manner and procedures of procurement directly from manufacturer, dealer, wholesaler or service provider.

Approved
procurement
Standards

65B.-(1) Procurement of goods for Government use shall be done in conformity with the established and approved standards.

(2) The approved standards referred under subsection (1) shall be-

- (a) issued by relevant Government organs specified in Regulations made under this Act; and
- (b) in the manner and procedure prescribed in the Regulations made under this Act.

(3)Notwithstanding subsection (1), the Minister may make Regulations for procurement of certain goods for Government without approved procurement standards.”

Amendment of
section 73

- 25.** The principal Act is amended in section 73(5) by-
- (a) deleting the words “Subject to the provisions of section 60(3), after” and substituting for them the word “After”; and
 - (b) deleting the words “e-examination, clarification and” appearing in the third line.

Amendment of

- 26.** The principal Act is amended in section 76(2) by-

section 76

- (a) deleting paragraphs (c) and (d);
- (b) renaming paragraph (e) as paragraph (c).

Amendment of
section 77

27. The principal Act is amended in section 77(1) by deleting the word “is” appearing in paragraph (b).

Amendment of
section 83

28. Section 83 the principal Act is amended:
(a) by deleting subsections (2), (3) and (4) and substituting for them the following-

“(2) Where a procuring entity is satisfied that any person or firm to which it is proposed that a tender be awarded, has been determined by a court of law to engage in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, it shall-

- (a) reject the proposal for award of such contract;
- (b) subject to subsection (4), declare any person or tenderer, including its directors, ineligible to be awarded a public financed contract; and
- (c) require such person or tenderer to reimburse the portion of disbursed funds or cancel the portion of undisbursed funds to a contract for goods, works or services.

(3) The procuring entity shall, within a period of seven days after the declaration of a tenderer, including its directors ineligible to be awarded a public financed contract in accordance with the provisions of this section, submit to the Authority the name of such tenderer, including its directors.

(4) Upon receipt of notification under subsection (3), the Authority shall make further declaration of the period of debarment against the

person declared in terms of sub section (3):

Provided that, the period of debarment shall not be less than ten years”.

Amendment of section 88

- 29.** The principal Act is amended in section 88 by-
- (a) deleting subsection (4); and
 - (b) renumbering subsections (5), (6) and (7) as subsections (4), (5) and (6) respectively.

Amendment of section 89

- 30.** Section 89(3) of the principal Act is amended-
- (a) by deleting the opening phrase and substituting for it the following-
 - “(3) The Executive Secretary shall be responsible for.”
 - (b) by deleting the word “control” appearing in paragraph (c) and substituting for it the word “management.”

Amendment of section 91

- 31.** The principal Act is amended in section 91 by deleting subsection (3).

Amendment of section 93

- 32.** Section 93 of the principal Act is amended-
- (a) in subsection (1), by deleting the words “Members of the Appeals Board” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;
 - (b) in subsection (2), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;
 - (c) in subsection (3), by deleting the words “Members of the Appeals Authority” and substituting for them the words “Permanent Secretary of the Ministry responsible for finance”;

Amendment of section 95

- 33.** The principal Act is amended in section 95 by

deleting subsection (3).

Amendment of
section 96

- 34.** Section 96 of the principal Act is amended-
- (a) in subsection (4) by deleting the words “twenty eighty days” and substituting for them the words “seven days”
 - (b) in subsection (6) by deleting the word “fourteen” and substituting for it the word “seven”

Amendment of
section 97

- 35.** Section 97 of the principal Act is amended-
- (a) in subsection (2), by deleting the closing phrase and substituting for it the following closing phrase-
 - “the tenderer may make a complaint to the Appeals Authority within seven days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision.”
 - (b) in subsection (3), by deleting the word “fourteen” appearing in the fifth line and substituting for it the word “seven”;
 - (c) in subsection (5), by adding immediately after paragraph (f) the following new paragraphs:
 - “(g) order payment of compensation to the procuring entity for any cost incurred by procuring entity in whose favor a decision has been made by the Appeals Authority;
 - (h) set aside, vary or confirm the decisions made by the Authority to blacklist; or
 - (i) any other order or relief as it may deem fit to grant.”
 - (d) by deleting subsection (8) and substituting for it the following-
 - “(8) The decision of the Appeals Authority shall be binding on the parties to the complaint or appeal and shall be enforceable in

the same manner as a decree or order of the court”.

Amendment of
section 99

- 36.** Section 99 of the principal Act is amended by-
- (a) deleting subsections (1) and (2);
 - (b) renumbering subsections (3) and (4) as subsections (1) and (2) respectively;
 - (c) in subsection (1) as renumbered, by deleting the words “, the Authority or the Appeals Authority” and substituting for them the words “made pursuant to Sections 96 and 97”.

Amendment of
section 101

- 37.** Section 101 of the principal Act is amended-
- (a) in subsection (2) by deleting paragraph (b) and substituting for it the following-
 - “(b) in the case of an application by a procuring entity or a tenderer who is a public institution challenging the decision of the Appeals Authority, the procuring entity or tenderer and the Appeals Authority shall state their positions to the Attorney General”.
 - (b) in subsection (3) by deleting the words “in accordance with Order XXXIV of the Civil Procedure Code” appearing at the end of that subsection.

Amendment of
section 105

- 38.** The principal Act is amended in section 105(2) by-
- (a) deleting the word “and” appearing in paragraph (w);
 - (b) adding immediately after paragraph (w) the following new paragraphs:
 - “(x) procurement procedures for commercial use by public bodies;
 - (y) procedures for emergency procurement;”
 - (c) renaming paragraph (x) as paragraph (z).

Amendment of the
Second Schedule

39. The principal Act is amended in the Second Schedule by-

(a) deleting the words “not less than once in a month, as the Chairman may determine.” appearing at the end of paragraph 5 and substituting for them the word “quarterly.”; and

(b) adding immediately after paragraph 5 the following proviso-

“Provided that, the board may convene an extra-ordinary meeting as the Chairman may determine.”

Amendment of the
Third Schedule

40. The principal Act is amended in the Third Schedule by-

(a) deleting paragraphs 3 and 8; and

(b) renumbering paragraphs 9 and 10 as paragraphs 8 and 9 respectively.

OBJECTS AND REASONS

This Bill proposes amendments to the Public Procurement Act (Cap. 410). The amendments intend, among other things, to review institutional arrangement and responsibilities within procuring entities in order to reduce costs and increase efficiency; to set legal requirement on the use of Government approved standards and to set legal requirement enhancing transparency and accountability in procurement system; to set legal requirement enhancing special groups including women, youth, elderly and persons with disabilities to participate in public procurement undertakings.

The proposed amendments intend to; increase efficiency in public procurement by minimizing procurement transaction costs and processing time, procuring goods and services reflecting prevailing market prices, enjoy benefits such as bulky procurement accruing from use of standardized requirements, minimize corruption loopholes and increase accountability in procurement and to

set a system that will empower the special groups to participate in public procurement undertakings.

The Bill is divided into Two Parts.

The First Part refers to the title of the intended Act.

The Second Part makes provisions for the amended of various sections of the intended Act.

Clause 2 proposes to amend section 3 of the Act by deleting and adding various new definitions.

Clause 3 proposes to introduce a new section 4A which sets out general public procurement principles in order to achieve value for money spent.

Clauses 4, 5, 6, 7, 8, 9 and 10 proposes amendment to sections 6(2), 9, 10, 18, 20, 23 and 25 in order to clarify the responsibilities of the institutions involved in public procurement process so as to increase efficiency and effectiveness in service delivery .

Clause 11 proposes to amend section 31 with a view to harmonize the public procurement process between central and local government.

Clause 12 proposes to amend section 35 in order to reduce the time taken for procurement processing by excluding the requirement for the accounting officer to seek prior approval of the tender Board before signing procurement contract.

Clause 13 proposes to amends section 36(1) to requires procuring entities to submit to the authority details of procurement contracts awarded, annual procurement plans for the next financial year, list of tenderers proposed to be declared ineligible and adds requirement for submission of electronic infrastructure so as to ensure transparency and efficient reporting.

Clause 14 proposes to introduce a new section 46A which provides for the requirement for witnessing the signing of contracts.

Clause 15 proposes to amend the title to Part V by renaming that title with a view to make proper arrangement of Parts in the Act.

Clause 16 proposes to repeal section 47. The contents of the repealed section have been designated to the appropriate section 4A in the Act.

Clause 17 proposes to amend section 50 with a view to reduce cost by departing from the requirement to procure through closed framework agreement which dictates their being agreed prices set forth by the Services Agency, instead amendment makes provisions that allow open framework agreement without the need of agreed price by the Service Agency.

Clause 18 proposes to add new sections 55A, 55B, 55C and 55D so as engage local firms in procurement that involve foreign firms, the use of domestic manufactured goods and related services in international competitive tendering and building capacity to local firms in procurement undertakings.

Clause 19 proposes to amend section 59 by deleting subsection (6) which makes requirements of approval of rejections by the Authority. The amendments aim at reducing time constraints in procurement process.

Clause 20 proposes to amend section 60 by reducing the number of days for lodging of complaint under subsection (3). The Bill further proposes to delete subsection (4) with a view to reduce time constraint occasioned through scrutiny of tenders by local government authorities.

Clause 21 proposes to amend section 63 by transferring the contents of that section to the proposed new section 4A, and in its place introduce provisions on e-procurement with a view to control corrupt practices and maximize efficiency, transparency, integrity and accountability.

Clause 22 proposes to amend section 64 so as to make it mandatory for procuring entities, when selecting procurement methods for the benefit of achieving certain social objectives, to consider special groups including women, youth, elderly and persons with disabilities.

Clause 23 proposes to amend section 65 so as to make better clarity of certain provisions. The Section is further amended by deleting subsections (3) and (4) with a view to reduce time constraint and enhance efficiency in emergency procurement process.

Clause 24 proposes to introduce a new section 65A to make provisions that affords procuring entities to procure goods directly from manufacturers and wholesalers or service provider so as to obtain value for money. The Bill further introduces a new section 65B to make provisions for approved procurement standards.

Clause 25 proposes to amend section 73(5) of the Act to make proper clarity of the provision.

Clause 26 proposes to amend section 76(2) by deleting paragraphs (c) and (d). The amendment aims at allowing procuring entities to negotiate prices during process of award of contract.

Clauses 28 proposes to amend subsections (2), (3) and (4) of section 83. The amendment enables the Authority, upon receipt of recommendations by the procuring entities, to make declaration for debarment period against tenderers and their directors who are determined to have engaged in corrupt, fraudulent and coercive practices in procurement process. The amendment aims at regulating fairness of actionable measures.

Clauses 29 to 31 proposes to amend sections 88, 89, 91 with a view to enhance good governance and avoidance of dual role within the institutional framework of the Authority, and to make better clarification of the provisions.

Clause 32 proposes to amend section 93(1) so as to provide the requirement to submit report to the Permanent Secretary of the Ministry responsible for Finance. The amendment is aimed at enhancing accountability.

Clause 33 proposes to amend section 95 by deleting subsection (3). The amendment aims at curing conflicting provisions within the section.

Clause 34 proposes to amend section 96(4) and (6) of the Act so as to reduce time to lodging complaints to accounting officer from 28 days to 7 days. The amendments further require the accounting officer to make decisions against complaints within 7 days.

Clause 35 proposes to amend section 97 with a view to shorten the time frame of review of appeals by Appeals Authority and add remedies to be awarded by the Appeals Authority.

Clause 36 proposes to amend section 99 so as to reduce time and cost of occasioned of complaints by unsuccessful tenderers.

Clause 37 proposes to amend section 101 so as to make better provisions of procedures for judicial review of complaints by parties who are government institutions or corporation.

Clause 38 proposes to amend Section 105 so as to mandate the Minister to make Regulations for procurement for commercial use by public entities and emergency procurement procedures

Clause 39 of the Bill proposes amendment the Second Schedules the view to amend paragraph 5 so as to reduce cost resulting from meetings of the tender board.

Clause 40 of the Bill proposes amendment of the Third Schedule by deleting paragraphs 3 and 8 with a view to align them with current organizational structure of the Authority.

MADHUMUNI NA SABABU

Muswada huu unapendekeza marekebisho katika Sheria ya Ununuzi wa Umma, Sura ya 410. Marekebisho haya yanalenga, pamoja na mambo mengine, kupitia muundo na majukumu ya vyombo vinavyohusika na michakato ya ununuzi ndani ya taasisi ili kupunguza gharama na kuongeza ufanisi, kuweka sharti la kisheria la kuzingatia viwango vilivyoidhinishwa na Serikali katika ununuzi wa mahitaji ya taasisi ili kunufaika na matumizi ya viwango na kuweka sharti la kisheria la kutumia mifumo ya kuongeza uwazi katika ununuzi ili kuongeza uadilifu na uwajibikaji.

Aidha, kuweka sharti la kisheria la kutoa upendeleo kwa makundi maalumu kama vile wanawake, vijana, wazee na watu wenye mahitaji maalumu kushiriki katika zabuni mbalimbali.

Kusudi la marekebisho hayo ni kuongeza ufanisi kwa kupunguza gharama na muda wa uendeshaji wa michakato ya ununuzi, Serikali kununua bidhaa na huduma kwa bei inayoendana na bei ya soko, Serikali kunufaika na ununuzi wa mahitaji ya aina chache kwa mfumo wa ununuzi wa pamoja, kupungua kwa mianya ya rushwa na kuongezeka kwa uwajibikaji katika michakato ya zabuni na kuweka mfumo utakaotoa upendeleo kwa makundi maalumu kushiriki katika michakato ya zabuni.

Muswada huu umegawanyika katika Sehemu Mbili.

Sehemu ya Kwanza inahusu jina la Sheria inayopendekezwa.

Sehemu ya Pili inaweka masharti yanayopendekeza marekebisho katika vifungu mbalimbali vya Sheria hiyo.

Ibara ya 2 ya Muswada inapendekeza kurekebisha kifungu cha 3 cha Sheria kwa kufuta na kuongeza tafsiri za maneno mbalimbali yaliyotumika ndani ya Sheria.

Ibara ya 3 ya Muswada inapendekeza kuongeza kifungu kipyacha 4A ili kuweka misingi ya jumla katika ununuzi na uuzaji wa mali ya umma kuendana na thamani halisi ya fedha.

Ibara ya 4, 5, 6, 7, 8, 9, na 10 ya Muswada zinapendekeza kufanya marekebisho ya vifungu vya 6(2), 9, 10, 18, 20, 23, na 25 vya Sheria ili kuondoa mwingiliano wa majukumu ya kiutendaji baina ya taasisi zinazosimamia ununuzi wa umma nchini ambazo ni Idara ya Sera ya Ununuzi wa Umma, Mamlaka ya Udhhibiti wa Ununuzi wa Umma na Mamlaka ya Rufaa ya Zabuni.

Ibara ya 11 inapendekeza kufanya marekebisho ya kifungu cha 31 ili kuhuisha taratibu za ununuzi wa umma kati ya Serikali Kuu na Serikali za Mitaa.

Ibara ya 12 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 35 cha Sheria ili kupunguza muda wa ununuzi kwa kuondoa sharti la hitaji la mkataba kurudi kwenye bodi ya zabuni kabla ya afisa masuuli kusaini.

Ibara ya 13 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 36(1) cha Sheria ili kuweka sharti la kuwasilisha kwa Mamlaka taarifa za mikataba ya zabuni na Mpango wa Ununuzi kwa ajili ya kufanyiwa uchambuzi. Aidha, kuweka sharti la kisheria la kutumia mifumo ya kieletroniki ili kuongeza uwazi.

Ibara ya 14 ya Muswada inapendekeza kuongeza kifungu kipyacha 46A ili kuongeza uwazi kwa kubainisha utaratibu utakaotumika na taasisi unuzi katika kushuhudia mikataba ya zabuni.

Ibara ya 15 ya Muswada inapendekeza kubadili jina la Sehemu ya Tano ili kuweka mpangilio sahihi wa masharti ya sheria.

Ibara ya 16 ya Muswada inapendekeza kufuta kifungu cha 47 cha sheria kwa kuwa misingi iliyokuwa chini ya ibara hiyo imebainishwa katika kifungu kipyacha 4A.

Ibara ya 17 ya Muswada inapendekeza marekebisho ya kifungu cha 50 cha sheria ili kupunguza gharama kwa kuacha utaratibu wa kupanga bei na badala

yake taasisi za manunuzi zitafanya utaratibu wa ununuzi kwa kuzingatia bei ya soko kwa wakati husika.

Ibara ya 18 ya Muswada inapendekeza kufanya marekebisho kwa kuongeza vifungu vipya vya 55A, 55B, 55C na 55D. lengo la marekebisho hayo ni kushirikisha makampuni ya wazawa katika zabuni za kimataifa, kukuza manunuzi ya bidhaa zinazozaliishwa nchini kwa kuzishindanisha na zabuni za kimataifa na kuzijengea uwezo kampuni hizo.

Ibara ya 19 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 59 cha sheria kwa kufuta kifungu kidogo cha (6) ili kupunguza muda wa zabuni.

Ibara ya 20 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 60 cha sheria kwa kupunguza muda wa kuwasilisha malalamiko chini ya kifungu kidogo cha (3). Muswada unapendekeza pia kufuta kifungu kidogo cha (4) kwa madhumuni ya kupunguza muda unaotokana na uchambuzi wa zabuni unaofanywa na mamlaka za serikali za mitaa.

Ibara ya 21 ya Muswada inapendekeza marekebisho ya kifungu cha 63 kwa kuhamisha maudhui ya kifungu hicho na kuyaweka kwenye kifungu kipya cha 4A, na hivyo maudhui ya kifungu cha 63 kwa sasa yatahusu ununuzi wa umma kwa njia ya mtandao (e-procurement) kwa madhumuni ya kudhibiti vitendo vya rushwa na kuongeza ufanisi, uwazi, uadilifu na uwajibikaji.

Ibara ya 22 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 64 cha sheria kwa kuweka sharti la lazima kwa taasisi za ununuzi wa umma zinapokuwa zinachagua mifumo ya manunuzi kwa lengo la kufanikisha malengo ya kijamii, kujumuisha makundi maalum ikiwa ni pamoja na wanawake, vijana, wazee na watu wenye ulemavu.

Ibara ya 23 ya Muswada inapendekeza kufanya marekebisho kwenye kifungu cha 65 ili kufafanua vizuri baadhi ya masharti. Kifungu hiki pia kinarekebishwa kwa kufuta kifungu kidogo cha (3) na (4) kwa madhumuni ya kupunguza muda, na kuongeza ufanisi kwenye mchakato wa manunuzi ya dharura.

Ibara ya 24 ya Muswada inapendekeza kuongeza kifungu kipya cha 65A ambacho kinazipa uwezo taasisi nunuzi kufanya ununuzi moja kwa moja kwa wazalishaji, wauzaji wa jumla au watoa huduma ili kupata thamani halisi ya fedha kulingana na bidhaa au huduma itolewayo. Muswada pia unapendekeza kifungu kipya cha 65B kinachoweka masharti kuhusu viwango vya ununuzi vilivyoidhinishwa.

Ibara ya 25 ya Muswada inapendekeza kurekebisha kifungu cha 73(5) ili kuleta maana iliyokusudiwa.

Ibara ya 26 ya Muswada inapendekeza kurekebisha kifungu cha 76(2) kwa kufuta aya ya (c) na (d). Marekebisho yana lengo la kuruhusu taasisi za ununuzi kufanya majadiliano ya bei wakati wa mchakato wa kuidhinisha mkataba.

Ibara ya 28 ya Muswada inapendekeza kurekebisha vifungu vidogo vya (2), (3) na (4) vya kifungu cha 83 cha sheria. Marekebisho haya yanaiwezesha Mamlaka, baada ya kupokea mapendekezo ya taasisi za ununuzi, kutoa tamko la muda wa kufungia wazabuni pamoja na wakurugenzi ambao wamethibitika kujihusisha na vitendo vya rushwa, udanganyifu na ushawishi wakati wa mchakato wa ununuzi wa umma. Marekebisho haya pia yana lengo la kuweka usawa wa hatua za adhabu.

Ibara ya 29 hadi ya 31 ya Muswada inapendekeza kufanya marekebisho ya vifungu vya 88, 89 na 91 kwa madhumuni ya kudumisha utawala bora na kuondoa mwingiliano wa majukumu katika Mamlaka, na pia kuboresha maudhui ya masharti ya vifungu hivyo.

Ibara ya 32 ya Muswada inapendekeza kufanya marekebisho katika kifungu cha 93(1) ili kuweka hitaji la kuwasilisha taarifa kwa Katibu Mkuu wa Wizara yenye dhamana ya masuala ya fedha. Marekebisho haya yana lengo la kuongeza uwajibikaji.

Ibara ya 33 ya Muswada inapendekeza kufanya marekebisho kwa kufuta kifungu cha 95 kwa kufuta kifungu kidogo cha (3). Marekebisho haya yana lengo la kuondoa ukinzani wa masharti mbalimbali ndani ya kifungu hicho.

Ibara ya 34 ya Muswada inapendekeza kufanya marekebisho kifungu cha 96(4) na (6) cha sheria ili kupunguza muda wa kupeleka malalamiko kwa Afisa Masuuli kutoka siku 28 mpaka siku 7. Aidha, kifungu hicho pia kinamtaka afisa masuuli kutoa maamuzi zidi ya malalamiko yaliyowasilishwa ndani ya siku 7.

Ibara ya 35 vya Muswada inapendekeza kufanya marekebisho katika kifungu cha 97 cha sheria ili kupunguza muda wa mapitio ya rufaa unaofanywa na Mamlaka ya Rufani na kuongeza nafuu zinazoweza kutolewa na Mamlaka ya Rufani.

Ibara ya 36 ya Muswada inapendekeza kurekebisha kifungu cha 99 ili kupunguza muda na gharama zinazotokana na malalamiko yanayoweza kuwasilishwa na wazabuni walioshindwa zabuni.

Ibara ya 37 ya Muswada inapendekeza kurekebisha kifungu cha 101 ili kuboresha taratibu za kuomba marejeo mahakama kuu unaofanywa na mashirika au taasisi za serikali.

Ibara ya 38 ya Muswada inapendekeza kufanya marekebisho ya kifungu cha 105 cha sheria ili kumpa mamlaka Waziri mwenye dhamana kuandaa kanuni kwa ajili ya utaratibu wa ununuzi kwa taasisi za umma zinazojiendesha kibiashara na ununuzi wa dharura.

Ibara ya 39 ya Muswada inapendekeza marekebisho ya Jedwali la Pili la Sheria kwa kurekebisha aya ya 5 kwa madhumuni ya kupunguza gharama zinazotokana na idadi kubwa ya vikao vya bodi za zabuni.

Ibara ya 40 ya Muswada inapendekeza marekebisho ya Jedwali la Tatu la Sheria kwa kufuta aya ya 3 na 8 kwa lengo la kuwianisha masharti ya aya hizo na muundo wa kitaasisi wa Mamlaka.

Dar es Salaam,
8 Juni, 2016

PHILIP I. MPANGO
Waziri wa Fedha na Mipango