

## PART XI – MISCELLANEOUS

Certain procurements and disposals by armed forces, police, etc.

**133.**(1) For the avoidance of doubt, defence and national security organs shall comply with this Act subject to sub-section (2) and (3).

(2) The defence and national security organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement and disposal methods respectively.

(3) The defence and national security organs shall agree annually with the Authority on the category of restricted items to be included in the restricted list and on restricted procurement or disposal methods to be applied to each category of items on the restricted list.

(4) The restricted list of items shall be subjected to classified audit by the Controller and Auditor-General or his appointee.

(5) The defence and national security organs to which this section applies are the following —

- (a) the Armed Forces;
- (b) the Kenya Police Force;
- (c) the National Security Intelligence Service;
- (d) the Kenya Prisons Service;
- (e) the Administration Police;
- (f) the Kenya Wildlife Service; and
- (g) such other institution as may be prescribed.

Consultation meetings.

**134.**(1) The Director-General shall convene meetings at least annually for the purpose of consulting with persons in the public and private sectors who have an interest in the proper functioning of the public procurement system.

(2) The Permanent Secretary of the ministry

responsible for finance, or a member of the staff of the ministry selected by the Permanent Secretary, shall chair each meeting convened under this section.

(3) The Director-General, or a member of the staff of the Authority selected by the Director-General, shall act as the secretary to each meeting convened under this section.

(4) The procedure for conducting a consultative meeting referred to in subsection (1) shall be as prescribed .

Offence -  
obstruction, etc.

**135.**(1) No person shall —

- (a) obstruct or hinder a person carrying out a duty or function under this Act or exercising a power under this Act;
- (b) knowingly lie to or mislead a person carrying out a duty or function under this Act or exercising a power under this Act;
- (c) delay without justifiable cause the opening or evaluation of bids or the awarding of contract beyond the prescribed period;
- (d) unduly influence or exert pressure on any member of a tender committee or on any employee or agent of a procuring entity to take a particular action which favours or tends to favour a particular bidder; or
- (e) open any sealed bid, including such bids as may be submitted through the electronic system and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the bid or documents.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Offence –  
contravention of  
orders.

**136.** A person who contravenes an order of the Review Board under Part VII or an order of the Director-General or the Review Board under Part VIII is guilty of

an offence.

General Penalty.

**137.**(1) A person convicted of a offence under this Act for which no penalty is provided shall be liable -

- (a) if the person is an individual, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both;
- (b) if the person is a body corporate, to a fine not exceeding ten million shillings.

(2) In addition to the penalty under sub section (1), the public officer involved shall suffer disqualification from public office while the private individual shall be debarred.

Protection from personal liability.

**138.** No person shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omissions done in good faith in the performance of his duties under this Act.

Ethics applicable.

**139.** All procurement and disposal shall be carried out in accordance with the codes of ethics that may from time to time be specified by the Authority.

Regulations.

**140.** The Minister shall make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations –

- (a) governing how decisions relating to procurement are to be made on behalf of public entities, including requiring the creation of specified committees and the assignment of responsibilities and functions within a public entity;
- (b) governing pre-qualification procedures;
- (c) providing for and governing the use of electronic communications and documents in relation to procurement;

- (d) governing the procedures to be followed in reviews by the Review Board, including the panels of the Review Board to conduct reviews;
- (e) governing how decisions relating to disposals of stores and equipment that are unserviceable, obsolete or surplus are to be made on behalf of public entities, including requiring the creation of specified committees and the assignment of responsibilities and functions within a public entity;
- (f) prescribing anything that this Act requires or allows to be prescribed.

Availability of Act, etc.

**141.** The Authority shall ensure that this Act, the regulations and any directions issued under this Act are accessible to the public.

Transitional provisions.

**142.** The provisions of the Third Schedule shall apply.

Amendment of Cap. 412.

**143.** The Exchequer and Audit Act is amended by deleting section 5A.

Other consequential amendments.

**144.** The Acts identified in the Fourth Schedule are amended in the manner set out in that Schedule.