

SUBSIDIARY LEGISLATION

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THE PUBLIC PROCUREMENT APPEALS RULES, 2014

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SCHEDULE

- review before the Appeals Authority;
- “Authority” means the Public Procurement Regulatory Authority;
- “complaint or dispute” means any decision, matter, act or omission arising out of procurement or disposal proceedings or blacklist by the Authority with respect to which an appeal is preferred;
- “Executive Secretary” means the chief executive officer of the Appeals Authority appointed pursuant to section 89 of the Act or any other person duly authorized to act in that capacity;
- “member” ” means a person or persons being members of the Appeals Authority appointed under section 88(2) of the Act;
- “respondent” means any person against whom an appeal has been lodged or an application for review has been filed;
- “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.

PART II
APPEALS

Who may
appeal

4. Any person being a tenderer who is dissatisfied with the decision, matter, act or omission of a procuring entity or the Authority may lodge an appeal to the Appeals Authority.

Determi-
nation of
appeals

- 5.- (1) Appeals may be determined by way of-
- (a) review of documents; or
 - (b) hearing of an appeal.
- (2) Notwithstanding subrule (1), the Appeals Authority shall, upon receipt of the written submissions of the parties, determine the way in which the appeal shall be determined.
- (3) The procedures relating to receipt of an appeal under rule 9 shall apply to determination of an appeal by way of hearing and review by documents, as the case may be.

- Matters from which an appeal may lie
6. Subject to sections 60 (3), 62, 95(2), 96 or 97 of the Act, an appeal shall lie from the following matters-
- (a) acceptance or disqualification of a tender;
 - (b) award or proposed award of contract;
 - (c) inclusion of unacceptable provisions in the tender documents;
 - (d) unacceptable tender process or practice;
 - (e) decision, act or omission of a procuring entity;
 - (f) blacklisting of a tenderer;
 - (g) rejection of all tenders; or
 - (h) any other matter which the Appeals Authority may deem appealable.

PART III

GENERAL PROCEDURE FOR SUBMITTING AN APPEAL

Application Of part III

7. This Part shall apply to appeals by way of hearing or appeals by way of document review.

Notice of intention to appeal

8. (1) A person who is dissatisfied with the matter or decision giving rise to a complaint or dispute may give notice of intention to appeal within seven days from the date he became aware of the circumstances giving rise to the complaint or dispute or when the tender should have become aware of those circumstances, whichever is earlier.

(2) A notice of intention to appeal shall be filed with the Executive Secretary of the Appeals Authority.

(3) The fees for filing a notice of intention to appeal shall be as set out in the Second Schedule to these Rules.

(4) The notice of intention to appeal may be made in three copies on Form PPAA No. 1 prescribed in the First Schedule to these Rules.

Lodging of an appeal

9.-(1) A person who is dissatisfied with the matter or decision giving rise to a complaint or dispute may lodge an appeal

with the Appeals Authority within fourteen days from the date when he became aware of the circumstances giving rise to the complaint or dispute or when the tenderer should have become aware of those circumstances, whichever is earlier.

(2) An appeal shall be in writing or in an electronic form and shall be filed with the Executive Secretary.

Content of
the appeal

10.-(1) The appeal under Rule 9 shall be in writing or in electronic form and shall be filled in accordance with PPAA Form No.2 as set out in the first Schedule to these Rules.

(2) The Statement of appeal shall contain the following information:-

- (a) name and address of the parties;
- (b) statement of facts giving rise to a complaint or a dispute; and
- (c) relief or remedy being sought.

(3) In addition to particulars referred to in sub rule (2), an appeal shall be accompanied by the following documents:-

- (a) a copy of the decision giving rise to the appeal, if any; and
- (b) any other material documents which the appellant may consider necessary for the proper determination of the appeal.

(4) Without prejudice to the preceding provisions of this rule, the Appeals Authority may order a party to the proceedings to supply any document that may be necessary for the settlement of an appeal that has been preferred before it.

Extension
of time

11. Subject to section 97(2) and (3) of the Act, an application for an extension of time to lodge an appeal out of time shall be filed with the Appeals Authority within seven days from the date when the Appellant ought to have filed his appeal using PPAA Form No.7 as set out in the First Schedule to these Rules.

Receipt of
appeal and
notification
of parties

12.-(1) On receipt of the appeal, the Executive Secretary shall endorse the date of receipt and send a copy of the appeal to the respondent together with a notification letter requiring the respondent to submit his reply within five working days from the date of receiving the notification.

(2) Upon receipt of a notification letter and a statement of appeal, the respondent shall within five working days from the date of receipt, file a written submission to the Appeals Authority addressing all the issues raised in the statement of appeal and submit all documents or information requested by the Appeals Authority.

(3) On receipt of the reply from the respondent, the Executive Secretary shall notify all other tenderers who participated in the tender proceedings or any public body, which may be affected by the appeal proceedings of the existence of the appeal.

(4) The notice under sub-rule (3) shall be accompanied by the statement of appeal and the reply from the respondent and the tenderers shall have the right to join as parties to the proceedings or attend the hearing as observers.

(5) Where the procedure for determination of an appeal is by way of hearing, the Executive Secretary shall fix the hearing date which shall be communicated to all parties.

(6) Where a tenderer opts to join as a party to the proceedings, he shall file a statement indicating his reasons for joining, if any, within three days from the date of receipt of the notification.

Amend-
ment of
statement
of appeal

13. (1) The Appeals Authority may, on its own motion or on application by a party to the proceedings order that the statement of appeal be amended in such manner as may be suitable and necessary for the determination of the appeal.

- (2) An order for amendment shall be made-
 - (a) in the case of a motion by the Appeals Authority, within reasonable time before the hearing date; or
 - (b) in the case of a motion by the appellant, within five days from the date of submission of the statement of appeal.

(3) Where an order for amendment has been issued, the amended statement of appeal shall be made in writing and filed with the Appeals Authority within three days from the date of the order for the amendment.

(4) After the amended statement of appeal has been lodged with the Appeals Authority and a copy of the same served with the respondent, the respondent shall have a right to reply within three days from the date of receipt of the amended statement of appeal.

(5) At the hearing of the appeal or review of the documents, the appellant shall not raise any new issues which were not in the original written submissions except where such new issues emanate from the respondent's reply.

Payment
of fees

14. (1) The appellant shall, at the time of filling his appeal, pay fees as set out in the Second Schedule to these Rules.

(2) The Appeals Authority shall not entertain any appeal unless the appropriate fees have been paid.

(3) Where a party joins in an appeal he shall also be required to pay fees as set out in the Second Schedule to these Rules.

(4) The Minister may, by notice published in the *Gazette*, amend the Second Schedule to these Rules.

Quorum

15. (1) At least three members of the Appeals Authority shall form a quorum at the determination of an appeal.

(2) The members forming a panel at each sitting shall nominate one of their number to be the Chairman.

(3) At any sitting to determine an appeal, the decision of the majority of the members present shall be a recorded as the decision

of the Appeals Authority, save that, a member who dissents from that decision shall be entitled to a dissenting decision and the reasons thereof recorded in the minutes of the proceedings of the appeal.

(4) Where the number of members of a panel is even and the members supporting an opinion and those dissenting thereof are equal, the chairman shall have a casting vote.

Withdrawal
of appeal

16.-(1) The appellant may, by way of notice, withdraw the appeal at any time before the decision is made.

(2) Notwithstanding sub-rule (1), a notice of withdrawal of the appeal shall be lodged with the Appeals Authority at any time but not later than three days before the hearing date.

(3) Withdrawal of the appeal shall be made by notice in writing and submitted to the Executive Secretary.

(4) If the withdrawal is made at the time when the parties are in attendance, it shall be sufficient for the appellant to make an oral statement to that effect and the chairman of the panel shall record the statement accordingly.

(5) Where the appeal has been withdrawn, the Secretary shall immediately send to the respondent and to other parties a copy of the notice of withdrawal or a statement as recorded by the chairman, pursuant to sub-rule (4), and may attach any document relating to the subject matter of the appeal.

(6) The appellant shall be liable to pay penalty as set out in the Second Schedule to these Rules for contravening sub-rule (2).

Rejection
of
appeal

17.-(1) The Appeals Authority may, in its discretion, reject an appeal where it is satisfied that any condition regarding institution of appeal has not been complied with.

(2) Where an appeal is rejected, the Appeals Authority shall give reasons for the rejection of such an appeal.

PART IV
REVIEW BY WAY OF HEARING

Notice to parties to attend the hearing 18. (1) After submission of all the required statements by the parties, the Executive Secretary shall issue a seven days notice of hearing to the parties.

(2) A notice of hearing shall be signed by the Executive Secretary and served upon the parties using Form PPAA No. 4 as set out in the First Schedule to these Rules.

(3) A person served with a notice of hearing shall endorse each copy of the notice and return a copy to the Executive Secretary; and

(4) Endorsement of notice by the person served shall be sufficient proof of service.

Where only appellant appears 19. Where the appellant appears and the respondent does not appear at the scheduled time on the date fixed for hearing, and it is proved that the notice was duly served but the respondent fails to appear for no justifiable cause, the appellant may apply to proceed *ex parte*.

Setting aside *ex parte* decision 20.-(1) Where an *ex parte* decision is made against a respondent, he may apply to the Appeals Authority for an order to set it aside if it is satisfied that sufficient cause exists that prevented the respondent to appear and shall fix another date for hearing.

(2) The application to set aside expert decision shall be made by filing Form No. 6.

(3) An application for setting aside an *ex parte* decision shall be made within five days from the date on which the decision was communicated to the respondent using **PPAA** Form No.8 as set out in the First schedule to these Rules.

Where only respondent appears 21.-(1) Where the respondent appears and the appellant does not appear on the scheduled time on the date fixed for hearing and if it is proved that the notice was duly served but the Appellant failed to appear on time for no justifiable cause, the Appeals Authority shall make an order dismissing the appeal.

(2) Where the appeal has been dismissed pursuant to sub-rule (1), the appellant is barred from re-instituting the appeal through an application to file an appeal out of time.

Where
neither
party
appears

22. Where neither party appears at the hearing of an appeal for no justifiable cause, the Appeals Authority may make an order dismissing the appeal or proceed to review the matter by way of review of documents and inform the parties accordingly.

Witnesses
and
production
of evidence

23.- (1) The Appeals Authority may summon any person to attend at the hearing and give expert opinion evidence including production of any document if it believes that the evidence is necessary for judicious disposition of a complaint or dispute preferred before it.

(2) The summons shall be issued and signed by the Executive Secretary using Form PPAA No. 5 as set out in the First Schedule to these Rules.

(3) A person summoned as a witness by the Appeals Authority shall be entitled to an allowance to defray traveling expenses at the rate to be determined by the Appeals Authority.

(4) Where the appeal is determined by way of hearing, a party may be accompanied by any person or witness whom he may deem necessary in proving their case; Provided that such person or witness is conversant with the subject matter of the appeal and the costs of inviting him shall be borne by the party.

PART V

PROCEDURE AT THE HEARING

Procedure

24.-(1) Subject to the Act and these Rules, the Appeals Authority shall determine the procedures for the conduct of proceedings at the hearing.

(2) The proceedings before the Appeals Authority shall be conducted with as little formality and technicality as possible and, in relation thereto, the Appeals Authority shall not be bound by strict rules of evidence or court procedures.

Language 25. The Language of the Authority shall be english or kiswahili, but all rulings, orders or decisions of the Appeals Authority shall be in English.

Record of proceedings 26. Proceedings at the hearing by the Appeals Authority shall be recorded in writing by the members or by any other authorized person.

Decision 27.-(1) The Appeals Authority shall fix the date of delivery of the decision not later than seven days following the date of completing the hearing.

(2) The decision of the Appeals Authority shall be made in writing and signed by all members forming the panel.

(3) The decision shall state the reasons for the decision and the remedies granted, if any.

(4) Upon delivery of the decision the Executive Secretary shall, within seven days from the date of delivery of the decision avail copies of the decision to all parties.

PART VI

APPEAL BY WAY OF REVIEW OF DOCUMENTS

Review by documents 28. Subject to rule 5(1) (a), where an appeal is to be determined by way of documents review, the appellant shall comply with rule 10.

Statement of appeal 29. The statement of appeal shall be submitted in accordance with Part III of these Rules.

Procedure for appeal 30. -(1) Without prejudice to Part III, the appellant shall lodge his statement of appeal with the Appeals Authority and the Appeals Authority shall serve a copy of the same to the respondent.

(2) The respondent shall file his reply, if any, within 5 days from the date of receipt of the statement of appeal.

(3) The appellant shall have a right to reply to the

response of the respondent. Such response including any request to be availed additional documents shall be done within 3 days from the date of receipt of the response.

(4) The Appeals Authority shall notify the parties that the Appeal will be determined by review of documents 5days before determination date using PPAA Form No. 5 as set out in the first schedule to these Rules.

Decision

31.-(1) The Appeals authority shall review the submissions filed by the parties, deliberate on the evidence produced and give its decision within forty five days from the date of instituting the appeal.

(2) The decision of the Appeals Authority shall be made in writing and signed by all members of the panel.

(3) The decision shall state the reasons for the decision and the remedies granted, if any.

(4) The Executive Secretary shall, within seven days from the date of delivering the decision of the Appeals Authority, avail copies of the decision to all parties.

Consolidation of appeals.

33. The Appeals Authority may for sufficient reason order any two or more appeals to be consolidated on such terms as it thinks just, or may order them to be heard or reviewed at the same time or one immediately after the other, or may order them to be stayed until after determination of any one of them.

SCHEDULES

FIRST SCHEDULE

(Made under Rules 8,9,11, 12,18,20,23 and 30)

PPAA FORM NO 1.

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of the intended

APPEAL NO..... OF

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

NOTICE OF INTENTION TO APPEAL

(Rule 8 (4))

TAKE NOTICE that (the Appellant's name) being aggrieved by the decision of

Public Procurement Appeals Rules

GN. No. 411 (contd..)

..... (the Respondent's name) made on
the.....day of 20..... regarding Tender
No..... intends to appeal against
(award/disqualification
etc).....

Name of the Appellant:

.....
Address:
.....
.....

Dated thisday ofof 20

Name:

Signedby (the Appellant/Legally Authorized representative)

FOR OFFICIAL USE ONLY (PPAA):

Received by PPAA on theday of.....20at (am/pm)

Name:.....Designation.....

Signature..... Official stamp.....

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of appeal

APPEAL NO.....OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

STATEMENT OF APPEAL

(Under Rule 9, 10)

1. PARTICULARS OF THE APPELLANT

- a) Name:.....
- b) Nature of business
- c) Postal address
- d) City, Municipality, Town
- e) Telephone No.....
- f) Fax No. E-mail address
- g) Tender No.for
.....(type of tender).

2. STATEMENT OF FACTS SUPPORTING THE APPEAL:

(If space provided is not adequate, attach as many additional pages as needed for the statements):

(a) Date of the tender advertisement/invitation.....

(b) Date of the tender opening (if applicable)

3. Grounds/ reasons for the appeal:

.....
.....
.....
.....

4 LIST OF DOCUMENTS OR ITEMS TO BE PRODUCED BEFORE THE APPEALS AUTHORITY

(Give brief description of each document or Items attached to the Statement of Appeal and number them accordingly:

Appendix No.	Subject	Date	Source/Author

5. REMEDIES/RELIEFS/CLAIMS: (number them consecutively)

- i.
- ii.
- iii.
- iv.
- v.
- vi.

6. PARTICULARS OF WITNESS

Name	Designation	Address

Dated this.....day of 20

Name.....

Designation.....

Signedby (the Appellant/Legally Authorized representative).

FOR OFFICIAL USE ONLY:

(Received by PPAA on theday of.....20.....at(am/pm)

Name:.....Designation.....

Signature.....Official stamp.....

Public Procurement Appeals Rules

GN. No. 411 (contd..)

7. Statement of Appeal served upon:

Name:

Address:

Date:

Signature:.....

Designation:.....

Official stamp

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of

APPEAL NO.....OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

STATEMENT OF REPLY

(Under Rule 12(2))

1. PARTICULARS OF THE RESPONDENT

(a) Name:.....

(b) Nature of business

(c) Postal address

(d) City, Municipality, Town

Telephone No.

Fax No. E-mail address

- (e) Tender No. for
.....(type of tender)
- (f) Procurement method used.....

2. REPLIES TO THE APPELLANT’S STATEMENT OF APPEAL:

- (a) Date of the tender advertisement/invitation.....
- (b) Date of the tender opening (if applicable)
- (c) Evaluation was carried from (dd/mm/yy) to
(dd/mm/yy).....
- (d) Date of award by the Tender Board
- (e) Date of notification of award
- (f) Date of contract signing.....

3. RESPONSE TO THE GROUNDS OF APPEAL:

(If space provided is not adequate, attach as many additional pages as needed for the statements. Ensure you address each of the grounds of appeal in the same order as presented by the Appellant)

.....
.....
.....

4. LIST OF DOCUMENTS OR ITEMS TO BE PRODUCED BEFORE THE APPEALS AUTHORITY

(Give brief description of each document or Items attached to the Statement of Reply and number them accordingly:

Public Procurement Appeals Rules

GN. No. 411 (contd..)

Appendix No.	Subject	Date	Source/Author

5. REPLIES TO THE REMEDIES CLAIMED

- i.
- ii.
- iii.
- iv.

6. PARTICULARS OF WITNESSES

Name	Designation	Address

Public Procurement Appeals Rules

GN. No. 411 (contd..)

Dated thisday of20.....

Name.....

Designation.....

Signedby (the Respondent/Legally Authorized representative).

FOR OFFICIAL USE ONLY:

Received by PPAA on theday of20.....at..... (am/pm)

Name:.....Designation.....

Signature..... Official stamp.....

7. SERVICE OF COPY OF THE STATEMENT OF REPLY

Name:.....

Address:

Date:

Signature:.....

Designation:.....

Official stamp.....

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of

APPEAL NO..... OF..

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

NOTICE OF PARTIES TO APPEAR

(Under Rule 18(2))

TO:

.....
.....
.....

TAKE NOTICE that the above appeal will be heard by the Appeals Authority (PPAA) on the.....day of20.....at (time)

..... at (venue and physical address).....
.....

You are required to appear on scheduled time before the PPAA and bring witness with you, if any.

If you do not appear in person without notice or by any person legally authorized by you to act on your behalf, the appeal may be dismissed or heard and decided in your absence.

Public Procurement Appeals Rules

GN. No. 411 (contd..)

Signed and Issued by the Appeals Authority thisday
of.....20.....

Name: Designation

Signature.....

Official Stamp.....

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE.

Name

Address

Signature

Designation.....

Date.....

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of

APPEAL NO..... OF.....

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

NOTICE OF DETERMINATION OF APPEAL BY REVIEW OF DOCUMENTS
(Under Rule 30(5))

TO:

.....
.....
.....

TAKE NOTICE that the Appeals Authority (PPAA) will deliberate on the above named appeal by way of review of documents on the.....day of20.....at (time) at (venue and physical address).....

Signed and Issued by the Appeals Authority thisday of.....20.....

Name: Designation
.....

Signature.....

Official Stamp.....

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE.

Name

Address

Signature

Designation.....

Date.....

PPAA FORM NO.6

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT.....

APPEAL NO..... OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

NOTICE OF EXPERT TO APPEAR

(Under Rule 23(2))

To:

.....
.....
.....
.....

Whereas your attendance is required as an expert witness on behalf of the Appeals Authority during the hearing of the above appeal. You are by this notice required to appear before the Appeals Authority on theday of20atO'clock at (venue and physical address) You are required to bring with you or send the following books, documents or items to the Appeals Authority.

1.
2.
3. or any other relevant material for your evidence

Signed and Issued by the Appeals Authority thisday of
.....20.....

Name: Designation

Signature.....

Official Stamp.....

ACKNOWLEDGEMENT OF SERVICE OF NOTICE BY THE WITNESS

Full Name.....

Address.....

Signature

Designation.....

Date.....

PPAA FORM NO.7

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT.....

APPEAL NO..... OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

APPLICATION FOR EXTENSION OF TIME

(Under Rule 11)

1. PARTICULARS OF THE APPLICANT.

- a) Name.....
- b) Nature of business.....
- c) Postal address.....
- d) City, Municipality, Town.....
- e) Telephone No.....
- f) Fax No.....E-mail address.....

To:

.....
.....
.....
.....

2. STATEMENT OF FACTS

The above named Applicant in the tender No.....for
.....advertised by.....(name of the procuring
entity) on.....20.....and its result being communicated to the
successful tenderer /Applicant on.....20.....apply to this Authority
for an extension of time to file an appeal out of time on the following
ground(s).....
.....
.....
.....

The Applicant wishes to attach the following documents to support their
application (attach if any)

- i.
- ii.
- iii.

Dated atthis.....of.....year.....

Name.....designation.....

Signature..... (the Respondent/Legally Authorized representative)

3. FOR OFFICIAL USE ONLY (PPAA):

Signed and Issued by the Appeals Authority thisday of
.....20.....

Name: Designation

Signature.....

Official Stamp.....

4. COPY OF THE APPLICATION TO BE SERVED UPON:

Name:

Address:

Date:

Signature:

Designation:.....

Official stamp.....

PPAA FORM NO.8

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT.....

APPEAL NO..... OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

APPLICATION TO SET ASIDE EXPARTE DECISION

(Under Rule 20(2))

1. PARTICULARS OF THE APPLICANT.

- g) Name.....
- h) Nature of business.....
- i) Postal address.....
- j) City, Municipality, Town.....Telephone No.....
Fax No.....E-mail address.....

To:

.....
.....
.....

2. STATEMENT OF FACTS

The above named Applicant being the Respondent in Appeal case No.....betweenand.....apply to this Authority to set aside its exparte decision delivered on.....day of20.....on the following grounds.....

The Applicant wishes to attaches to attach the following documents to support their application (attach if any)

- i.....
- ii.....
- iii.....

Dated atthis.....of.....year.....
Name.....designation.....
Signature..... (the Respondent/Legally Authorized representative)

3. FOR OFFICIAL USE ONLY (PPAA):

Signed and Issued by the Appeals Authority thisday of20.....

Name: Designation

Signature.....

Official Stamp.....

4. Copy of the Application to be served upon:

Name:

Address:

Date:

Public Procurement Appeals Rules

GN. No. 411 (contd..)

Signature:

Designation:.....

Official stamp.....

SECOND SCHEDULE

(Made under Rules 6, and 12)

FEES PAYABLE

	Subject matter	Amount in Shs.	
1	On submitting notice of intention to appeal	50,000	00
2	On submitting statement of appeal	150,000	00
3	On opting to join as co-appellant to the proceedings	150,000	00
4	On submitting application to set aside ex parte decision	500,000	00
5	For withdrawal of appeal	1,000,000	00

Dar es Salaam,
16th September, 2014

SAADA MKUYA SALUM
Minister for Finance