

(Legislative Supplement No. 61)

LEGAL NOTICE NO. 161

THE EXCHEQUER AND AUDIT ACT

(Cap. 412)

IN EXERCISE of the powers conferred by section 5A of the Exchequer and Audit Act, the Minister for Finance, makes the following Regulations:—

THE EXCHEQUER AND AUDIT (PUBLIC PROCUREMENT)
(AMENDMENT) REGULATIONS, 2002

1. These Regulations may be cited as the Exchequer and Audit (Public Procurement) (Amendment) Regulations, 2002.

2. Regulation 22 of the Exchequer and Audit (Public Procurement) Regulations, 2001, in these Regulations referred to as “the principal Regulations”, is amended by deleting paragraph (2) and substituting therefor the following—

L.N. 51/2001.

(2) The time allowed for the submission of tenders shall be at least 28 days.

3. The principal Regulations are amended by inserting the following new regulation after regulation 33—

Amendment to
contract.

33A. No amendment to a contract described in regulation 33 (2) is effective unless the amendment has been approved in writing by the tender committee of the procuring entity.

4. Regulation 34 of the principal Regulations is amended by deleting paragraph (e) and substituting therefor the following—

(e) the Public Procurement Directorate may allow a shorter time period for the submission of tenders than would otherwise be required under regulation 22 (2);

5. Regulation 38 of the principal Regulations is amended by deleting paragraph (2) (c) and substituting therefor the following—

(c) the time allowed for the submission of tenders shall be at least 42 days instead of the time period required under regulation 22 (2);

6. Regulation 46 of the principal Regulations is amended by deleting the words “A member of a procuring entity, the Public Procurement Directorate or the Appeals Board” in paragraph (1) and substituting therefor the words “A member of a procuring entity, a person who acts as an agent for a procuring entity, or a member of the Public Procurement Directorate or the Appeals Board”.

7. Part 1.1 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted “Chairman” and “Alternate Chairman” and substituting therefor the following—

Chairman. Person appointed in writing by the Accounting Officer. A notice of the appointment shall be published in the Gazette.

Deputy
Chairman. Chief Finance Officer or, if there is no such officer in the Ministry or the self accounting unit, the head of the finance unit.

(b) by deleting the item denoted “Chairman’s veto” and substituting therefor the following—

Accounting
Officer’s veto. The Accounting Officer may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted “procurement of item below given threshold” and substituting therefor the following—

Procurements
below
thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee’s shall be carried out by the persons or bodies specified by the Accounting Officer.

8. Part 1.2 of First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted “Chairman” and “Alternate Chairman” and substituting therefor the following—

Chairman. A head of a department appointed in writing by the District Commissioner. A notice of the appointment shall be published in the Gazette.

Deputy
chairman. District Officer I.

(b) by deleting the item denoted “Chairman’s veto” and substituting therefor the following—

District
Commissioner’s
veto. The District Commissioner may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted “procurement of items below given threshold” and substituting therefor the following—

Procurements
below
thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee’s shall be carried

out by the persons or bodies specified by the respective holders of the authority to incur expenditures.

9. Part 1.3 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted "Chairman", "Alternate Chairman" and "Members" and substituting therefor the following—

Chairman. A member of Board of the state corporation, who is not a public officer, appointed in writing by the Board.

Deputy chairman. A member of the Board of the state corporation who is not a public officer, appointed in writing by the Board.

Members. The Chief Executive, the Chief Financial Officer, the Chief Technical Officer, the Head of the Legal Department, two department heads, one of whom is from a user department, appointed by the Chief Executive. One member of the Board of the state corporation, appointed by the Board.

(b) by deleting the item denoted "Chairman's veto" and substituting therefor the following—

Chief Executive's veto. The Chief Executive may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements below thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the Chief Executive.

10. Part 1.4 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted "Chairman", "Alternate Chairman", "Members" and "Secretary" and substituting therefor the following—

Chairman. A Council member who is not a public officer, appointed in writing by the Council.

Deputy chairman. A Council member who is not a public officer, appointed in writing by the Council.

Members. The Vice-Chancellor, the head of administration, the head of academic affairs, the

principal of a college appointed by the Vice-Chancellor, two heads of a faculty or school, one of whom is from a user faculty or school, appointed by the Vice-Chancellor, two Council members who are not members of the academic staff, appointed by the council. The head of the legal affairs department.

Secretary. The head of the procurement department.

(b) by deleting the item denoted "Chairman's Veto" and substituting therefor the following—

Vice-Chancellor's veto. The Vice-Chancellor may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by amending the item denoted "Role and Responsibility"—

(i) by deleting the words "two hundred thousand" in paragraph (a) and substituting therefor the words "three hundred thousand"; and

(ii) by deleting the words "one hundred thousand" in paragraph (b) and substituting therefor the words "one million";

(d) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements below thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the Vice-Chancellor.

11. Part 1.5 of the First Schedule of the principal Regulations is amended—

(a) by deleting the item denoted "Members" and substituting therefor the following—

Members. The Chairman of the Finance Committee. Up to seven heads of departments, appointed by the Clerk of the local authority;

(b) by deleting the item denoted "Chairman's veto" and substituting therefor the following—

Clerk's veto. The Clerk to the local authority may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements
below
thresholds.

If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the Clerk to the local authority.

12. Part 1.6 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted "Chairman", "Alternate chairman" and "Members" and substituting therefor the following—

Chairman. A member of the Board of Governors who is not a public officer, appointed in writing by the Board.

Deputy chairman. A member of the Board of Governors who is not a public officer, appointed in writing by the Board.

Members. The Principal, two members of the Board of Governors appointed by the Board, the Finance Officer, two department heads, one of whom is from a user department, appointed by the Principal Matron/Officer-in-Charge of boarding facilities.

(b) by deleting the items denoted "Chairman's veto", and substituting therefor the following—

Principal's veto. The principal may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements
below
thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the Principal.

13. Part 1.7 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted "Chairman"; "Alternate Chairman", "Members" and "Secretary" and substituting therefor the following—

Chairman. A member of the Board of Governors (or school committee if there is no Board of Governors) who is not a public officer, appointed in writing by the Board (or school committee).

Deputy
chairman.

A member of the Board of Governors (or school committee) who is not a public officer, appointed in writing by the Board (or school committee).

Members.

The principal or headmaster, the deputy principal or headmaster, the Chairman of the Parents Teachers Association and one other member of the Parents Teachers Association appointed by the Association, two members of the teaching staff appointed by the principal or headmaster, the matron or officer-in-charge of the boarding facilities.

Secretary.

The bursar.

(b) by deleting the item denoted "Chairman's veto" and substituting therefor the following—

Principal or
headmaster's
veto.

The principal or headmaster may veto a decision of the Committee for the purposes of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the items denoted "procurement of items below given threshold" and "Thresholds" and substituting therefor the following—

Procurements
below
thresholds.

If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the principal or headmaster.

KSh.

Thresholds.	Provincial/national secondary schools	500,000
	Other secondary schools	300,000
	Primary schools	100,000

14. The Part of the First Schedule of the principal Regulations numbered as Part 1.8 and entitled "CO-OPERATIVE SOCIETIES TENDER COMMITTEE" is amended—

(a) by deleting the items denoted "Chairman", "Alternate Chairman", "Members" and "Secretary" and substituting therefor the following—

Chairman.

A member of the governing body of the society appointed in writing by the governing body.

Deputy
chairman.

A member of the governing body of the society appointed in writing by the governing body.

Members. The Chief Executive of the society, the Treasurer of the society, the honorary secretary of the society, if any, up to four members of the society, appointed by the governing body of the society, up to four members of the governing body of the society appointed by the governing body.

Secretary. The officer-in-charge of operations.

(b) by amending the item denoted "Quorum" by deleting the words "five (5) members" and substituting therefor the words "seven (7) members";

(c) by deleting the item denoted "Chairman's veto" and substituting therefor the following—

Chief Executive's veto. The Chief Executive of the society may veto a decision of the Committee for the purposes of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(d) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements below thresholds. If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out by the persons or bodies specified by the Chief Executive of the Society.

15. The Part of the First Schedule of the principal Regulations numbered as Part 1.8 and entitled "VOLUNTARY ORGANIZATIONS AND INSTITUTIONS TENDER COMMITTEE" is amended—

(a) by renumbering the Part as Part 1.9 and by deleting the title of the Part and substituting therefor the title "VOLUNTARY INSTITUTIONS TENDER COMMITTEE";

(b) by deleting the items denoted "Chairman", "Alternate Chairman", "Members" and "Secretary" and substituting therefor the following—

Chairman. A person appointed in writing by the Institution.

Deputy chairman. A person appointed in writing by the Institution.

Members. The Chief Executive of the Institution, the Deputy Chief Executive of the Institution, the Treasurer, three members of the management committee of the Institution appointed by the management committee.

Secretary. The secretary of the institution.

(c) by deleting the item denoted "Chairman's Veto" and substituting therefor the following—

Chief
Executive's
veto.

The Chief Executive of the Institution may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(d) by amending the item denoted "role and responsibility—

(i) by deleting the words "voluntary organizations and Institutions Tender Committee" and substituting therefor the words "Voluntary Institution Tender Committee";

(ii) by deleting the word "Association" wherever it appears and substituting therefor the word "Institutions";

(e) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements
below
thresholds.

If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried out of the persons or bodies specified by the Chief Executive of the Institution.

16. Part 1.10 of the First Schedule of the principal Regulations is amended—

(a) by deleting the items denoted "Chairman", Alternate Chairman" and "Members" and substituting therefor the following—

Chairman.

A member of the Board of Directors who is not a public officer, appointed in writing by the Board.

Deputy
chairman.

A member of the Board of Directors who is not a public officer, appointed in writing by the Board.

Members.

The Governor of the Central Bank, the Deputy Governor of the Central Bank, Up to four department heads, one of whom is from a user department, appointed by the Governor, one member of the Board of Directors, appointed by the Board.

(b) by deleting the item denoted "Chairman's Veto" and substituting therefor the following—

Governor's
veto.

The Governor of the Central Bank may veto a decision of the Committee for the purpose of controlling the expenditure of funds. Every veto shall be reported to the Public Procurement Directorate.

(c) by deleting the item denoted "procurement of items below given threshold" and substituting therefor the following—

Procurements
below threshold.

If the value of a procurement is below an indicated threshold, the role and responsibility that would otherwise be the Committee's shall be carried

out by the persons or bodies specified by the Governor.

17. The principal Regulations are amended by deleting the Second Schedule and substituting therefor the following:

SECOND SCHEDULE

THRESHOLDS

<i>Threshold</i>	<i>Amount KSh.</i>
Threshold below which restricted tendering may be used without satisfying other conditions (r. 18 (2))	20,000,000
Threshold below which direct procurement may be used without satisfying other conditions (r. 19 (2))	300,000
Threshold above which requests of quotations may not be used (r. 21)	5,000,000
Threshold above which an invitation to tender must be advertised (r. 22 (1))	5,000,000

18. The Fourth Schedule of the principal Regulations is amended—

(a) by inserting the following new item after the item denoted “Chairman”—

Acting Chairman.

In the absence of the Chairman, the Appeals Board may designate one of its members to act as the Chairman;

(b) in the item denoted “Members”—

(i) by deleting the words “three members appointed by the Minister from among persons nominated by the following Organizations” and substituting therefor the words “four members appointed by the Minister from among persons nominated by the following Organizations”;

(ii) by deleting the words “Two members co-opted by the Appeals Board” and substituting therefor the words “Two members co-opted by the Appeals Board, one of whom is an expert in procurement”.

Made on the 5th September, 2002.

C. M. OBURE,
Minister for Finance.