

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2014 No. 16.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(ADMINISTRATIVE REVIEW) REGULATIONS, 2014.**

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Fees for administrative review.

S T A T U T O R Y I N S T R U M E N T S

2014 No. 16.

The Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014.

(Made under section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003, Act No 1 of 2003).

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003, on the recommendation of the Authority and with the approval of Parliament, these Regulations are made, this 6th day of February, 2014.

1. Title and Commencement.

(1) These Regulations may be cited as the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014.

(2) These Regulations shall come into force on the 3rd day of March, 2014.

2. Application.

These Regulations shall not apply where a procuring and disposing entity has entered into a contract, for procurement or disposal, with a bidder.

3. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Public Procurement and Disposal of Public Assets Act, 2003;

“bidder” means a physical or artificial person intending to participate or who is participating in a procurement or disposal process with a procuring and disposing entity.

4. Complaint to Accounting Officer.

(1) A bidder who is aggrieved by a decision of a procuring and disposing entity shall make a complaint to the Accounting Officer.

- (2) The complaint made under subregulation(1) shall indicate—
- (a) the name and contact details of the bidder or the person representing the bidder;
 - (b) the procurement or disposal requirement to which the complaint relates;
 - (c) the substantive and factual grounds of the complaint, including—
 - (i) the provision of the Act or regulations made under the Act which are the subject of the breach or omission by the procuring and disposing entity; and
 - (ii) where known, the names of the person involved in the subject of the complaint, the events and the facts that constitute the complaint;
 - (d) the corrective measures requested by the bidder;
 - (e) the documentary evidence and any other evidence, relevant to the complaint, that is in the possession of the bidder; and
 - (f) any other information relevant to the complaint.

5. Review by the Accounting Officer.

The Accounting Officer shall investigate a complaint filed under regulation 4 by considering—

- (a) the information and evidence contained in the complaint;
- (b) the records of the procurement or disposal, kept by the procuring and disposing entity;
- (c) information provided by the staff of the procuring and disposing entity, if any;
- (d) where appropriate, information provided by other bidders; and
- (e) any other relevant information.

6. Dismissal of complaint by Accounting Officer.

(1) An Accounting Officer shall not investigate a complaint where—

- (a) the complaint does not fulfill the requirement of regulation 4 and section 90(1a) of the Act;
- (b) the complainant is not a bidder in respect of the procurement or disposal proceeding for which the complaint is made;
- (c) a complaint is not in respect of any procurement or disposal proceeding; or
- (d) the complaint is not in respect of an omission or breach by the procuring and disposing entity, of the Act, regulations made under the Act, guidelines issued under the Act or a provision of a solicitation document.

(2) A complaint that does not fulfill the requirements of subregulation (1) shall be dismissed by the Accounting Officer without investigation.

(3) Where the Accounting Officer dismisses a complaint, the Accounting Officer shall in writing notify the bidder of the dismissal.

(4) A bidder who is aggrieved by a decision of the Accounting Officer made under subregulation (3), may within ten working days from the receipt of the notification from the Accounting Officer, make a complaint to the Authority.

7. Complaints to the Authority.

(1) A complaint to the Authority shall be in writing, addressed to the Executive Director of the Authority.

(2) A complaint shall—

- (a) indicate the name and contact details of the bidder or the person representing the bidder;
- (b) indicate the procuring and disposing entity against which the complaint is made;
- (c) indicate the procurement or disposal requirement to which the complaint relates;
- (d) indicate the complaint made to the Accounting Officer;

- (e) include a record of the correspondences regarding the complaint, between the Accounting Officer and the bidder;
- (f) indicate the grounds of the complaint;
- (g) indicate the corrective measures requested for by the bidder from the Authority; and
- (h) provide any other information relevant to the complaint.

8. Review by the Authority.

(1) The Authority shall, where a complaint is filed under regulation 7, immediately—

- (a) notify the procuring and disposing entity of the complaint; and
- (b) suspend the procurement or disposal proceedings.

(2) The Authority shall request the procuring and disposing entity to provide the records of the procurement or disposal process and shall institute an investigation into the complaint.

(3) The Authority shall, in carrying out an investigation under subregulation (2) consider—

- (a) the information and evidence contained in the complaint;
- (b) the records of the procurement or disposal kept by the procuring and disposing entity;
- (c) the information provided by the staff of the procuring and disposing entity, if any;
- (d) the information provided by the interested bidders; and
- (e) any other relevant information.

9. Dismissal of complaints by the Authority.

(1) The Authority shall not investigate a complaint where the Authority determines that—

- (a) the complainant is not a bidder in respect of the procurement or disposal process for which the complaint is made;

- (b) a complaint is not in respect of a procurement or disposal proceeding; or
- (c) the complaint does not comply with sections 90 and 91 of the Act.

(2) A complaint that does not fulfil the requirements of subregulation (1) shall be dismissed by the Authority without investigation.

(3) Where the Authority dismisses a complaint, the Authority shall in writing notify the complainant of the dismissal.

(4) A bidder who is aggrieved by a decision of the Authority, made under this regulation, may appeal to the Tribunal.

10. Appeal to the Tribunal.

A bidder may appeal to the Tribunal where—

- (a) the bidder is not satisfied with the decision of the Authority;
- (b) the Authority does not issue a decision in respect of a review of the decision of the Accounting Officer, within fifteen working days; or
- (c) the bidder alleges that the Authority cannot handle a review impartially.

11. Fees for administrative review.

(1) The fees in the second column of the Schedule to these Regulations shall be paid to a procuring and disposing entity, for the administrative review for a procurement or disposal of a value specified in the first column.

(2) Where a complaint is upheld by the Accounting Officer or the Authority, the fee shall be refundable.

(3) Where a complaint is withdrawn or dismissed, the fee shall not be refundable.

SCHEDULE

FEES FOR ADMINISTRATIVE REVIEW

No.	Value of procurement	Fees payable for administrative review in Shilings
1.	Procurements or disposal of a value of up to shillings 100,000,000	500,000
2.	Procurements or disposal of a value of more than shillings 100,000,000 up to shillings 500,000,000	1,500,000
3.	Procurements or disposal of a value of more than shillings 500,000,000 up to shillings 1,000,000,000	2,500,000
4.	Procurements or disposal of a value of more than shillings 1,000,000,000 up to shillings 50,000,000,000	5,000,000
5.	Procurements or disposal of a value of more than shillings 50,000,000,000 up to shillings 100,000,000,000	10,000,000
6.	Procurements or disposal of a value of more than shillings 100,000,000,000	15,000,000

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