

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

2023 No. 106.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(ADMINISTRATIVE REVIEW) REGULATIONS, 2023**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Application.
3. Interpretation.
4. Complaints to Accounting Officer.
5. Suspension of procurement or disposal process.
6. Review by the Accounting Officer.
7. Dismissal of complaint by Accounting Officer.
8. Decision of Accounting Officer.
9. Application to Tribunal.
10. Fees for administrative review.
11. Revocation and transition.

SCHEDULE

(4) A complaint against a procuring and disposing entity shall be made within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that gave rise to the complaint.

(5) The procuring and disposing entity against which a complaint is made shall on request provide the bidder with a report indicating the reasons for the rejection of the bidder and the stage at which the bidder was rejected and the report shall be used only for the administrative review process.

5. Suspension of procurement or disposal process.

(1) The Accounting Officer shall, on receiving the complaint, immediately suspend the procurement or disposal process, as the case may be.

(2) Where bid validity or the bid security is to expire before the expiry of the period prescribed in section 89 (7), for communicating a decision of the administrative review process, the Accounting Officer shall request the bidders to extend the period of the bid validity and bid security for the duration of the suspension.

6. Review by 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.

7. Dismissal of complaint by Accounting Officer.

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

- (a) the complaint does not fulfil the requirement of regulation 4;
- (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 bidding 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) An Accounting Officer shall not investigate a complaint where the fees for administrative review prescribed under regulation 10 are not paid to the procuring and disposing entity.

8. Decision of Accounting Officer.

The Accounting Officer shall, within ten days of receipt of a complaint, make and communicate a decision, in writing, addressed to the bidder who makes the complaint and which shall indicate the reasons for the decision taken and the corrective measure to be taken, if any.

9. Application to Tribunal.

(1) A bidder may make an application to the Tribunal in accordance with Part VIIA of the Act where—

- (a) an Accounting Officer does not make a decision or communicate a decision within the period specified in regulation 8;
- (b) a bidder is not satisfied with the decision made by the Accounting Officer;
- (c) a bidder is aggrieved by a decision of the Accounting Officer.

(2) Where a bidder intends to make an application to the Tribunal under subregulation (1), the bidder shall give the Accounting Officer notice within five working days after the expiry of the period specified in regulation 4(4) or regulation 8, as the case may be.

(3) Where a bidder makes an application to the Tribunal, the procurement or disposal process that is suspended under regulation 5 shall remain suspended until the Tribunal makes a decision.

(4) For the avoidance of doubt an Accounting Officer shall not enter into a contract with a provider—

- (i) during the administrative review period;
- (ii) before the expiry of the time period required for giving notice under subregulation (2); or
- (iii) where the matter is referred to the Tribunal, before the Tribunal makes a decision.

(5) Notwithstanding this regulation and regulation 4, where a bidder believes that the Accounting Officer has a conflict of interest in respect of a complaint, omission or breach or that matter cannot be handled impartially by the procuring and disposing entity, the bidder may make an application to the Tribunal under section 91I (1) (c) of the Act.

10. Fees for administrative review.

(1) A person making a complaint under these regulations shall pay fees for administrative review.

(2) For the purposes of subregulation (1), a person who makes a complaint shall pay to the procuring and disposing entity, for a procurement or disposal of a value specified in the first column of the Schedule, the fees in the second column of the Schedule.

(3) Where the Accounting Officer upholds a complaint, the fee shall be refunded to the person who makes the complaint.

(4) Where a complaint is withdrawn or is dismissed by the Accounting Officer, the fee shall not be refunded to the person who makes the complaint.

11. Revocation and transition.

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

(2) An administrative preview process that had commenced under the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014 and the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006 shall be continued and completed under these Regulations.

SCHEDULE

FEES FOR ADMINISTRATIVE REVIEW

PART A

Value of Procurement or Disposal	Fees Payable for Administrative Review in Shillings
1. Procurement or disposal of a value of up to shillings 100,000,000	500,000
2. Procurement 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

PART B

Expression of interest and general pre-qualification – shillings 500,000

MATIA KASAIJA,
Minister of Finance, Planning and Economic Development.

