

PART VI-ADMINISTRATIVE REVIEW OF PROCUREMENT PROCEEDINGS

A - COMPOSITION AND MEMBERSHIP OF THE REVIEW BOARD

Appointment and
tenure of
members.

67. (1) The members of the Review Board shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years

(2) Subject to paragraph (1), a member shall hold and vacate office in accordance with the member's terms of appointment.

Composition and
membership.

68. (1) Pursuant to section 25 of the Act, the Review Board shall comprise of-

- (a) six members appointed by the Minister from among persons nominated by;
 - (i) a Kenya Association of Manufacturers;
 - (ii) a Law Society of Kenya;
 - (iii) the Architectural Association of Kenya;
 - (iv) the Institution of Engineers of Kenya;
 - (v) the Institute of Certified Public Accountants of Kenya;
 - (vi) the Kenya Institute of Supplies Management;
 - (vii) the Institute of Certified Public Secretaries of Kenya;
 - (viii) the Chartered Institute of Arbitrators;
 - (ix) the Kenya National Chamber of Commerce and Industry;
 - (x) the Kenya Institute of Management;
 - (xi) the Computer Society of Kenya;
 - (xii) the Pharmaceutical Society of Kenya;
 - (xiii) the Federation of Kenya Employers;
 - (xiv) the Central Organization of Trade Unions
- (b) three other members appointed by the Minister;
- (c) a Chairman appointed by the Minister from

among the persons appointed under paragraph (a);

(2) Each organization referred to in sub regulation (1) (a) shall submit to the Minister the curriculum vitae of two members being nominated of whom one shall be a woman.

(3) The Director General shall appoint a Secretary to the Review Board from amongst the staff of the Authority.

Quorum, panels
and proceedings.

69. (1) The quorum of the Review Board shall be three members including the Chairman.

(2) The Secretary may in consultation with the Chairman and the Review Board constitute a panel of three members to hear and determine a request for review and each panel shall elect its own chairman.

(3) In the absence of the Chairman, the Review Board may designate one member to act as Chairman for the purpose of that meeting.

(4) Decisions of the Review Board shall be taken by simple majority but in the case of a tie the proposal supported by the Chairman shall prevail.

Resignation from office.

70. The Chairman or any other member of the Review Board may at any time, by notice to the Minister, resign from his office.

Termination of appointment.

71. The Minister may terminate a person's appointment as a member of the Review Board only if the person-

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of an offence under the Penal Code, the Anti Corruption and Economic Crimes Act, 2003, or the Act or these Regulations or an offence involving dishonesty; or
- (d) is absent from three consecutive meetings of the Review Board to which the member has been invited without reasonable excuse.

Allowances.

72. The Authority shall pay the members of the Review Board such allowances as may be determined by the Advisory Board.

B - PROCEDURES IN REVIEWS

Mode of filing requests.

73. (1) A request for review under the Act shall be made in Form RB 1 set out in the Fourth Schedule to these Regulations.

(2) The request referred to in paragraph (1) shall-

- (a) state the reasons for the complaint, including any alleged breach of the Act or these Regulations;
- (b) be accompanied by such statements as the applicant considers necessary in support of its request;
- (c) be made within fourteen days of-
 - (i) the occurrence of the breach complained of where the request is made before the making of an award; or
 - (ii) the notification under sections 67 or 83 of Act;

(d) be submitted in fifteen bound copies and a soft copy, pages of which shall be consecutively numbered;

(e) be accompanied by the fees set out in Part II of the Fourth Schedule which shall not be refundable.

(3) Every request for review shall be filed with the Secretary of the Review Board upon payment of the requisite fees.

(4) The Secretary shall acknowledge filing of the request for review.

Notification of filing of request.

74. (1) The Secretary shall immediately after the filing of the request under Regulation 73, serve a copy thereof on the procuring entity or Director General as the case may be.

(2) The copy to the procuring entity under paragraph (1) shall also contain a notification of the pending review and the suspension of the procurement proceedings of such procuring entity.

(3) Upon being served with a notification of a request, the procuring entity or the Director General shall within seven days or such lesser period as may be stated by the Secretary in a particular case, submit to the Secretary a written memorandum of response to the reasons for the request together with such documents as the Secretary may specify.

(4) The Secretary shall, within fourteen days of the filing of the request, notify all other parties to the review of the filing and such parties may, at their own expense, obtain copies of the request for review.

Notice of Hearing,

75. (1) The Secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.

(2) The notice referred to in paragraph (1) shall be in the format shown in Form RB 2 set out in the Fourth Schedule.

Representation by person of own choice.

76. Any party to a request filed under Regulation 73 shall, at the hearing thereof, be entitled to be represented by an advocate or any other person of his own choice.

Preliminary objection

77. (1) A party notified under Regulation 74 may file a preliminary objection to the hearing of the request for review

to the Secretary of the Review Board within five days from the date of notification.

(2) The preliminary objection filed under paragraph (1) shall set out the grounds upon which it is based on and shall be served on the applicant at least one day before the hearing.

(3) The applicant may file a reply to the preliminary objection before the time of the hearing of the request.

(4) The Review Board shall hear the preliminary objection and make a determination whether to uphold or dismiss the same and shall record the reasons for the determination.

(5) If the Review Board dismisses the preliminary objection, it shall soon thereafter proceed to hear the request for review as scheduled.

(6) The fees chargeable for filing a preliminary objection shall be as set out in the Part II of the Fourth Schedule.

Invitation to the hearing.

78. (1) The Secretary shall, at least three days before the date set for the hearing, invite the members of the Review Board to attend the hearing.

(2) The invitation under paragraph (1) shall set out the time, date, and place where the hearing shall take place.

(3) The business of the Review Board shall be transacted between 8.00 a.m. and 5.00 p.m. on normal working days unless otherwise agreed to by the Secretary.

Disclosure of interest.

79. Where any member of the Review Board has a direct or indirect interest in any matter before the Review Board, he or she shall declare his or her interest in the matter and shall not participate in the hearing or decision-making process of the Review Board in relation to that particular matter.

Attendance at the hearing.

80. If on the day set for the hearing of a review for which due notification has been given-

(a) the applicant appears and the procuring entity fails to appear, the hearing of the request for review shall proceed in the absence of the procuring entity unless the Review Board deems it fit to adjourn the hearing;

(b) the procuring entity appears and the applicant does not appear, the request for review shall be

dismissed unless the Board deems it fit to adjourn the hearing;

- (c) if both parties fail to appear, the request for review shall be dismissed unless the Board deems it fit to adjourn the hearing.

Procedure at hearing.

81. At the hearing of the request for review, unless decided otherwise by the Review Board, the applicant shall be given the first opportunity to present the case in support of the request and the procuring entity shall be given an opportunity to reply thereto.

Consolidation of requests.

82. Where two or more requests for review are instituted arising from the same tender or procurement procedure the Review Board may consolidate the requests and hear them as if they were one request for review.

Withdrawal of requests for review.

83. (1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Secretary signed by the applicant and upon such notice being received the request for review shall be deemed to have been withdrawn.

(2) When a request for review is withdrawn, the Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.

Hearing of request.

84. (1) Hearing of review proceedings shall be open to all parties to the review.

(2) The Review Board may, at the hearing of the request exclude any person from the hearing whom it deems is unruly, interruptive or otherwise conducts himself in an unreasonable manner.

Experts.

85. The Review Board may engage an expert to assist it in proceedings in which it feels it lacks the necessary expertise but the opinion of the expert shall not be binding on the Review Board.

Rules of evidence.

86. The Review Board shall not be bound to observe the rules of evidence in the hearing of a request under these Regulations.

Proof of documents

87. An order of the Review Board certified by both the Chairman and the Secretary to be a true copy thereof shall in any legal proceedings be *prima facie* evidence of the issuance of that order.

Communication
to the Review
Board.

88. All communications to the Review Board relating to matters pending before the Review Board shall be through the Secretary.