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THE PETROLEUM ACT
(CAP. 392 R.E 2010)

THE PETROLEUM (BULK PROCUREMENT) REGULATIONS, 2013

(Made under Sections 53 (1) and 33 (2))

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THE PETROLEUM ACT
(CAP. 392 R.E 2010)

THE PETROLEUM (BULK PROCUREMENT) REGULATIONS, 2013

PART I
PRELIMINARY PROVISIONS

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| Citation | 1. These Regulations may be cited as the Petroleum (Bulk Procurement) Regulations, 2013. |
| Application | 2. These Regulations shall govern the implementation of a Bulk Procurement System. |
| Interpretation | 3. In these Regulations, unless the context otherwise requires: |
| Cap. 392 | “Act” means the Petroleum Act; |
| | “annual general meeting” means the annual general meeting of the PIC; |
| | “applicable law” means any principal law, convention, treaty, proclamation, regulation, order or by-law that is customarily treated in Tanzania as having legally binding force relevant to matters pertaining to the procurement and supply of a bulk petroleum product in Tanzania; |
| Cap. 130 | “approved specification” means any specification or standard prescribed by the Authority in consultation with the minister responsible for petroleum affairs on a bulk petroleum product pursuant to the Standards Act, or any other standards that are widely used for good petroleum industry practices; |
| Cap. 414 | “Authority” means the Energy and Water Utilities Regulatory Authority established under the provisions of the EWURA Act; |
| Cap.197 | “bank” means the Bank of Tanzania established under the provisions of the Bank of Tanzania Act; |
| | “BPTC” means the technical committee established in accordance with regulation 6; |
| | “buyer” means an OMC that buys a petroleum product from a supplier; |
| | “Code of Conduct” means a set of principles, values, standards, |

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- or rules of behavior that guide the decisions, procedures and systems of PIC management and employees as approved by the board;
- "correspondence bank" means a locally registered bank engaged by a buyer which shall have a corresponding relationship with a supplier banker;
- "EWURA Act" means the Energy and Water Utilities Regulatory Authority Act;
- "general manager" means the chief executive officer of PIC;
- "Good Petroleum Industry Practices" means a set of best practices and/or generally accepted standards related to the management of petroleum products including health, safety and environmental requirements;
- "independent inspector" means an inspector appointed jointly by PIC and a supplier to verify on the quality and quantity of a petroleum product imported;
- "inspector" means an inspector of the Tanzania Bureau of Standards;
- "KOJ" means Kurasini Oil Jetty;
- "LIBOR" means the London Inter-bank Overnight Rate;
- "licence" means an authorization granted by the Authority to an OMC to conduct wholesale business;
- "Minister" means the minister responsible for petroleum affairs;
- "Ministry" means the ministry responsible for petroleum affairs;
- "offloading point" means KOJ, SPM or any other authorized area where a petroleum product shall be offloaded;
- "Petroleum Bulk Procurement System" means a system established pursuant to these Regulations to govern the importation of a bulk petroleum product into Tanzania and "BPS" shall be construed accordingly;
- "Petroleum Bulk Procurement Technical Committee" means the committee established under regulations 6 and "BPTC" shall be construed accordingly;
- "Petroleum Importation Coordinator" means a company limited by guarantee with no share capital responsible for carrying out the functions specified in regulation 10 (5); and the term PIC shall be construed accordingly;
- "petroleum products" means petroleum products mentioned under regulation 4 (4);
- " OMC" means an oil marketing engaged in the petroleum supply trade;
- " SPM" means a single point mooring which is an offshore

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facility owned and operated by TPA to offload a petroleum product from tankers;

"supplier" means an institution selected by the Petroleum Importation Coordinator or the Bulk Procurement Technical Committee to import a petroleum product in bulk quantity;

"tender committee" means a committee established under the provision of regulation 18;

Cap. 130 "TBS" means the Tanzania Bureau of Standards established under the provisions of the Standards Act;

Cap. 166 "TPA" means the Tanzania Ports Authority established under the provisions of the Ports Act;

Cap. 257 "TPDC" means the Tanzania Petroleum Development Corporation established under the provisions of the Public Corporation Act;

Cap 399 "TRA" means the Tanzania Revenue Authority established under the provisions of the Tanzania Revenue Authority Act;

"wholesale business" means buying of a petroleum product for resale in bulk quantity; and

"wholesaler" means an entity engaged in the supply of a petroleum product in bulk quantity.

PART II

IMPORTATION OF BULK PETROLEUM PRODUCTS

Efficient
Procurement

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4.-(1) No person shall import a petroleum product unless the importation is conducted through efficient procurement.

(2) Pursuant to section 33 of the Petroleum Act, the Minister responsible for petroleum affairs has delegated the implementation of an efficient petroleum procurement system to an entity established in accordance with regulation 10.

(3) The term "efficient procurement" referred to in sub-regulation (1) shall be by way of Bulk Procurement System described under these Regulations.

(4) The BPS shall apply to the following petroleum products:

- (a) motor super premium;
- (b) automotive gasoil ;
- (c) kerosene;
- (d) heavy fuel oil; Jet- A1;
- (e) liquefied petroleum gas; and

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(f) any other petroleum product as the Minister may declare.

(5) The Authority shall be responsible for implementing and enforcing the provision of these Regulations.

The use of BPS
for transit trade

5.-(1) The use of Bulk Procurement System for transit petroleum products shall be optional.

(2) Subject to the provisions of sub-regulation (1), an OMC undertaking transit business shall ensure that the cargo imported is within the specifications of the country to which the product is destined.

(3) Any OMC undertaking transit business which opts not to use the BPS shall, within thirty days before the date of arrival of the vessel, notify PIC and the Authority accordingly.

(4) In event that, the specifications for transit cargo is not in conformity with the Tanzanian specifications, OMC undertaking transit business shall be required to have a dedicated depot or storage facilities for such cargo.

(5) No transit cargo shall be localized unless it is under emergency condition declared by the minister responsible for petroleum affairs.

(6) An OMC undertaking transit business shall, in the event of localization, seek an approval from the Authority, obtain certificate of quality from TBS and pay all necessary costs as if the cargo was destined for domestic use.

(7) Any person who contravenes any provision of this regulation shall be liable to a fine equal to twenty percent of the value of the cargo under consideration or fifty million whichever is higher.

Bulk
Procurement
Technical
Committee

6.-(1) There shall continue to be a Bulk Procurement Technical Committee.

(2) The Bulk Procurement Technical Committee shall comprise of;

- (a) two representatives from the ministry responsible for petroleum affairs;
- (b) one representative from the ministry responsible for port affairs;
- (c) one representative from the ministry responsible for finance;
- (d) one representative from TPDC;

- (e) one representative from TRA;
- (f) one representative from the TBS;
- (g) one representative from the Bank ; and
- (h) one representative from TPA.

(3) The Minister shall appoint one of the two representatives from the ministry responsible for petroleum affairs to be the Chairman of the Bulk Procurement Technical Committee.

(4) The general manager shall be an *ex-officio* member of the Bulk Procurement Technical Committee.

(5) Members of the Bulk Procurement Technical Committee shall hold office for a period of three years and shall be eligible for re-appointment.

Functions of the
Bulk
Procurement
Technical
Committee

7.-(1) The Bulk Procurement Technical Committee shall:

- (a) ensure that the BPS is properly established and managed;
- (b) ensure that matters of national interest are observed in the BPS including security of supply and emergency situation which may have major implications to the delivery of a petroleum product;
- (c) advise the Minister on the implementation of the BPS and supply of a petroleum product;
- (d) in the event of the declaration by the Minister under regulation 8, nominate an interim coordinator; and
- (e) approve the petroleum procurement plan to be implemented during the time of emergence.

(2) The bulk Procurement Technical Committee shall, while nominating an interim coordinator under sub-regulation (1)(d), consider, *inter alia*-

- (a) technical capability of the interim coordinator;
- (b) integrity, track record and experience of the interim coordinator in the downstream petroleum business;
- (c) the need to promote competition amongst OMCs; and
- (d) the need to restore the BPS.

(3) An interim coordinator to be nominated by the Bulk Petroleum Technical Committee under sub-regulation (1)(d) shall, while discharging the functions of the PIC, charge a service charge to OMCs at the amount to be determined by the Authority.

(4) The Bulk Procurement Technical Committee shall not be responsible for the day-to-day activities of the BPS.

(5) The Ministry shall coordinate and facilitate activities of the Bulk Procurement Technical Committee.

(6) The Bulk Procurement Technical Committee shall, on a quarterly basis, prepare and submit to the Minister, reports on the performance of its functions.

Minister to
Declare

8. In the event of persistent distortion of BPS operations, the Minister shall, declare BPS or PIC to have failed to function as required, and thereafter the provisions of regulation 7 (1) (d) shall apply.

Minister may
issue directions

9. The Minister may, in the public interest, issue in writing directions of specific or general nature to the Bulk Procurement Technical Committee on any matter or decision and the Bulk Procurement Technical Committee shall comply with that direction.

PART III

PETROLEUM IMPORTATION COORDINATOR

Establishment
of the PIC

10.-(1) There shall continue to be an entity limited by guarantee with no share capital to act as the Petroleum Products Importation Coordinator.

(2) All OMCs shall join the PIC in accordance with laws and regulations governing such establishment.

(3) All PIC members shall have equal voting rights during PIC annual general meeting.

(4) The PIC shall be licensed by the Authority.

(5) The PIC shall:

- (a) collect the procurement requirements of petroleum products in respect of its members;
- (b) conclude and administer contracts by PIC and a supplier and between the PIC and OMCs;
- (c) conduct an International Competitive Bidding for the procurement of a petroleum product in bulk;
- (d) report to the Authority on the PIC's activities on a monthly basis or as may be required by the Authority;
- (e) prepare plans and a budget to cover its operations;
- (f) relay information, in a timely manner, related to

the petroleum business to the Authority, OMCs, ministry responsible for petroleum affairs, TRA, TPA, TBS and other relevant parties;

- (g) forecast supply and demand of petroleum products in consultation with OMCs;
- (h) coordinate diligent receipts by OMCs of petroleum products from the delivery vessels;
- (i) maintain records of the shipments and performance;
- (j) coordinate invoicing and payments for the respective shares of petroleum products imported by an OMC;
- (k) appoint, jointly with a supplier, an independent inspector at a load-port and discharge-port to ensure delivery of acceptable quantity and quality of a petroleum product; and
- (l) perform any other duties with regards to BPS as may be directed by the minister responsible for petroleum affairs.

Penalty

11. Any person who contravenes the provisions of regulation 10 (2) shall be liable to a fine of not less than twenty million Tanzanian shillings and shall have its licence suspended for a period of twelve months.

Restriction on
Conflict of
Interest

12.-(1) Members of the Board shall have a fiduciary obligation to PIC and not to any company actively participating in the BPS.

(2) PIC employees shall, before assuming office, sign a Code of Conduct approved by the Board, and shall during their tenure in office observe the provisions of such Code of Conduct.

(3) No director shall participate in PIC decision making process in any matter in which he has a direct or indirect personal financial interest.

(4) Any member of the Board who knowingly participates in the deliberations of any matter in which he has a conflict of interest, shall be deemed to have distorted the functioning of the BPS and be liable to the penalty prescribed under regulation 26.

Financing of the
PIC

13.-(1) PIC shall be funded by the contributions of all OMCs at the ratio or amount to be determined by the Board.

(2) The general manager shall table, before the Board the

annual budget of PIC for approval.

(3) The amount of contribution to be made by each member under sub-regulation (1) shall be determined based on the annual budget which has been approved pursuant to sub-regulation (2).

(4) Notwithstanding the provisions of sub-regulation (3) new OMC shall contribute a membership fee as shall be determined by the Board from time to time.

PIC to keep
Books of
Accounts

14.-(1) The PIC shall keep books of accounts and maintain proper records of its operations in accordance with the International Financial Reporting Standards (IFRS).

(2) The general manager shall, during the annual general meeting, submit the annual audited financial statements and the recommendations for the appointment of auditors.

The PIC to
report monthly
to BPTC

15.-(1) The PIC shall prepare a monthly report for the operation of the BPS including *inter alia* the available stock, demand forecast for the coming month, payment status for all importer and operational challenges during that month.

(2) The report shall be submitted to the BPTC within fifteen days after the end of each month.

PART IV

BULK PROCUREMENT PROCEDURES

Obligation to
procure bulk
petroleum using
BPS

16.-(1) No person shall import a petroleum product in bulk except pursuant to these Regulations.

(2) An OMC seeking to import a petroleum product shall first conclude with PIC a supply and shipping contract that shall comprise the terms and conditions that governs the relationship between PIC and supplier, PIC and OMCs; and PIC and other related parties in the BPS.

Bidding process

17.-(1) Invitation to bid, bid evaluation, bids qualification and award of the bid to supply a bulk petroleum product shall be in a manner prescribed by the Authority.

(2) Notwithstanding the generality of sub-regulation (1), PIC management shall participate in tender process including receipt and compilation of the requirements from each OMC, evaluation and management of the shipping and supply agreement.

Tender

18.-(1) There shall be a tender committee which shall be

G.N. 59 (contd.)

committee

responsible for opening, evaluation and award of tender to the winning bidder.

(2) The tender committee shall comprise of two representatives from OMCs that are members of PIC and three from PIC management.

(3) Members of PIC shall be selected by PIC members through a voting process before the opening of each tender.

(4) Board members and PIC members or their affiliates who have submitted bids for the respective tender shall neither be eligible members of the tender committee, nor participate in the selection of members of the tender committee.

Petroleum
products
specifications

19.-(1) All petroleum products imported into Tanzania shall conform to approved specifications pursuant to the Standards Act.

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(2) The PIC shall all times ensure that specifications included in tender process strict conforms to the Standards Act or be specifications prescribed by the Minister responsible for petroleum affairs as the case may.

(3) Petroleum products that do not meet approved specifications shall not be offloaded into Tanzania and shall be referred back to the country of origin.

(4) Notwithstanding the sanctions referred to in sub-regulation (1), any supplier who supplies a petroleum product that fails to meet approved specifications shall, subject to the provisions of regulation 24 be blacklisted and shall not be eligible to bid for importation of petroleum products into Tanzania for a period of not more than ten years.

Procedure for
Sampling,
Testing and
Blacklisting

20.-(1) The procedure for sampling and testing of a petroleum product shall be as prescribed by TBS.

(2) The test result for the samples taken by TBS shall be communicated to PIC and an independent inspector.

(3) OMC is allowed to appoint a surveyor to verify on the quality and quantity of any petroleum product received.

(4) In the event that, Independent inspector results are not in conformity with TBS results, the latter results shall be final as much as quality of imported petroleum products in Tanzania is concerned.

(5) PIC shall, upon receipt of results from TBS in sub-regulation (2) which are non-conforming, notify the Authority

about its intention to blacklist the respective supplier and thereafter blacklist such supplier.

(6) Each OMC is obliged to notify PIC and the Authority in the event it becomes aware of any off specification petroleum product that is due to or has been imported into Tanzania.

(7) Without prejudice to the provisions of sub-regulation (5), no person other than the Authority and TBS is allowed to publish, circulate or cause to be published or circulated any information related to the quality of any petroleum product.

(8) Any person who contravenes the provisions of sub-regulation (6) shall be deemed to have distorted the BPS and shall be liable to the penalties prescribed under regulation 26.

Cargo delivery

21. A supplier shall be responsible for the procurement, shipping arrangements and the offloading of a petroleum product at the discharge port.

Operational matters related to petroleum

22. All operational matters related to petroleum products, including pre-arrival checks, pre-discharge operations, discharge operations, post discharge overturn and customs and warehousing shall be in a manner prescribed by the Authority.

Payment procedures

23.-(1) Each OMC's banker shall open a letter of credit to the supplier's banker in respect of the cargo specified in the respective supply and shipping contract.

(2) OMC that fails to open a letter of credit within the time specified by PIC shall amount to distortion of BPS and as such be liable to penalties ascribed in regulation 26.

(3) Subject to establishment of a joint financing arrangement, a correspondence bank shall, on behalf of the buyer, settle invoices raised in respect of the cargo detailed in the respective supply and shipping contract.

PART V

FAILURE OF BPS, DISTORTION OF BPS OR FAILURE
OF PIC TO FUNCTION

Failure of BPS
or failure of PIC
to perform as
required

24.-(1) Notwithstanding the provisions of these regulations and as an interim measure in the event of the failure by the PIC to function as required or on the failure of the BPS, the PIC shall cease to implement the BPS and the provisions of regulations 7 (1) (d) and 9 shall apply.

(2) Notwithstanding the provisions of sub-regulation (1), the PIC shall be deemed to have failed to perform its functions where:

- (a) it fails to discharge its functions as provided in these Regulations and other applicable law and the Minister has declared PIC has failed to perform; or
- (b) it is wound up or subjected to winding up proceedings in a court of competent jurisdiction in accordance with applicable law.
- (c) its members persistently fails to honour contractual obligations leading into BPS being impaired.

Distortion of
BPS

25. For the purpose of these regulations, a person, supplier or an OMC shall be deemed to have distorted the functioning of the BPS as appropriate if:

- (a) such person, supplier or OMC either individually or collectively with other person or OMC cause PIC not to function as required including but not limited to delay in opening letter of credit and non compliance with its guidance or directives;
- (b) any OMC fails or refuses to make contributions for the membership fee and the costs of running PIC as required in regulation 13;
- (c) any OMC fails or refuses to take part in day to day business of the PIC;
- (d) a supplier willfully and with no justifiable reasons fails to import petroleum products;
- (e) an OMC fails or refuses without justifiable cause to receive the ordered cargo or fails to open a letter of credit for the ordered cargo;
- (f) any member of the Board knowingly participates in the deliberations of any matter, which he has conflict of interest;
- (g) any act by suppliers that endangers the security of supply; and
- (h) any OMC which fails or refuses to release fuel stocks to the market.

Penalty

26.-(1) Any person who distorts the functioning of the BPS or willfully endangers its performance or causes PIC not to function as required shall be liable to a fine of not less than twenty million Tanzanian shillings, suspension of the license for

no more than ten years or upon conviction, imprisonment for a term not exceeding two years or both.

(2) Without prejudice to the provisions of sub-regulation (1) and any other penalties prescribed under these Regulations, any person who:

- (a) distorts the functioning of the BPS;
- (b) endangers the functioning of the competitive supply system; or
- (c) causes the PIC not to function as required,

shall, for a natural person be banned from participating in any petroleum supply operations or holding any office in any OMC in Tanzania for a period of ten years and for a corporate body have its licence suspended for not more than a period of ten years.

PART VI

DEFAULT PENALTIES

Late delivery

27.-(1) Late delivery default arising from causes other than a *force majeure* event shall attract a late delivery penalty of US\$ 2.0 per metric ton per day to be paid by a supplier to compensate buyers for compromising their minimum stocks or for procuring petroleum products from the petroleum strategic reserve.

(2) The penalty prescribed in sub-regulation (1) shall be paid to an escrow account operated by PIC for onward payment to the buyer within fifteen days from the date of signing a settlement deed with PIC.

(3) Notwithstanding the provisions of sub-regulation (1) the lay-time on late arriving vessels shall commence when the vessel berths.

Delivery default

28. Without prejudice to the provisions of regulation 26 (1), a supplier whose vessel is delayed for more than 7 days from the last day of the delivery date window shall be deemed to have defaulted on the delivery and shall be liable to penalties as shall be provided in the Shipping and Supply Contract.

G.N. 59 (contd.)

Late payment

29. A buyer who fails to pay for its share of a petroleum product at the due date shall be charged a late payment penalty of LIBOR +2% or be barred from participating in the following BPS tender or both. The payment shall be made to PIC within seven days from the date of determination of such failure.

PART VII
GENERAL PROVISIONS

Upgrading and replacement of existing lines

30.-(1) All OMCs having their storage facilities connected to KOJ shall:

- (a) ensure that their facilities have at least two lines from KOJ to their storage facilities; and
- (b) ensure that their lines have a larger diameter of not less than 10 inch.

(2) Without prejudice to the provisions of regulation 31, any person who is in continuous breach of sub-regulation (1) shall be liable to a fine of five million shillings for everyday on which the contravention occurs or continues.

General penalty

31.-(1) Any person who contravenes the provisions of these regulations for which no specific penalty is prescribed shall be liable to a fine as shall be determined by the Authority.

(2) Any OMC who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as they concern the OMC.

Penalty for continued defiance

32. Any person who is in continuous breach of these Regulations shall be liable to a fine of five million shillings for everyday on which the contravention occurs or continues.

Revocation of GN Nos; 164 of 2011.

33.-(1) The Petroleum (Bulk Procurement) Regulations, 2011.

GN. No. 164 of 2011

(2) Notwithstanding the revocation of the Petroleum (Bulk Procurement) Regulations, 2011, all orders, exemptions or directives made or issued or deemed to have been made or issued under those regulations shall be deemed to have been made under these Regulations, and shall remain in force until revoked or otherwise expire or cease to have effect.

G.N. 59 (contd.)

Authority to
supplement
procedures

34. Where procedures are not provided for in these Regulations, the Authority shall, in consultation with the Minister responsible for petroleum affairs endeavour to do whatever is necessary and permitted by applicable law in order to effectively and completely adjudicate on the matter.

Dar es Salaam,
11th March, 2013

SOSPETER MUHONGO,
Minister for Energy and Minerals