

GOVERNMENT NOTICE NO. 508 published on 06/11/2015

THE PETROLEUM ACT
(No. 21 OF 2015)

THE PETROLEUM (BULK PROCUREMENT) REGULATIONS, 2015

(Made under Sections 168 and 258)

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THE PETROLEUM ACT,
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THE PETROLEUM (BULK PROCUREMENT) REGULATIONS, 2015

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Petroleum (Bulk Procurement) Regulations, 2015.
- Application 2. These Regulations shall govern the implementation of Bulk Procurement System of Petroleum Products.
- Interpretation 3. In these Regulations, unless the context otherwise requires:
- Act No. 21 of 2015
GN No.423 of 2015 “Act” means the Petroleum Act;
- “Agency” means the Agency established under the Executive Agencies (The Petroleum Bulk Procurement Agency) Order, 2015;
- “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 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;
- GN No.423 of 2015 “Board” means the Ministerial Advisory Board established under the Executive Agencies (The Petroleum Bulk Procurement Agency) Order, 2015 and the term “MAB” shall be construed accordingly;
- “bulk quantity” means a single lot of not less than five hundred

- metric tonnes of a petroleum product;
- “buyer” means an OMC that buys a petroleum product from a supplier under Bulk Procurement System;
- “Chairman” means the chairman of the Board;
- “Code of Conduct” means a set of principles, values, standards, or rules of behavior that guide decisions and procedures for the employees of the Agency as approved by the Minister;
- “correspondence bank” means a locally registered bank engaged by a buyer which has a corresponding relationship with a supplier banker;
- Cap. 414 “EWURA Act” means the Energy and Water Utilities Regulatory Authority Act;
- “Executive Director” means the chief executive officer of the Agency;
- “Good Petroleum Industry Practices” means any action related to a petroleum product intended to preserve product quality and meeting generally accepted health, safety and environmental requirements;
- “Independent inspector” means an inspector appointed to verify quality and quantity of petroleum product imported under BPS;
- “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;
- “offloading point” means KOJ, SPM or any other authorized area where a petroleum product shall be offloaded;
- “OMC” means an Oil Marketing Company licenced by the Authority to undertake a petroleum product wholesale business;
- GN No 423 of 2015 “Order” means the Executive Agencies (The Petroleum Bulk Procurement Agency) Order, 2015;
- “Permanent Secretary” means the Permanent Secretary of the Ministry responsible for petroleum affairs;
- “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 products” means petroleum products prescribed under regulation 14 (4);
	“SPM” means single point mooring which is an offshore facility owned and operated by TPA to offload a petroleum product from tankers;
	“supplier” means a company selected by the Agency to supply a petroleum product in bulk quantity under BPS;
	“Tender Committee” means a committee established under the provision of regulation 19;
Cap. 130	“TBS” means the Tanzania Bureau of Standards established under the Standards Act;
Cap. 166	“TPA” means the Tanzania Ports Authority established under the Ports Act;
Cap 399	“TRA” means the Tanzania Revenue Authority established under the Tanzania Revenue Authority Act;
	“wholesale business” means the sale or storage of a petroleum product in bulk quantity within the country;
	“wholesaler” means the company engaged in the supply of a petroleum product in bulk quantity for the purpose of wholesale business in Tanzania after it has taken its share from the supplier; and
Cap. 245 GN No. 94 of 2002	“WMA” means the Weights and Measures Agency established under the Executive Agencies (Weights and Measures) Establishment Order.

PART II

THE PETROLEUM BULK PROCUREMENT AGENCY

(a) The Agency

Licencing of the Agency	4. The Agency shall be licensed by the Authority in accordance with procedures stipulated in the Petroleum Act, 2015.
Functions of the Agency	5. In addition to functions stipulated under the Order, the Agency shall perform the following functions:
GN No. 423 of 2015	(a) collect the procurement requirements of petroleum products from OMCs;
	(b) conclude and administer contracts with suppliers and between the Agency and OMCs;
	(c) conduct an International Competitive Bidding for the

- procurement of petroleum products in bulk;
- (d) report to the Authority on Agency'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, WMA and other relevant parties when requested;
- (g) forecast supply and demand of petroleum products;
- (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 collection of payments for the respective shares of petroleum products imported by an OMC;
- (k) appoint an independent inspector to ensure delivery of acceptable quantity and quality of a petroleum product; and
- (l) to make orders and to undertake any function that aims at improving efficient procurement of petroleum products.

Registration of an OMC

6. An OMC shall, pursuant to the procedures prescribed by the Agency, be required to register with the Agency in order to import a petroleum product under BPS.

Financing of the Agency

7.-(1) The Agency shall be funded by:-

- (a) contribution collected from Oil Marketing Companies on each liter of petroleum product imported under BPS as shall be approved by the Minister;
- (b) sale of pre-qualification and tender documents;
- (c) income from Agency operations;
- (d) grants and loans; and
- (e) Government subventions.

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

(3) The Agency shall table before the Board the annual plan

and budget of the Agency and thereafter submit such plan and budget to the Permanent Secretary for approval.

(4) Without prejudice to the provision of sub regulation (1)(a), an OMC shall pay to the Agency, registration fees as shall be determined by the Board and approved by Permanent Secretary from time to time,

Provided that, where an OMC is subsequently granted a new licence by the Authority as the result of expiration or revocation of earlier licence, such OMC shall be required to pay registration fee in respect of the new licence granted.

Agency to keep Books of Accounts

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

Agency to report quarterly to the Board.

9.-(1) The Agency shall prepare a quarterly report for the operations of the BPS including *inter alia* the available stock, demand forecast for the coming quarter, payment status for all importers and operational challenges for that quarter.

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

(b) The Ministerial Advisory Board

Composition of the Board

10.-(1) Subject to section 6 of the Executive Agencies Act, the Ministerial Advisory Board shall comprise of:-

- (a) the Chairman;
- (b) a representative from the Ministry responsible for petroleum affairs;
- (c) one representative from the Ministry responsible for ports affairs; and
- (d) three representatives from OMCs.

(2) The Executive Director shall be the Secretary to the Ministerial Advisory Board.

Functions of the Board

11. Functions of the Ministerial Advisory Board shall be to advise the Minister on the following:

- (a) development and maintenance of a strategic framework;
- (b) objectives of the Agency;
- (c) acceptability of the Agency's plans and associated budgets;
- (d) setting of priorities and annual performance targets for the Agency;
- (e) the Agency's annual reports and accounts;
- (f) evaluation of the Agency's performance;
- (g) salaries, wages and allowances of employees of the Agency; and
- (h) any other matter in the promotion and furtherance of objectives and functions of the Agency.

Restriction on conflict of interest

12.- (1) Members of the Board shall have a fiduciary obligation to the Agency and not to the entities they represent.

(2) Employees of the Agency shall, before assuming office, sign a Code of Conduct and shall during their tenure in office observe the provisions of such Code of Conduct.

(3) A member of the Board shall not participate in his advisory role, in the matter in which he has direct or indirect interest.

Minister may issue directions

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

PART III

IMPORTATION OF BULK PETROLEUM PRODUCTS

Efficient Procurement

14.- (1) A person shall not import a petroleum product unless the importation is conducted through efficient procurement.

(2) For purpose of this regulation “efficient procurement” means a procurement undertaken by way of Bulk Procurement System in accordance with these Regulations.

(3) Powers and mandates of the Minister to implement an efficient petroleum procurement system in accordance with the Petroleum Act is hereby vested in the Agency.

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- (4) The BPS shall apply to the following petroleum products:
- (a) motor super premium;
 - (b) automotive gasoil;
 - (c) illuminating kerosene;
 - (d) heavy fuel oil;
 - (e) jet-A1;
 - (f) liquefied petroleum gas; and
 - (g) any other petroleum product as the Minister may declare.

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

(6) Without prejudice to sub regulation (5), the Authority shall have mandate to oversee all matters relating to petroleum supply operations in accordance with provisions of the Act.

Use of BPS for
transit trade

15.-(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) An OMC intending to import a petroleum transit product shall at the time of placing order, submit to the Agency the name and contacts of the consignee of the transit product.

(4) An OMC undertaking transit business shall, in the event of localization of transit product, notify in writing and provide proof of notice of tax liabilities from TRA to the Agency and the Authority.

(5) In the event that the specifications for transit cargo are:-

- (a) of higher standards than the Tanzania specifications, OMC undertaking transit business shall be required to have a dedicated depot or storage facilities for such cargo; and
- (b) of lower standards than the Tanzania specifications,

OMC undertaking transit business shall not import such transit cargo within the Tanzania territory.

(6) TRA shall provide information to the Agency in relation to localized petroleum products.

(7) Under emergency conditions declared by the Minister, the transit petroleum products may be localized.

(8) Any person who contravenes the provision of sub-regulations (3) or (4), shall be liable to a fine equal to twenty percent of the value of the cargo imported or localized as the case may be or fifty million Tanzanian shillings whatever is higher.

Priority berthing
for Non BPS
Vessels

16.-(1) Any non BPS vessel shall not be given priority berthing unless approved by the Minister after consultation with the Minister responsible for ports affairs.

(2) Subject to an approval under sub-regulation (1), prior to commencement of any discharge, the owner of the product in the approved non BPS vessel shall be required to pay provisional demurrage for the affected vessels in line.

(3) Without prejudice to sub-regulation (2), the Agency shall determine the actual demurrage to be paid.

(4) Where the owner of the product has paid:-

- (a) an excess provisional demurrage, such owner shall be entitled to refund; or
- (b) less provisional demurrage, such owner shall be required pay the remaining amount within the time prescribed by the Agency.

PART IV

BULK PROCUREMENT PROCEDURES

Obligation to
Procure
Petroleum

17.- (1) A person shall not procure a petroleum product in bulk except pursuant to these regulations.

Petroleum (Bulk Procurement)

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Product Using
BPS

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

Bidding Process

18. All matters relating to bidding process shall be as prescribed in the Bulk Procurement System Manual.

Tender
Committee

19.- (1) There shall be a tender committee which shall be responsible for opening, evaluation and award of tender to the winning bidder in accordance with the Bulk Procurement System Manual.

(2) The tender committee shall comprise of a Chairman and other five members, three of whom shall represent OMCs, and the other two from staff of the Agency.

(3) Board members and pre-qualified suppliers or their affiliates shall not be eligible to be members of the Tender Committee.

Petroleum
products
specifications

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

(2) The Agency shall ensure that specifications included in the tender process strictly conform to the Standard Act.

(3) Petroleum products that do not meet approved specifications shall not be offloaded into Tanzania.

(4) Any supplier who supplies a petroleum product that is not in conformity with approved specifications shall be blacklisted and shall not be eligible to bid for importation of petroleum products into Tanzania for a period of not less than six months and not more than five years.

Procedure for
sampling, testing
and blacklisting

21.- (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 the Agency and to an Independent Inspector.

(3) An OMC may appoint a surveyor to verify on the quality and quantity of any petroleum product received in a terminal.

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

(5) In the event that quantity results by Independent inspectors are not equal, the Agency shall regard results by WMA as final as much as quantity of imported petroleum product in Tanzania is concerned.

(6) The Agency shall, upon receipt of results from TBS in sub-regulation (2) which are non-conforming, blacklist the respective supplier and thereafter notify the Authority.

(7) Each OMC is obliged to notify the Agency 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.

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

(9) Any person who contravenes the provisions of sub-regulation (8) shall be deemed to have distorted the BPS and shall be liable to the penalties prescribed under regulation 27.

Re-sampling and re-testing

22.-(1) Where the Agency or supplier has reasons to believe that any results issued by TBS are erroneous, the Agency may request TBS to undertake re-sampling or re-testing of the particular petroleum product.

(2) Without derogating the powers conferred by TBS under the Standards Act, TBS may undertake re-sampling or re-testing in collaboration with the Independent inspectors of the Agency or supplier, or cause such re-sampling or re-testing to be undertaken by an independent institution upon such terms and

conditions as the TBS may prescribe.

(3) Any costs for re-sampling or re-testing under this regulation shall be borne by an entity seeking such re-sampling or re-testing.

Cargo delivery

23.- (1) A supplier shall be responsible for the procurement, shipping arrangements and the offloading of a petroleum product to a discharge port.

(2) A BPS vessel delivering a petroleum product shall, if it arrives within its scheduled delivery date ranges, have priority access to the offloading point.

(3) A BPS vessel delivering a petroleum product that arrives prior to, or after its scheduled delivery date range shall be accommodated as soon as practicable.

Bulk Procurement
System Manual

24. The Bulk Procurement System Manual shall-

(a) regulate all matters related to invitation to bid, bid evaluation, bids qualification and award of the bid to supply a bulk petroleum product; and

(b) guide all operational matters related to procurement of petroleum products under BPS, including pre-arrival checks, pre-discharge operations, discharge operations, post discharge overturn and customs and warehousing.

(2) Without prejudice to sub regulation (1), the Bulk Procurement System Manual shall be prepared by the Agency and thereafter submitted to the Authority for vetting before it is approved by the Minister.

Financing and
payment
procedures

25.- (1) Financing of petroleum products under the BPS shall be borne by OMCs.

(2) For purposes of procurement of petroleum products under the BPS, procedures stipulated under public procurement laws shall not apply.

(3) Each OMC's banker shall open a letter of credit to the supplier's banker or facilitate pre-payment in respect of the

cargo specified in the respective supply and shipping contract.

(4) Where an OMC fails to open a letter of credit or facilitate pre-payment within the time specified in the shipping and supply contract, such OMC shall be deemed to have distorted the BPS, and liable to penalties prescribed in regulation 27.

(5) 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

DISTORTION OF BPS

Distortion of BPS

26. For the purpose of these Regulations, a person, supplier or an OMC shall be deemed to have distorted the functioning of the BPS if:-

- (a) such person, supplier or OMC either individually or collectively with other person or OMC cause the Agency not to function as required including but not limited to delay in opening letter of credit, payment of wharfage and non-compliance with its guidance or directives;
- (b) the OMC fails or refuses to make contributions as required in these Regulations;
- (c) the OMC fails or refuses to take part in day to day business of the Agency;
- (d) the OMC willfully and with no justifiable reasons fails to import petroleum products;
- (e) the OMC fails or refuses without justifiable cause to receive the ordered cargo;
- (f) a supplier acts in a manner which endangers the security of supply; and
- (g) the OMC fails to make arrangement to receive the ordered quantity.

Penalty

27. Any person who distorts the functioning of the BPS or willfully endangers the functioning of the competitive supply system or causes the Agency not to function as required shall be liable to a fine prescribed in the Schedule.

PART VI

PENALTIES

Late delivery

28.- (1) Late delivery default arising from causes other than a *force majeure* event shall attract a late delivery penalty of US\$ 0.5 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 Agency for onward payment to the buyer within seven days from the date of receiving demand note from the Agency.

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

(4) The demurrage costs resulting from cascading effect caused by late delivery of the BPS vessel shall be borne by the supplier of the late delivery vessel.

(5) For purpose of this regulation, the cascading effect shall be limited to three subsequent vessels which have to discharge petroleum products after the late delivery vessel.

(6) For purposes of ensuring efficient and effective BPS, the Agency shall take necessary measures to minimize cascading effects.

Delivery default

29. Without prejudice to the penalty prescribed in regulation 28(1) a supplier whose vessel is delayed for more than seven 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.

Late payment

30. (1) An importer 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% per annum or be barred from participating in the following BPS tender or both.

(2) The penalty prescribed in sub-regulation (1) shall be

paid to an escrow account operated by Agency within seven days from the date of determination of such failure for onward payment to the supplier.

PART VII
GENERAL PROVISIONS

Upgrading and replacement of existing lines

31.- (1) All entities 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 penalty prescribed under regulation 33 any person who is in continuous breach of sub-regulation (1) shall be liable to a fine of not less than one million shillings for every day on which the contravention occurs or continues.

General penalty

32. - (1) Any person who contravenes the provisions of these regulations for which no specific penalty is provided shall be liable to a fine of three million shillings.

(2) Any OMC, supplier or Independent Inspector 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 the OMC, supplier or Independent Inspector is concerned.

Penalty for continued defiance

33. Any person who is in continuous breach of these regulations shall be liable to a fine of one million shillings for every day on which the contravention occurs or continues.

Revocation
GN No 59 of
2013

34.-(1) The Petroleum (Bulk Procurement) Regulations, 2013 are hereby revoked.

(2) Notwithstanding the revocation of the Petroleum (Bulk Procurement) Regulations, 2013, all orders, exemptions, contracts 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

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until revoked or otherwise expire or cease to have effect.

(3) These Regulations shall not operate so as to affect in a prejudicial way the rights of any person granted or any contract entered prior to the commencement of these Regulations.

Agency to supplement procedures

35. Where procedures for any specific matter or thing are not provided for in these Regulations, the Agency shall endeavor to do whatever is necessary and permitted by applicable law to effectively and completely adjudicate on the matter or thing.

SCHEDULE

(Made under regulation 27)

OFFENCE	PENALTY	ADDITIONAL PENALTY
Delay to open LC or to make pre payment	20 millions, and one million for each day of continuity of breach	<ul style="list-style-type: none"> • Not to be allowed to participate in tenders until when the product paid for and all penalties have been paid. • Pay demurrage resulting from failure to open LC
OMCs failure to make arrangement to receive the ordered quantity including payment of wharfage and creating ullage.	20 million shillings, and one million for each day of continuity breach	Pay all cost associated with failure to make arrangement to receive/ordered quantity eg demurrage
Failure to make contribution to the Agency.	10% of the amount to be paid as contribution and one million for each day of continuity breach.	Not to participate in tenders until when full amount has been paid.
OMC refusal to take part in day to day business of the Agency.	3 million shillings, and one million for each day of continuity breach.	
Failure to make arrangement to receive the ordered quantity	20 million shillings, and one million for each day of continuity breach	Pay demurrage resulting from failure to receive the ordered quantity.

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Supplier acts which endangers the security of supply such as late delivery.	0.5 USD per MT per day	<ul style="list-style-type: none">• Pay demurrage resulting from cascading effect;• Invoke the Performance Bond as per the terms and conditions of the contract.
Supplier bring off specification product	50,000 USD	<ul style="list-style-type: none">• Invoke the Performance Bond as per the terms and conditions of the contract.• Pay penalties as per the shipping and supply contract.• Being blacklisted as per regulation 19(4).

Dar es Salaam,
20th October, 2015

GEORGE B. SIMBACHAWENE,
Minister for Energy and Minerals