

GOVERNMENTS NOTICE No.958 Published on 6/12/2019

THE PETROLEUM ACT,

(CAP.392)

REGULATIONS

(Made under section 258)

THE PETROLEUM (RECONNAISSANCE AND TENDERING) REGULATIONS, 2019

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THE PETROLEUM ACT
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REGULATIONS

(Made under sections 258)

THE PETROLEUM (RECONNAISSANCE AND TENDERING) REGULATIONS, 2019

PART I

PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Petroleum (Reconnaissance and Tendering) Regulations, 2019.
- Application 2. These Regulations shall govern the conduct and issuance of Reconnaissance permit and Tendering procedures.
- Interpretation 3. In these Regulations, unless the context otherwise requires:
- Cap 328 "Act" means the Petroleum Act;
- "Authority" means the Petroleum Upstream Regulatory Authority and the acronym PURA ;
- "Contractor" means a second party or an entity to which any interest on the licence may be transferred in the application of the provisions of the relevant agreement;
- "Effective Date" means the date on which a Petroleum Agreement or Reconnaissance and data sales agreement is signed by the Parties and the Exploration Licence is simultaneously granted by the Minister or the Reconnaissance permit is issued by the Director General of the Authority;
- "Licensed area" means the area covered by the licence;
- "Operations" means petroleum exploration, appraisal,

development or production operations;

"Operator" means a contractor or a person appointed by the licence holder to be in charge of an operation under the licence;

"Petroleum Agreement" means Production Sharing Agreement, Service Contract, Concession or any other form of contract which the Government may opt to use.

Cap. "Public Procurement Regulatory Authority" in its acronym PPRA means a regulatory authority established under the Procurement Act;

PART II

GRANT OF RECONNAISSANCE PERMITS

Reconnaissance permit

4.-(1) A person intending to carry out reconnaissance surveys shall apply to the Authority for reconnaissance permit.

(2) An application for a reconnaissance permit shall be made to the Authority in a manner prescribed manner and shall be accompanied by the prescribed fee.

(3) An application for the grant of reconnaissance permit shall contain:

in case of an individual person, full name and nationality, physical and postal address;

- (a) in the case of a body corporate, its corporate name, place of incorporation, names and nationality of directors accompanied by necessary documents and certificates;
- (b) in case of more than one person, particulars referred in item (i) and (ii) of each of that person;
- (c) the size of the area to which the application relates;
- (d) the reconnaissance work programme proposed to be carried out and expected expenditure in respect of the area to which the application relates;
- (e) the proposed duration for which the permit is sought which shall not exceed three years unless otherwise determined by the Authority;
- (f) an assessment of the impact which the proposed reconnaissance operations may have on the society and environment and their mitigation plans;
- (g) a description of capacity including financial and technical resources available to the applicant;

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- (h) a procurement plan of goods and services to be procured locally and Internationally;
- (i) details of any reconnaissance permit previously granted to the applicant;
- (j) any other matter which in the opinion of the applicant is relevant to the application;
- (k) particulars of the type of survey to be undertaken;
- (l) particulars of the petroleum data to be provided by the Authority; and
- (m) any other information which may be requested by the Authority.

(4) A person who contravenes the provisions of regulation 4 shall, on conviction be liable to a fine of not less than seventy five million Tanzanian Shillings.

Grant or
refusal of
application
for
reconnaissance
permit

5.-(1) The Authority may grant or decline to grant reconnaissance permit with respect to an application made pursuant to the provisions these Regulations.

(2) A reconnaissance permit shall not be granted in respect of an area which:

- (a) comprises an exploration or development licence; or
- (b) is reserved under the Act.

(3) In granting or refusing to grant a reconnaissance permit, the Authority shall take into account of the following:

- (a) the legal status of the applicant;
- (b) the importance of the requested survey;
- (c) the proposed reconnaissance work programme and expenditure;
- (d) the impact of the proposed reconnaissance operations on the economic, social, cultural and environment;
- (e) the capacity of the applicant including financial and technical resources ; and
- (f) any other factor which, in the opinion of the Authority is relevant to the application.

Notice of
decision and
duration of

6.-(1) The Authority shall, within ninety days after receipt of the application, notify the applicant of its decision to

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permit

grant or refuse to grant reconnaissance permit:

provided that, the Authority shall give reasons for refusal or conditions for grant of reconnaissance permit.

(2) Where the Authority fails to determine the application within the prescribed time stipulated in subregulation (1) the Authority shall notify the applicants before the lapse of ninety days.

(3) The Applicant shall be required to respond within a period of thirty days after receipt of the notice.

(4) Subject to the provisions of the Act, permit issues under the subregulation (1) shall last for a duration of not more than three years unless otherwise determined by the Authority.

Contents of a reconnaissance permit

7. Subject to the provision of the Act, a reconnaissance permit shall contain the:

- (a) date and registration number of the permit;
- (b) names and particulars of the permit holder;
- (c) duration of the permit;
- (d) particulars of the area to which the permit applies;
- (e) terms and conditions of the permit; and
- (f) type of survey and work programme to be undertaken in the reconnaissance period and estimated expenditure in respect of the work programme.

Reconnaissance and data Sale agreement

8.-(1) The Authority shall enter into a contract with a prospective reconnaissance Permit holder for the purpose of either undertaking reconnaissance survey, data sales or both.

(2) The permit shall be appended to the Reconnaissance and data sale agreement.

(3) The Board of Directors of the Authority shall approve the reconnaissance and data sale agreement prior to the signing.

Reconnaissance work programme

9.-(1) A holder of reconnaissance permit shall complete the reconnaissance work programme within the duration specified in the reconnaissance permit.

(2) A holder of reconnaissance permit shall not modify or amend the content of the reconnaissance work programme

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without a prior written approval of the Authority.

(3) An application for modification or amendment of the reconnaissance work programme shall be submitted to the Authority.

(4) The Authority may approve a modification or amendment to reconnaissance work programme subject to such terms and conditions as the Authority may specify. .

Reconnaissance permit guarantee

10.-(1) A holder of reconnaissance permit shall, within thirty days from the effective date of the permit and in a form approved by the Authority, provide to the Authority a guarantee for fulfilment of the obligations under the permit and reconnaissance work programme.

(2) The guarantee shall be in a form of unconditional bank guarantee equivalent to ten percent (10%) of the estimated expenditure for the reconnaissance work programme and shall remain effective for a duration of the permit.

(3) Upon completion of the reconnaissance work programme, the Authority shall return the guarantee to the holder of the reconnaissance permit.

(4) Where a holder of a reconnaissance permit fails to complete the reconnaissance work programme within the stipulated period, the Authority may revoke the permit and the holder shall pay to the Authority the part of the expenditure obligation which is equivalent to the uncompleted part of the reconnaissance work programme.

Transfer and assignment of the reconnaissance permit

11.-(1) A person desiring to transfer or assign a reconnaissance permit shall make an application on that behalf to the Authority, and any purported transfer or assignment of the reconnaissance permit without a period approval of the Authority shall be void

(2) An application referred to under subregulation (1) shall be accompanied by:

- (a) an undertaking that the transferee is capable of discharging the obligations of the transferor;
- (b) certificate of incorporation or compliance by the transferee;
- (c) transfer agreements between transferee and transferor;
- (d) tax clearance certificate from the Tanzania Revenue Authority;

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- (e) particulars of technical and industrial qualifications of the transferee and of his employees;
- (f) particulars of the kind of financial resources available to the transferee, including capital, credit facilities; and
- (g) any other matter as the Authority may consider necessary.

(3) The Authority may grant or refuse to grant approval subject to any condition as the Minister considers necessary to impose.

Rights and obligations of reconnaissance permit holders

12.-(1) Reconnaissance permit shall confer upon the holder non-exclusive rights to conduct reconnaissance operations and may be issued to different persons in respect of different reconnaissance activities in the same area.

(2) All original data acquired from reconnaissance operations shall be managed and freely used by the Authority, provided that a reconnaissance permit may permit the holder to sell data acquired from reconnaissance operations, where the profits derived from the sale of data shall be shared between the Authority and the permit holder in accordance with the conditions and terms specified in the Rules prepared by the Authority.

(3) A holder of a reconnaissance permit shall promptly submit to the Authority in such format as shall be specified in the permit the complete package of the data and retain the copy of the same for the whole period of the permit.

(4) A holder of a reconnaissance permit shall not, by virtue of having been issued the permit, has the right to be awarded a Petroleum Agreement.

Marketing and Sales of data

13.-(1) The Authority and permit holder shall have exclusive rights to promote, market and sell data in accordance with the provision of these Regulations.

(2) Data shall include unprocessed, processed, re-processed and interpreted data, reports and any other information and deliverables derived from these data.

(3) The cost for marketing and sales of data shall be recovered as agreed between the Authority and the reconnaissance permit holder in the manner prescribed in the Rules.

(4) The Authority and permit holder shall have a joint custodianship of all data for marketing and sale purposes for the

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period to be agreed.

(5) All sales of data to any third party shall be under the joint logos of the Authority and permit holder.

(6) All Data shall be labeled as confidential data owned by the Government of Tanzania, produced by the permit holder and any use shall be subject to the joint authorization of the Authority and permit holder”.

Submission of
quarterly
report to the
Authority

14.-(1) Permit holder shall at the end of each quarter, starting from 1st January of each calendar year, submit to the Authority a quarterly report of the marketing activities and data sales.

(2) The report to be submitted under subregulation (1) shall include:

- (a) date of sale;
- (b) description of the buyer;
- (c) data type;
- (d) unit price;
- (e) total value;
- (f) total cost incurred during that quarter;
- (g) cost recovery statement and revenue allocation; and
- (h) any other information as the Authority may direct.

(3) A third party shall not have right to sell or otherwise dispose data to any other person except with the express consent of the Authority.

Termination
of
reconnaissance
permit

15. Without prejudice to the provision of section 39 of the Act, the Authority shall terminate a Reconnaissance Permit where permit holder:

- (a) fails in a material respect to comply with any requirement of the Act or the Regulations;
- (b) fails to comply with a condition of the Permit; and
- (c) fails to comply with a direction lawfully given under the Act or the Regulations.

PART III

TENDERING FOR AND GRANTING PETROLEUM AGREEMENTS

Tendering Procedure for Petroleum Agreement

Requirement
for award of
petroleum
agreement

16.-(1) Petroleum Agreement shall be awarded on the basis of open, transparent and competitive tenders or through direct negotiations conducted in accordance with the provisions of the Act and these Regulations.

(2) A Petroleum Agreement shall not relate to more than one block.

Direct award
to the
National Oil
Company

17.-(1) The National Oil Company may, in writing, propose to the Minister to be awarded a certain block to conduct petroleum operations.

(2) The Minister may upon advice by the Authority award a certain block to the National Oil Company in accordance with section 44(4) of the Act, based on the submitted proposal.

(3) Upon an award, the National Oil Company shall have the rights to conduct petroleum operations in the block awarded.

(4) Where the National Oil company fails within three years to conduct the petroleum operation on its own means, section 48 of the Act shall apply accordingly.

Bidding
rounds

18.- (1) Subject to the responsibilities given to the Authority under Section 12(1)(a)(i) of the Act, the Authority may seek consent of the Minister to conduct a bidding round for the award of Petroleum Agreements in respect of one or more blocks within open acreages for Petroleum operations.

(2) The bidding process under sub-regulation (1) shall consist of the following stages:

- (a) announcement of open acreages for bidding;
- (b) prequalification;
- (c) request for proposals;
- (d) evaluation of proposals;
- (e) Petroleum Agreement negotiations;
- (f) contract signing; and

(g) award of license.

Procedure for
preparation
and
submission of
tender

19.-(1) The Authority shall prepare and submit to the Minister for approval tender procedures setting out the procedures and requirements governing the bidding round including:

- (a) the schedule for the bidding round announcement, presentations to interested companies, submission of bids, evaluation of bids, contract signature and award;
- (b) data package purchase requirements;
- (c) participation fees;
- (d) rules for the submission of bids, including the timing, form and the bid guarantees;
- (e) bid components;
- (f) the percentage weight assigned to each bid component for evaluation purposes; and
- (g) the latest model petroleum Agreement shall be the basis for negotiation with the winning bidder .

(2) For the purposes of subregulation (1), the bid components shall include one or more of the following:

- (a) minimum work program during the exploration period;
- (b) aggregate amount of the signature bonus and other contributions payable upon the effective date of the petroleum agreement;
- (c) aggregate amount of the surface rentals and other annual contributions;
- (d) royalty rate on crude oil and natural gas;
- (e) percentage of petroleum production allocated to the recovery of contractor's costs;
- (f) percentages of, or formula for calculating, the government share of petroleum production remaining after deduction of the Petroleum production allocated to cost recovery and royalties;
- (g) percentage of state participation in excess of the minimum set forth in section 35; and

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(h) such other criteria as the Authority may deem appropriate.

(3) In preparation of the tender procedures, the Authority shall consult the Ministry responsible for Finance, agency responsible for regulating public procurement and any other relevant Ministries or agencies in respect of any matter falling within the scope of functions and responsibilities of such other Ministry or agency.

Approval and
Publication

20. The Minister may instruct the Authority in respect of the areas open for bidding:

- (a) publish a notice of request for pre-qualification in accordance with the guidelines to be made by the Authority;
- (b) develop a shortlist of prequalified companies;
- (c) invite the prequalified companies to submit their proposals; and
- (d) conduct evaluation of bidders prior to award of a petroleum exploration license or a petroleum development license.

Prequalification Procedure

Application
for
prequalification
on

21.-A person who wishes to apply for a Petroleum agreement in a bidding round or through direct negotiations, shall apply for prequalification in accordance with prequalification guidelines prepared by the Authority and approved by the Minister.

Contents of
the
prequalification
on guidelines

22.(1)The prequalification guidelines shall provide-

- (a) the requirements for prequalification;
- (b) the amount of the prequalification fee;
- (c) the requirements and supporting documentation for technical qualification;
- (d) the requirements and supporting documentation for economic and financial qualifications;
- (e) the required legal documentation evidencing the organization, good standing of the applicant, its directors, shareholders and beneficial owners;

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- (f) the timeframe within which to apply;
- (g) the submission procedure, location and address for clarifications; and
- (h) any other information that the Authority deems necessary.

(2) Technical qualification shall take into account the past and the current worldwide experience of the applicant, the size, nature and scope of the Petroleum projects in which the applicant has been involved as operator or as participant, and the quality of its health, safety and environmental processes, provided that no applicant shall be excluded from the prequalification process solely on account of its size.

Notice of
prequalificati
on

23.-(1) Where the Authority is satisfied that an applicant qualifies as an operator or a participant, as the case may be, it shall issue to the applicant a notice of qualification.

(2) The qualification will be limited to any specific onshore or offshore environment or other specific operating conditions referred to in the relevant prequalification guidelines pursuant to which the application was made.

Duration of
prequalificati
on

24. Prequalification as an operator or as a participant under these Regulations shall be valid for a period of up to the next bidding round.

Notification
as to material
changes

25. A person pre-qualified as an operator or as a participant shall give written notice to the Authority as soon as practicable regarding any material changes to the technical, financial or other information submitted in connection with its prequalification, including changes in beneficial ownership from that originally reported or any information affecting their obligations under the notice.

Termination,
cancellation
and
revocation of
prequalificati
on

26.-(1) A notice for prequalification shall terminate upon:

- (a) termination of the duration upon which it was granted; or
- (b) cancellation or revocation in accordance with these Regulations.

(2) Notwithstanding regulation 23, the Authority may

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cancel or revoke the qualification of any person where:-

- (a) there is an adverse material change in the status of the holder of the prequalification notice; or
- (b) the company supplies false, misleading information, or fails to supply material information, in respect of, or following, the application for prequalification.

(3) Where it is evident that the applicant has provided information that is false, misleading or fails to supply material information his qualification, such applicant shall be barred from in any public tender in accordance with Public Procurement Act.

Register

27.-(1) The Authority shall establish and maintain a register of the qualified applicants which shall record, in respect of each applicant, the grounds for the pre-qualification and any cancellation thereof, shall include:

- (a) all documentation submitted to the Authority in support of an application for prequalification, and
- (b) any notice received under regulation 25

(2) Any person, upon request and payment of fee prescribed in the Rules, may inspect the said register.

Invitation to tender

28.- (1) The Minister shall cause open acreages for bidding to be advertised in the PPRA tender's portal, Tanzania procurement journal, the Authority's website, newspapers of wide circulation and international journals.

(2) In order to ensure widest participation in the bidding round, the Minister may cause the tender to be advertised in local and international promotional events and conferences.

Issuance of Bidding documents

29.-(1) The Authority shall, by written notice, invite the bidders to submit applications in accordance with the Act in respect of the block or blocks or part of a block to be applied for and upon receipt of the bidders' payment of the prescribed fee, issue bidding documents to the prequalified bidders.

(2) The bidding documents referred to in sub-regulation (1) shall contain information to bidders on:

- (a) the format and content required in the bid;

- (b) requirement for signing and authorizing bids;
- (c) the number of copies of bids to be submitted;
- (d) bid validity period and extensions, if any;
- (e) bid security or bid security declaration;
- (f) conditions for forfeiture of bid security and consequences of dishonored bids securing declaration;
- (g) methods of receipt of bids;
- (h) the bid currency;
- (i) withdrawal, replacement and modification of bids, where necessary;
- (j) format and signing of proposal;
- (k) submission and opening of proposals;
- (l) the evaluation criteria for bids;
- (m) the mechanism by which any dispute would be resolved; and
- (n) any other information as the Authority deems necessary.

(3) The Authority in collaboration with other relevant bodies shall prepare standard bidding document.

Appointment
of evaluation
committee

30. The Minister shall, in consultation with the Authority, appoint a bid evaluation committee, in relation to each bidding round.

Bid
evaluation
committee

31.-(1)The bid evaluation committee shall consist of a minimum number of seven and a maximum number of ten members in which at least four members shall have relevant professional qualification and experience in the work to be conducted.

(2) Without prejudice to subregulation (1), the bid

evaluation committee shall be comprised of at least one representative from:

- (a) the Ministry responsible for Petroleum;
- (b) the Ministry responsible for Finance;
- (c) the Authority;
- (d) the National Oil Company;
- (e) the Tanzania Extractive Industries Transparent Initiative; and
- (f) any other person as the Minister may deem necessary.

(3) A member of the bid evaluation committee shall not have any interest, direct or indirect, in any company participating in the bidding round.

(4) Each member of bid evaluation committee shall sign a code of ethics prior to commencing evaluation activities.

(5) A person solicited to become a member of a bid evaluation panel shall disclose to the Authority the nature of any such interest, and the Authority shall, in consultation with the Minister decide whether the expert in question should be nullified or revoked.

(6) The decision of the Authority concerning any expert so retained shall be recorded in writing and annexed to the bid assessment report.

Bid
evaluation
report

32.-(1) The bid evaluation panel shall prepare and submit to the Authority a bid assessment report containing recommendations on the classification of the bids and a detailed information about all of the bids.

(2) Decisions of the committee shall be recorded, including any dissenting views, in minutes of meeting which shall be signed by the members of the committee and annexed to the bid assessment report.

(3) The Authority shall submit the bid assessment report to the Minister, accompanied by its observations and recommendations on the bid assessment and bid award.

(b) Negotiation of Agreements relating to Petroleum Rights

Negotiations
with
successful
evaluated

33. Upon receipt of the bid assessment report, the Minister may initiate negotiations with the successful bidders in

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bidders order to harmonize their offers with Government expectations and award a licence in accordance with the Act and these Regulations.

Appointment of Government Negotiation Team 34.-(1) The Minister shall, in consultation with the Authority, appoint a Government Negotiation Team for each Petroleum Agreement on behalf of the Government.

(2) The Government Negotiation Team shall consist a maximum number of eleven members.

(3) In pursuance to subregulation (2), the Government Negotiation Team shall be comprised of: three.

- (a) two representatives from the Ministry responsible from the Ministry responsible for Petroleum;
- (b) representatives from the National Oil Company;
- (c) one member representing the Attorney General;
- (d) one member representing the Ministry of finance;
- (e) one member representing the Tanzania Tax Authority; and
- (f) any other member as the Minister may appoint basing on the proposal of the Authority

Instruction to Government Negotiation Team 35.-(1) The Minister may, in consultation with the Authority, appoint a secretariat team for to the Government Negotiation Team.

(2) The basis for negotiation shall be the Model Petroleum Agreement and other directives from the Government.

(3) in addition to subregulation (2), the Minister may prepare and issue a code of conduct or specific guidelines for the conduct of the affairs of the Government Negotiation Team.

Appointment of secretariat 36.-(1) The Authority, in consultation with the Minister, may appoint a secretariat team for purposes of coordinating the affairs of the Government Negotiation Team.

(2) Members of the secretariat team to the Government may be appointed from the Ministry, Authority, National Oil Company any other Ministry Government agency or elsewhere as the Minister may determine.

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Termination
and
replacement
of
Government
Negotiation
Team
Membership

37.-(1) The Minister may terminate any member of his appointment made if, he is not satisfied with the conduct of any Government Negotiation Team member.

(2) The Minister shall, while terminating any Government Negotiation Team membership provide the reasons for his decision to terminate such membership.

(3) Any member appointed as Government Negotiation Team may apply in writing to the Minister for resignation.

(4) The person applying in accordance with subregulation (3) shall provide the reasons for his resignation.

(5) Where any Government Negotiation Team member's appointment is terminated or become vacant because of the self-resignation, the Minister may may appoint a new member.

Reasons for
termination
and
replacement
of GNT
membership

38.-(1)A person may be terminated to be a member of Government Negotiation Team on the following grounds:

(a) direct or indirect interest in any company negotiating against the Government;

(b) involved in corrupt transactions or convicted of an offence involving dishonesty or fraud by a competent court within or outside United Republic of Tanzania;

(c) convicted of an offence and sentenced for imprisonment for a term of six months or more by a competent court within or outside United Republic of Tanzania without an option of fine;

(d) tendered a resignation letter;

(e) incapable of discharging his obligations;

(f) disclosed Government Negotiation Team confidential information; or

(2)Any other reasonable ground that the Minister is satisfied that is interfering the negotiation process.

Application
and grant of
exploration
licence

39.-(1) Upon completion of tendering process and where the contractor has been duly procured, the National Oil Company shall apply for an exploration licence in accordance with section 51 of the Act.

(2) The process and conditions for granting the licence

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shall be as prescribed under the Act

Monitoring of
tendering
procedure

40. Tendering procedure for procurement of petroleum matters shall be regulated by the authority responsible for regulating Public Procurement in Tanzania in accordance with the Petroleum Act and its Regulations

Disclaimer

41. Where the Act or these Regulations do not provide for any matter related to procurement of petroleum, the provision made under Public Procurement Act and its regulations shall apply.

Dodoma,
27th November, 2019

MEDARD M. C. KALEMANI
Minister for Energy