

**ANALYSIS OF CONTRACTORS' COMPLAINTS ON
SELECTION FAIRNESS IN TENDERING CASES FROM
PUBLIC PROCUREMENT APPEALS AUTHORITY TANZANIA**

Sauda Njila

**M.Sc. (Construction Economics and Management) Dissertation
Ardhi University
November, 2017**

**ANALYSIS OF CONTRACTORS' COMPLAINTS ON
SELECTION FAIRNESS IN TENDERING CASES FROM
PUBLIC PROCUREMENT APPEALS AUTHORITY TANZANIA**

**By
Sauda Njila**

**Dissertation submitted in partial fulfillment of the requirements for the award
of the MSC Degree in construction Economics and Management of the Ardhi
University**

**Ardhi University
November, 2017**

CERTIFICATION

The undersigned certify that she has read and hereby recommend for the acceptance by Ardhi University a dissertation entitled; **Examination of Contractors' Complaints on Selection Fairness in Tendering Cases From Public Procurement Appeals Authority Tanzania** in fulfillment of the requirements for the degree of (construction Economics and Management) of Ardhi University.

.....

Dr Khalfan Amour

(Supervisor)

Date.....

DECLARATION AND COPYRIGHT

I, **Njila, Sauda**, declare that this dissertation is my original work, and to the best of my knowledge, it has not been presented and will not be presented to any other University for similar or any other degree award.



Signature.....

This dissertation is copyright material protected under the Berne Convention, the copyright Act, 1999 and other international and national enactment, in that behalf, on intellectual property. It may not be reproduced by any means, in full or in part, except for short extracts in fair dealing, for research or private study, critical scholarly review or discourse with an acknowledgement, without the written permission of the Directorate of the Postgraduate studies, on behalf of both the author and the Ardhi University,

DEDICATION

With my heart, this dissertation is dedicated to my lovely Husband, Dr. Boniphace Timoth Mbise and our children, Deborah, Christian and Praise for their understanding and patience throughout the study.

ACKNOWLEDGEMENTS

My foremost gratitude goes to the Almighty God for his guidance in undertaking this study. It is through God's grace that made this vital assignment possible.

Secondly, I am highly indebted to my supervisor Dr. Khalfan Amour, for his tireless support on mentorship and constructive academic criticism. He provided abundance guidance as he particularly read draft after draft of my dissertation. Many thanks are extended to all lecturers of the school of Construction Economics and Management (SCEM) for their valuable advices and comments.

I feel indebted to my employer Contractors Registration Board (CRB) for tolerance and human kind for allowing pursuing the masters' programme. I know, somewhere there were incontinences because of the pursuance of this programme. This particularly appreciation goes to Eastern Zone Manager, Eng. Leonard Lucas and colleagues under the department for their valuable support and the encouragement they provided to me during the entire process of the study.

Undertaking and accomplishment of this study was, in many ways, made possible by the tireless support of my family and friends in and outside the Ardhi University. I thank them all for their warmth, solidarity and patience, especially during the final stages of the research. In particular I thank my lovely husband, Dr. Boniphace Timoth Mbise. May our Almighty God bless you all.

ABSTRACT

This study aimed to analyze on pre-contract cases which have been filed and concluded by the Public Procurement Appeals Authority or reported to Public Procurement Regulatory Authority, believing that there is unfair selection practice conducted. Public sector in Tanzania is governed by the Public Procurement Act No.21 of 2004 and its established regulations whereby it provides framework for carrying out procurement using public funds. The underlying principle is to obtain competitive price through open competition process which is transparent and non-discriminatory amongst bidders.

PPRA Annual Procurement Evaluation Report on the section of Procurement compliance and Complaints reviewed and PPAA Detailed Appeals were used and come up with total of 90 complaints appeals among them 29 are from contractors, 54 Suppliers & Other Service Providers and 7 Consultants. The cases study were chosen due to reason that is a serial of well documented complaints whereby three dimension views obtained such as ; Procuring Entities objections, Explanation from contractors and the conclusion of the mediate which is the Authority ruling as the procurement regulations enforcer.

The study finds that; selection of contractors for public works are not being followed fairly by not abiding to PPRA Act and its regulations and it is a problem which is exists in the Industry. Furthermore, it was found that there is validity of complaints by exploring the existence of the tenders appealed where all the detailed grounds are specified and 11 (37.9%) complaints and their grounds were accepted by PPAA and the rest which is 17 (62.1%) Withheld, whereby for accepted complaints the Appeals Authority granted appellant prays such as PE's have been ordered to re-evaluate the tender, pay compensation and start the tendering procedure in order to attain value for money for public projects, the accepted or valid complaints is not to be ignored for developing country like Tanzania when it comes to value for money. It is recommended that all construction stakeholders should abide into Professionalism and implement Public procurement Act 2011 and its regulations in order to archive integrity and transparency in the industry.

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION AND COPYRIGHT	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS.....	iv
ABSTRACT	v
LIST OF TABLES	x
LIST OF FIGURES	xi
LIST OF ABBREVIATIONS AND ACRONYMS	xii
CHAPTER ONE.....	1
PROBLEM SETTING.....	1
1.0 Background to the Problem.....	1
1.2 Problem statement.....	3
1.3 Research Objectives	8
1.3.1 The Main Research Objective	8
1.3.2 Specific Research Objectives	8
1.4 Research Questions	8
1.4.1 Main Research Question.....	8
1.4.2 Specific Research Questions	8
1.5 Significance of the Study	9
1.6 Limitation of the study	9
CHAPTER TWO	10
LITERATURE REVIEW.....	10
2.0 Introduction.....	10

2.1	Theoretical Review	10
2.1.1	Institutional theory.....	10
2.1.2	Agency theory	11
2.2	Practice for Selection of Contractors	13
2.2.1	Selection of a method of procurement	14
2.3	The Legal Framework for Construction Industry Procurement in Tanzania ..	16
2.4	The Public Procurement Regulatory Authority (PPRA).....	17
2.5	The Public Procurement Appeals Authority (PPAA)	18
2.5.1	Functions Of The Authority (PPA)	18
2.5.2	Application to Appeal Procedures.....	19
2.5.3	Right to review (section 95 of PPA 2011).....	19
2.5.4	Settlement Of Complaints Or Disputes By Accounting Officer (Section 96 of PPA 2011).....	20
2.5.5	Review by the Appeals Authority (Section 97 of PPA 2011).....	22
2.6	Complaint Reviews.....	24
2.6.1	Review of Complaints and Procurements Decisions under the Public Procurement Act, 2011.....	24
2.6.2	Administrative review by the Head of Procuring Entity (Section 96)	24
2.6.3	Procedures for submission of application for administrative review to the Head of the Procuring Entity (Regulation 105)	25
2.6.4	The application for administrative.....	25
2.6.5	Time limit for administrative review by the Head of procuring entity	27
2.6.6	Review by the PPAA (Section 97; Regulation 107)	27
2.6.7	Judicial Review	28

2.6.8	Determination Of Appeals (Section 5, PPAR 2014)	29
1.	PPAA FORM NO.1 (Notice Of Intention To Appeal)-APPENDIX I....	29
2.6.9	Matters Which May Be Appealed Against (Section 6, PPAR 2014)	30
2.7	Compliance audits on Fraud and Corruption	30
2.8	Conceptual Frame work	32
	CHAPTER THREE	33
	RESEARCH DESIGN AND METHODOLOGY	33
3.0	Introduction	33
3.1	Approach (General).....	33
3.2	The Study Population.....	36
3.3	Sampling Technique.....	37
3.4	Sample size.....	39
3.5	Data Collection.....	40
3.6	Data Analysis	42
3.6.1	Thematic Analysis	42
3.6.2	Code System.....	43
	CHAPTER FOUR.....	44
	RESULTS AND DISCUSSION	44
4.0	Introduction	44
4.1	Structure of the Case	45
4.2	General Data Coding.....	45
4.3	Theme No 1-Common Complaints in relation to selection of Contractors	49
4.3.1	Identification of Complaints registered consecutive Years.....	50
4.3.2	Identification of Complaints registered by type of Project	52

4.3.3	Identification by Classes Of Contractors.....	53
4.3.4	Identification by Category Of Client.....	54
4.4	Theme No. 2 - Grounds For Complaints and Reasons For Appeal	57
4.5	Theme No. 3 – Determination of Fairness to contractors selection and the extent of fairness	90
4.5.1	Primary Objection and Pray by Appellant.....	91
4.5.2	Primary Objection and Pray by Respondent	93
4.5.3	Decision by PPAA.....	94
4.5.4	Reasons for Rejection by PE's.....	96
4.5.5	Reasons for Rejection by PPAA.....	97
4.5.6	Discussion of Findings for Theme No 3 by Scenarios	99
	CHAPTER FIVE.....	106
	CONCLUSION AND RECOMMENDATIONS	106
5.0	Introduction.....	106
5.2	Conclusion.....	106
5.3	Recommendations	109
5.4	Limitations Areas for Further study	111
	REFERENCES.....	112
	APPENDICES	118

LIST OF TABLES

Table 2: PE's with red flags (Source PPRA Annual Report 2016).....	31
Table 3: Coding System Output Of MAXQDA 12 Software	46
Table 4: Parent Code Observed (Number Of Segments).	48
Table 5: Identification and Trend of Complaints in Four Consecutive Years.	49
Table 6: List Of Appeals by Contractors From PPAA.	51
Table 7: Identification by Contractors Category and Their Project Specialization. ..	53
Table 8: Classes Of Projects Identified.....	54
Table 9: Category Of Client.....	55
Table 10: Grounds Of Complaints.	58
Table 11: Detailed Segments On Grounds For Complaints (Parent code).	59
Table 12: Pray By Appellant (Number Of Segments).	91
Table 13: Pray by Respondent (Number Of Segments).	93
Table 14: Decision by PPAA (Number Of Segments).....	95
Table 15: Reasons for Rejection by PE's (Number Of Segments).....	96
Table 16: Reasons for Rejection by PPAA (number Of Segments).	98
Table 17: Scenario Number One: Case Withheld and reasons thereof.....	99
Table 18: Scenario Number Two-Case Accepted and Reasons thereof	103

LIST OF FIGURES

Figure 1: Connection On Requirements Of Fair Selection and the Government Act.	32
Figure 2: The 'Big Picture' Of Statistics (Source: https://onlinecourses.science.psu.edu/stat100/)	37
Figure 3: Parent Codes Observed (Number Of Segments).	48
Figure 4: Identification and Trend Of Complaints in four Consecutive Years.	50
Figure 5: Identification by Contractors Category and Their Project Specialization.	53
Figure 6: Classes Of Projects Identified.	54
Figure 7: Category Of Client.	55
Figure 8: Grounds Of Complaints (Number Of Segments).	59
Figure 9: Pray b Appellant (Percentage Of Segments).	92
Figure 10: Pray by Respondent (Percentage Of Segments).	94
Figure 11: Decision by PPAA (number Of Segments).	95
Figure 12: Reasons for Rejection by PE's (Number Of Segments).	97
Figure 13: Reasons for rejection by PPAA (number Of Segments).	98
Figure 14: Status Of Contractors complaints.	99

LIST OF ABBREVIATIONS AND ACRONYMS

AO	Accounting Officer
CPAR	Country Procurement Assessment Report
CTB	Central Tender Board
CUIS	Common Use Items and Services
EPC	European Policy Committee of European Commission
GN	Government Notice
GOJ	Government of Jamaica
MOF	Ministry of Finance
NPPPU	National Public Procurement Policy Unit
PCCB	Prevention and Combating Corruption Bureau
PEs	Procuring Entities
PMU	Procurement Management Unit
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPRA	Public Procurement Regulatory Authority
PPU	Procurement Policy Unit
PSPTB	Procurement and Supplies Professional and Technicians Board
OECD	Organization for Economic Cooperation and Development
SPB	State Procurement Board of South Australia
SPSS	Statistical Package for Social Science

CHAPTER ONE

PROBLEM SETTING

1.0 Background to the Problem

According to Webster dictionary, complaint is the expression of grief, pain, or dissatisfaction or something that is the cause or subject of protest or outcry and in other explanations complaint is the act of saying or writing that you are unhappy or dissatisfied with something. Also oxford dictionary define complaint as a statement that something is unsatisfactory or unacceptable, and vocabulary dictionary express it as an objection to something that is unfair, unacceptable, or otherwise not up to normal standards.

Public sector in Tanzania is governed by the Public Procurement Act No.21 of 2004 and its established regulations. The act provides a legal framework for carrying out procurement using public funds. The underlying principle is to obtain competitive price through open competition process which is transparent and non-discriminatory amongst bidders (Athuman, 2014). Furthermore, Athuman (2014) stipulated that; the principle objective of the public procurement is to provide value for money (VFM) to the government by ensuring public funds are spent in a transparent, efficient and fair manner engrossed in the PPA 2004 which advocates fair competition ,accountability, transparency, equity and openness in the procurement process. Competitive tendering fosters honest competition in obtaining the best work and suppliers at the lowest possible price because taxpayers' money is being used.

But instead, quite often construction projects behind schedule, price changes and inappropriate quality are a direct outcome of the selection of an inadequate contractor (Nerija, et al., 2006 as cited by Mohamed, 2010).

This also constitutes by unacceptable client behavior in competitive tendering which considered based on theoretical, legislative and moral considerations; a range of malpractices is then identified through the examination of reported abuses (Runeson, 2002). On top of that Runeson stated that “In the construction industry, tendering today provides the predominant means by which clients obtain services to execute a specified scope of work. The construction industry is consists of a set of markets that form a very competitive system, so competitive that it has been said to be one of the closest systems to perfect competition in many markets so close as to be almost identical”.

For a perfect competition according to Public procurement Act in Tanzania, Mlinga (2007) pointed out on the principles that underpin ethics and probity which are:

- 1) Fairness and impartiality,
- 2) Consistency and transparency of process,
- 3) Use of an appropriately competitive process,
- 4) Appropriate security & confidentiality arrangements,
- 5) Identification & management of actual and potential conflicts of interest and
- 6) Compliance with legislative obligations and Public policies.

For construction contractors it all starts with the bid. Most projects large and small, public and private require that the parties perform the works or supplying the materials prepare and submit a bid or quote that outlines their offer to perform a certain scope of work for a certain price. According to Gregory, et al., (2010); In theory, if project or work is competitively bid and the owner or general contractor is

soliciting prices from more than one bidder, the bids submitted by various tiers of contractors represent their best prices (i.e the lowest price at which the believes it can win the job, perform the work and still can make a profit that will keep it in business).

Not only that but also other researchers supported that; Evaluation panel are sometimes pressurized to disqualify the most competitive tender and rather recommend favourites of politicians or those in authority, other times corrupt bidders pay their way through the evaluation team to use all foul means to disqualify other bidders to their advantage (Ameyaw, et al., 2013).

Although, Cunningham (2015) stipulated that; a number of tendering procedures have evolved to enable construction work to be procured; he also added that; the main distinction between the various methods is the extent, and therefore the intensity, of the competition involved. Competition ranges from unrestricted requests for tenders (open tendering) to an approach to an individual contractor to carry out the work (negotiation). Not only that, but also open tendering; selective (restricted) tendering, competitive dialogue and negotiation. Private sector employers are free to appoint a contractor using whichever approach they consider to be the most suitable in the particular circumstances.

1.2 Problem statement

Athuman (2006) explained about the aim of the tendering procedures is to ensure that government funds are used in the most efficient and economic way so that the best

value of money is attained through quality goods and services which are delivered timely and promptly. Efficiency of tendering procedures is ensured through proper laws, rules and regulation which provide the foundation for tendering procedures and regulation.

In addition that, during the financial year 2015/16 PPRA conducted 14 investigations involving 49 procurement contracts with estimated value of about TZS 1.6 trillion implemented by 11 PEs. These investigations were prompted by information from various sources including whistle blowers, the media, PEs and instructions from higher authorities. Investigations revealed that the government incurred losses equivalent to TZS 23.41 billion due to: Poor planning and lack of feasibility studies that resulted into increase in project costs; Poor preparation of specifications that did not detail most of the required items; Inappropriate bidding documents; Inadequate preparation of bids that did not detail the key and potential requirements to be fulfilled for the bid to be responsive; Inappropriate tender evaluation that resulted into recommendations of non-responsive bids; Unrealistic prices compared to the market; Accepting bids quoted in foreign currency; Outsourcing some of the activities that could have been done using internal resources; Splitting similar assignments to more than one bidder; and Poor contract management.

Another researcher, elaborated about facing with the challenge of corruption, conflict of interest, lack of uniformity, theft, inflate prices, inadequate processes and lack of proper monitoring and the effort of national governments which are always looking at ways of improving and maintaining the current tendering systems

(Ngoben, 2011). The study, went further and declared that the current tendering system, is lacking amongst others, in the following areas: taking a long time to go through the whole procedure; relying on a lot of paperwork; need a lot of people to deal with the forms and paperwork; needing other people to administer the procedures; not giving attention to related systems, such as stock control, quality control; and open to abuses, corruption and fraud which may lead to unfair selection. Over a period of time, there has been a significant increase in spending, combined with weaknesses in financial accountability.

(Ajayi, 2010 as cited by Boateng, 2014) stated that, contractor's selection is crucial decision that needs to be taken by the client and his representative, in order to ensure that projects are completed within cost, time and quality standard. When wrong decisions are taken, they can lead to delays, corruption, and abandonment of projects as a result of unfair selection.

Over and above; it has been postulated that even the rules of competitive bidding can at times be short-circuited, for instance, the setting of a particular brief timeframe, insufficient publication, and biased design/specification (Athuman, 2006). It has been an outcry of contractors in Tanzania that the selection of contractors for public works are not being followed fairly by not abiding to PPRA Act and its regulations requirements (CRB Proceeding, 2017), that where the study comes in to make an examinations on the extent of the unfairness complaints in the construction industry specifically to contractors. As it is well known that; Deliverance of construction works within schedule, budget and with the required quality and performance

depends on the proper conduct of contractors, consultants and clients who undertake such works.

Not only that, but also; the successful execution of a construction project is heavily impacted by making the right decision during tendering processes. Managing tender procedures is very complex and uncertain involving coordination of many tasks and individuals with different priorities and objectives. Bias and inconsistent decision are inevitable if the decision-making process is totally depends on intuition, subjective judgment or emotion. In making transparent decision and healthy competition tendering, there exists a need for flexible guidance tool for decision support (Mohemad, et al., 2010).

Favie, et al., explained that; these bad relationships are a result of the fact that contractors try to come up with the lowest possible price. When they have the lowest price in the tender, they are allowed to build the project. During the project, the contractor tries to earn as much extra money as possible. When, for example, the client wants to make a little change in the design, the contractor will ask a lot of money for that. Most of the time the contractor will ask for more money than he really needs to fulfill that job, this will lead to distrust, unpleasant situations and negative energy (Favie, et al., 2007). Hence Favie concluded by saying that “we can say that lowest price tendering might not be the best way to select a contractor”. As it have been observed, although the lowest evaluated tenderer selection criteria is the baseline of selecting contractor in Tanzania is also kind of loophole which might led to unfair selection of contractors.

In Year 2014, Price Water Cooper Organisation conducted a survey on economic crime in Construction and Engineering sector among others, included procurement fraud as a separate category for the first time. It's a significant problem and the engineering & construction sector is one of the industry's most affected, with 42% of those reporting economic crime experiencing it. The crimes reported are happening throughout the entire process, from the invitation of bids, through vendor selection and vendor contracting, during quality reviews and during the payment process. This intrudes the process of tendering and lead to unfair selection.

The survey went further by explaining some of the standard operating processes used in the sector are particularly susceptible to this kind of manipulation. One example is change orders, which may be used by contractors to recover costs during a project after a low bid has been accepted. Another is cost transparency where financial amounts or percentages for head office overheads, risk contingency and profit can be misconstrued or manipulated (PWC Report, 2014). The survey also pointed out the nature of the construction industry, where the procurement of goods and services and the selection of contractors and suppliers on large-scale projects may be decided or influenced by individuals within an organisation, provides a number of opportunities for corruption and bribery. Also, this can be amplified by a lack of transparency or governance of the processes established to judge and report on the levels of performance and value for money actually achieved. In many circumstances, capital project owners may have difficulty establishing objective, defined criteria to determine the best contractor or supplier for a particular project. As a result, an environment still exists where individuals can influence the process and outcome.

1.3 Research Objectives

1.3.1 The Main Research Objective

To scrutinize appeals by contractors' against procuring entities (PE's) to determine whether contractors are fairly selected in public procured projects.

1.3.2 Specific Research Objectives

- i. To identify the various complaints submitted by contractors against procuring entities (PE's) in order to unveil issues of concern in contractors complaints;
- ii. To scrutinize the grounds for complaints to reveal reasons thereof;
- iii. To determine whether contractors selection are fairly done or extent of fairness

1.4 Research Questions

1.4.1 Main Research Question

What are the validity of complaints, trend and their degree of Fairness in relation Tanzania PPA?

1.4.2 Specific Research Questions

- i. What are the common complaints existing in relation to selection of contractors?
- ii. Which grounds do the complaints bases and their reasons in contractors' selection in public projects?
- iii. How fair is contractors selection and to what extent the selection is fair.

1.5 Significance of the Study

The study is relevant in that the findings will contribute to :-

- i. The general body knowledge concerning contractors' selection fairness
- ii. Assist stakeholders in strategizing and act professionally
- iii. Show the implication of our current policy
- iv. Recommend the improvement on selection processes so that to obtain value for money in public projects.
- v. Expand the knowledge of the researchers on practice of procurement in public institutions.
- vi. Assist students who might be researching along similar topics will see the final report as a useful reference material.

1.6 Limitation of the study

The study focuses on pre-contract cases which have been filed concluded by the Public Procurement Appeals Authority or reported to Public Procurement Regulatory Authority, believing that there is unfair selection practice conducted. The scope shall consider all contractors of all type tendered for public works and end up to the PPAA due to complaints this will be the relevant sample for this study.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter aimed at reviewing literature that explored what has been done in relation to complaints on contractors' selection practice in public construction projects and their influence on the construction industry development. Basically available theoretical and conceptual contributions from different scholars will be explored, such as Complaints Dimension in Broad Context, Origin and Meaning, International Overview and the current national overview of contractors' selection practices.

2.1 Theoretical Review

This part of the research work will document the relevant theories and literature from similar past studies with regard to the objectives of the proposed study. Not only that, but also presents the conceptual framework that underlies the study. The major theories discussed herein are the Institutional theory and the agency theory.

2.1.1 Institutional theory

The institutional theory is a conventional approach that is used to study fundamentals of Public Procurement (Obanda, 2010). Obanda in his studies explained that; the institutional approach was systematically used to examine individual strategic policy interventions that can be employed to ensure compliance and subsequently curb corruption in tactical purchasing in a decentralized context in local governments in Uganda, he went further by saying that, the underlying principle in implementation entails the fact that the public officials should be held responsible for the proper

implementation of processes and procedures governing public procurement and thus for the procurement decisions they make.

On conducting the study of Procurement Governance and Procurement Performance Of Small Medium-Sized Enterprises In Nairobi Central Business District the researcher used Institutional theory to acquire his objectives by categorizing the regulatory pillar stressed on the use of rules, laws and sanctions as enforcement policies, with experience as basis for compliance. The normative pillar refers to norms that are how things would be done and value being the foundation of compliance. The cultural pillar rests on a mutual understanding, which is shared beliefs and symbols (Mwikali, 2016).

In this study, in order to scrutinize appeals lodged by contractors' against procuring entities (PE's) to find out whether their selections are fair, Institutional theory will be the proper option due the fact that Public Procurement is overseen by the Public Procurement Regulatory Authority by enforcing Public Procurement Act 2011 and its regulations, whose mandate is to provide procedures for efficient public procurement and for assets disposal by public entities and for associated purposes.

2.1.2 Agency theory

Agency theory attempts to describe the agency relationship, this is where the principal gives work to the agent who executes the work, apart from that there are challenges in such kind of relationship, this is due to the fact that principal and agent have differing objectives and this can result into conflict, in addition it is also difficult for the principal to know what the agent is doing. Principal-agent researchers cover the theory of the principal-agent relationship, as a theory that can

be used to access different relationships such as employer-employee, buyer-supplier and other agency relationships (Kagendo, 2012).

Further studies in Supplement to the 2011 Annual Statistical Report on United Nations explored the theory as Procurement regulation and transparency in the fight against corruption, since it is the agent that will have privileged access to the information needed to make the decision, the principal cannot seek simply to dictate the actions of the agent. The principal relies on the professional judgment of the agent who must use judgment to collect and evaluate the necessary information. To remove such discretion entirely would reduce the procurement process to a purely mechanical function with all the consequences that would have on quality, cost and value for money. To ensure that the agent's discretion is used properly, the principal will use the tool of transparency to check the agent's actions against the framework of the regulation (Trepte, 2005). On top of that, the study contemplated Opportunities for corruption in procurement raised by the relationship between the government (the 'principal', as represented by the politicians) and the bureaucracy (the 'agent' as represented by procurement agents) are well studied. The agent holds information which is not available to the principal. There is, in economic terms, an informational asymmetry. A corrupt agent can therefore conceal information related to the process, the bidders and the products from the principal.

Another study on Antecedents and Consequences of Public Procurement Non-compliance Behavior utilized the institutional theory, socio-economic theory, principal agent theory, cognitive dissonance theory and legitimacy theory which helped in identifying the variables that were considered antecedents and consequences of public procurement compliance (Tukamuhabwa, 2012). In *Vise*

versa the study on Moral hazard and construction procurement the researcher explained Moral hazard that; is typically seen as occurring in a Principle-Agent relationship where the “Principle” (e.g. a construction client) wants the “Agent” (e.g. a construction contractor) to do a certain thing, but where the Agent, because of moral hazard, do not behave or deliver the product/service as expected or agreed (Eriksson & Lind, 2015).

In view of the stated theory, this study shall also adopt principle-Agent theory due to the nature of complains and the relationship of Procuring Entities (PE’s) and contractors and shall consider the Authorities such as PPRA and PPAA concluded complaints as a primary source of information for the chosen theories perform.

2.2 Practice for Selection of Contractors

Procurement encompasses the whole process of acquiring goods and/or services. It begins when an organization has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the goods and/or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life (Mlinga, 2005).

East Africa experience on selection of contractors: In Kenya, open tendering is the most used tendering system. It normally happens at two levels: Open national tendering, which is open to participation on equal terms by all providers through

advertisement. It mainly targets domestic firms although foreigners are allowed to participate. Open international tendering is also open to participation on equal terms by all providers but it specifically seeks to attract foreign firms (Kagendo, 2012)

2.2.1 Selection of a method of procurement (Procurement Regulation 63 of 2014)

A procuring entity engaging in procurement of goods, works, non-consultant services or public private partnership such as build, operate and transfer, build, own, operate and transfer, turnkey projects, and disposal of public assets by tender shall do so by means of competitive tendering proceedings. The procurement of goods, works and non-consultancy services through international and national competitive tendering prescribed in the procurement Regulations shall be considered before other methods of tendering prescribed in the Regulations are used.

Subject to the prior approval, in writing, of the tender board, other methods of procurement may be used where it is established that such methods may have due regard for transparency, economy and efficiency in the implementation of the project.

A procuring entity may select an appropriate alternative methods of procurement which include (turnkey contract, force account, procurement under public private partnership) in case where tendering would not be the most economic and effective methods of procurement and the nature and estimate value of goods, works or service permit. Public Procurement Act No 21, 2004 stipulates methods of procurement.

The methods of procurement applied by depends the value, nature, time needed, these are:

International Competitive tendering

In International Competitive tendering or International bidding, a procuring entity shall invite suppliers, contractors, service providers or assets buyers regardless of their nationality by means of a tender notice that shall be advertised nationally or international to submit priced tenders for goods, works or services or purchase of public assets. In this method payment may be in whole or in the foreign currency or the estimate cost of the goods or works exceeds the threshold for such tenders.

National competitive tendering

In this method a procuring entity shall invite supplier's services provider's contractors or asset buyers regardless of their national by means of a tender notice advertised only in the United Republic of Tanzania to submit priced tenders for goods, service, works or purchase of public assets. This method is applied when the payment is made wholly in Tanzanian shillings, the goods, services and works are available in local at price below the international market, works or services are scattered geographical or spread over time.

Restricted tendering

Procuring entity may restrict the issue of tender documents to a limited number of specific suppliers, contractors or service providers. This method is applied when the goods, works or services required are of a specialized nature or can be obtained from

a limited number of specialized contractors, service providers or reputable source or if there is urgent need for the goods, works or service such that there would be insufficient time for a procuring entity to engage in open national or international tendering, provided that the circumstances giving rise to the urgency could not have been foreseen by a procuring entity and have been caused by dilatory conduct on its part.

International and national shopping

Shopping is a procurement method on comparing price quotations obtained from several suppliers to ensure competitive prices and is an appropriate method for procuring readily available off the shelf goods or standard specification commodities that are small in value. A tender board may approve for competition to be invited through request for quotations at international or national level where it has determined that:

- a) The goods to be procured are so diversified that it would be of no commercial interest for any single suppliers to tender for them.
- b) The goods are readily available off shelf or standard specification commodities.

2.3 The Legal Framework for Construction Industry Procurement in Tanzania

Public sector in Tanzania is governed by the Public Procurement Act No.21 of 2004 and its regulations. The act provides a legal framework for carrying out procurement using public funds, by saying so all public construction projects are undertaken by observing Public Procurement Act (PPA, 2011) and Public Procurement Appeals Rules (PPAR, 2014) whereby enforced by Public Procurement Regulatory

Authority(PPRA) and Public Procurement Appeals Authority (PPAA). The underlying principle is to obtain competitive price through open competition process which is transparent and non-discriminatory amongst bidders.

2.4 The Public Procurement Regulatory Authority (PPRA)

In 2002 a Country Procurement Review Assessment was carried out to review the implementation of the Public Procurement Act No. 3 of 2001. The Country Procurement Review Assessment Report (CPAR) recommended further reforms from centralized to decentralized procurement system, hence the enactment of Public Procurement Act No. 21 of 2004. The Public Procurement Act No. 21 of 2004 established a decentralized procurement system in which Ministries, Departments, Agencies and Local Government Authorities (LGAs) could carry out their procurement without any financial thresholds. In order to ensure that the Act is properly implemented, it established a Public Procurement Regulatory Authority (PPRA) charged with a task of ensuring that MDAs and LGAs adhere to the provisions of the Act. PPRA was established under Section 5 of the Act (hereby repealed by Public Procurement Act No.7 of 2011) as a body corporate with all a legal personality.

The Public Procurement Regulatory Authority (PPRA) is a body corporate established under the Ministry of Finance in accordance with Section 5 of the Public Procurement Act, No. 21 of 2004 (PPA 2004). The PPA 2004 was enacted to guide procurement practices within the country. The Authority is required to report to the Minister responsible for Finance.

2.5 The Public Procurement Appeals Authority (PPAA)

The Public Procurement Appeals Authority commonly referred to as the PPAA was initially established in **2004** under the former Public Procurement **Act No.3 of 2001** (Repealed and replaced by the Public Procurement **Act No 21 of 2004**) (**Cap 410**).The recently enacted Public Procurement **Act No 7 of 2011** has re-established the PPAA as an independent Appeals Authority under **Section 88**.

The key objective of establishing the PPAA was to provide an independent avenue through which aggrieved bidders could submit their complaints where it was felt that they had been unfairly treated when participating in the public procurement process. This would allow the contested process to be reviewed and corrective measures to be put in place without having to go to the Law courts to obtain a solution. It is only where there are disagreements on points of law that court intervention would be required.

2.5.1 Functions Of The Authority (PPA)

The functions of the Public Procurement Appeals Authority are stipulated in Section 6 of the PPA 2004 as follows:

Function of Appeals Authority

- a) To receive complaints and appeals in respect of procurement processes or decisions made by government or its institutions in relation to public procurement.

- b) To review decisions made by Accounting Officers in relation to procurement processes.
- c) To review decisions made by PPRA with respect to Blacklisting of Tenderers.
- d) To order for a Corrective action where it is found that there breach of Procurement Procedures.

NB.

- Appeals or Complaints handled by the Appeals Authority are only those which relate to the procurement process prior to the award of the Tender (Pre-award) and those that relate to the Award of Tender.
- Appeals or Complaints relating to execution of contracts are outside the mandate of the Appeals Authority.

2.5.2 Application to Appeal Procedures

These Rules shall apply in respect of appeals or reviews of decisions, acts or omissions by the Accounting Officer of a procuring entity in relation to the procurement of goods, works, services and disposal of public assets by tender or the Public Procurement Regulatory Authority in matters relating to blacklisting.

2.5.3 Right to review (section 95 of PPA 2011)

Any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity by this Act may seek a review and any tenderer who is aggrieved by the decision of the accounting officer under subsection (2) shall have the right to lodge a complaint to the Authority.

2.5.4 Settlement Of Complaints Or Disputes By Accounting Officer (Section 96 of PPA 2011)

Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

On receiving a complaint under this section the accounting officer may, depending on the nature of the complaint, constitute an independent review panel from within or outside his organization which shall review the complaint and advise him on the appropriate actions to be taken.

Where after proper investigation, it is established that, the Chairman of the tender board, any member of the tender board, the secretary of the tender board or any other public officer of the procuring entity has violated PPA Act 2011 and the regulations made under it, the accounting officer shall take appropriate actions against him.

The accounting officer shall not entertain a complaint or dispute unless it is submitted within twenty eight days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

The accounting officer shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

The accounting officer shall, within fourteen days after the submission of the complaint or dispute deliver a written decision which shall:-

- a) State the reasons for the decision; and
- b) If the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

Where the accounting officer does not issue a decision within the time specified, the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 97 of PPA 2011 and upon institution of such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

The decision of the accounting officer shall be final unless the tenderer applies for administrative review to the Appeals Authority.

Taking the experience from Turkish Appeals Authority after an appeal is made, the Authority shall take a decision relating to continuity of the tender proceedings within five days in cases where the contracting entity has taken the decision of continuation of tender proceeding. In the case of not proceeding with the correction of tender proceedings, the decision shall be made within fifteen days. The Authority shall take the final decision within thirty days following the request date. Therefore, this function of the Board is obviously a quick administrative way to solve problems. Nevertheless, there is the third phase for the still dissatisfied complainant, tenderers can take the decision of the Authority to a relevant administrative court (Gözel, 2005).

2.5.5 Review by the Appeals Authority (Section 97 of PPA 2011)

A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to the Appeals Authority for review and administrative decision.

Where-

- a. The accounting officer does not make a decision within the period specified under this Act; or
- b. The tenderer is not satisfied with the decision of the accounting officer,

The tenderer may make a complaint to the Appeals Authority within fourteen working days from the date of communication of the decision by the accounting officer.

A tenderer may submit a complaint or dispute directly to the Appeals Authority if the complaint or dispute cannot be entertained under section 96 because of entry into force of the procurement or disposal contract, and provided that the complaint or dispute is submitted within fourteen days from the date when the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that tenderer should have become aware of those circumstances.

The Appeals Authority shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the procuring entity in which case the procuring entity shall be required to submit all the relevant documentations and information pertaining to the particular tender.

The Appeals Authority may, unless it dismisses the complaint or dispute, issue one or more of the following remedies-

- a. Declare the legal rules or principles that govern the subject matter;
- b. Prohibit the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;
- c. Require the procuring entity that has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
- d. Annul in whole or in part an unlawful act or decision of the procuring entity;
- e. Revise an unlawful decision by the procuring entity or substitute its own decision for such a decision; or
- f. Require the payment of reasonable compensation to the tenderer submitting the complaint or dispute as a result of an unlawful act, decision or procedure followed by the procuring entity

The Appeals Authority shall, within forty five days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.

The decision of the Appeals Authority shall be final unless is subject for judicial review under section 95 of this Act.

The decision of the Appeals Authority shall be binding to the parties on the complaint or appeal and such decision may be enforced in any court of competent jurisdiction as if it were a decree of the court.

2.6 Complaint Reviews.

2.6.1 Review of Complaints and Procurements Decisions under the Public Procurement Act, 2011

The Public Procurement Act, No. 7 of 2011 have proven the dispute resolution mechanism procedures in public procurement where any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity by the Act may seek a review in accordance with Sections 96 and 97(2)

The review shall not apply to-

- the selection of a method of procurement or in the case of services the choice of a selecting procedure;
- the limitation of procurement proceedings on the basis of nationality in accordance with section 53 of the Act or in accordance with the prescribed Regulations;
- in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals proceedings.

The Act, 2011 provides for two tier appeal mechanism:-

- Administrative review by the Head of Procuring Entity (Sect 96; Regulations 105,106)
- Review by the Appeals Authority (Section 97; Regulation 107)

2.6.2 Administrative review by the Head of Procuring Entity (Section 96)

Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards

of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

2.6.3 Procedures for submission of application for administrative review to the Head of the Procuring Entity (Regulation 105)

Any application for administrative review shall be submitted in writing or electronically to the accounting officer of a procuring entity and a copy shall be served to the Authority within twenty eight (28) days of the tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute.

Any application for administrative review shall not apply to complaints submitted in response to the notice of intention to award the contract issued to tenderers pursuant to Section 60 (3) of the Act.

2.6.4 The application for administrative

Details of the procurement or disposal requirements to which the complaint relates; details of the provisions of the Act, Regulations or provisions that have been breached or omitted; an explanation of how the provisions of the Act, Regulations or provisions have been breached or omitted, including the dates and name of the responsible public officer, where known; documentary or other evidence supporting the complaint where available; remedies sought; and any other information relevant to the complaint.

The Act also stipulated that no fee shall be charged on the application for administrative review by the Head of procuring entity.

The accounting officer of a procuring entity shall not entertain a complaint or dispute or continue to do so after the procurement or disposal contract has entered into force.

An accounting officer shall, upon receipt of an application for administrative review- suspend the procurement or disposal proceedings of the tender in dispute, until he delivers a written decision on the complaint; and notify all tenderers who participated in the tender, of the complaint and of its substance within three (3) working days of receipt of such application and the tenderers who opt to join in the proceeding shall submit written responses within three (3) working days of receipt of such notification.

Upon receiving an application for review, an accounting officer shall institute an investigation to consider- the information and evidence contained in the application; the information in the records kept by a procuring entity; the information provided by other tenderers; and any other relevant information.

The investigation instituted may be conducted by an independent review panel appointed from within or outside his organization depending on the nature of the complaint, which shall review the complaint and advise the Head of the procuring entity on the appropriate actions to be taken.

In appointing members of a review panel, the accounting officer shall consider their expertise and experience on the subject matter of the tender.

2.6.5 Time limit for administrative review by the Head of procuring entity

An accounting officer shall, within fourteen (14) days after receipt of the complaint or dispute, deliver a written decision to a complainant and other tenderers who participated in the proceedings.

The decision of accounting officer shall address fully the tenderer's grounds of complaints and shall indicate whether the application is upheld in whole, in part or rejected; the reasons for the decision; and any corrective measures to be taken;

The accounting officer shall submit a copy of the decision to the Authority within seven (7) days from the date of its delivery.

2.6.6 Review by the PPAA (Section 97; Regulation 107)

Complaints or disputes which are not settled within the specified period; are not amicably settled by the accounting officer; or arise after the procurement contract has entered into force pursuant to section 60(11) of the Act, Then the complaint shall be referred to the Appeals Authority within fourteen (14) days from the date when the tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under regulation 106 (6) or when the tender become aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to section 97 (3) of the Act.

The Appeals Authority shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the procuring entity in which case the procuring entity shall be required to submit all the relevant documentations and information pertaining to the particular tender.

The Appeals Authority shall, within forty five (45) days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted, if any.

The decision of the Appeals Authority shall be final unless is subject for judicial review under section 95 of the Act.

2.6.7 Judicial Review

A tenderer or procuring entity aggrieved by the decision of the Appeals Authority may, within fourteen days of the date of delivery of such decision, apply to the High Court for judicial review.

Where the application is before the High Court for juridical review: in case of an application by a tenderer challenging the decision of the Appeals Authority, the Appeals Authority shall be represented in the High Court by the Attorney General; and in case of an application by a procuring entity challenging the decision of the Appeals Authority, the procuring entity and the Appeals Authority shall state their positions to the Attorney General.

Where the procuring entity and the Appeals Authority have submitted their positions to the Attorney General, the Attorney General shall state case containing positions of both parties and file a case marked “Case Stated” in the High Court for its opinion in accordance with Order XXXIV of the Civil Procedure Code.

The judgment of the High Court shall be communicated to the parties by the Attorney General and shall be binding on both parties.

2.6.8 Determination Of Appeals (Section 5, PPAR 2014)

Have You Participated In A Public Tender Competition and Dissatisfied With The Tender Process Or Decision Made? Appeals may be determined by way of review of documents; or hearing of an appeal and notwithstanding sub rule, procedures to following:-

1. Submit a formal letter of complaint to the Permanent Secretary of the respective Ministry or Chief Executive Officer of The Public Institution as soon as you get know of the matter/decision leading to the complaint.
2. If dissatisfied with the decision of the Accounting Officer or where the Accounting Officer does not give a decision within time, Submit appeal to the PPAA within 14 days of knowing the decision leading to the appeal.
3. Where the contract has entered into force following Communication of award to the winning bidder, Submit Appeal directly to the Appeals authority within 14 days of knowing the decision.
4. Observe time limit in appeal submission. Appeal must be submitted within 14 days of knowing the matter or decision leading to the appeal.
5. Written appeals should be submitted together with:
 1. *PPAA FORM NO.1 (Notice Of Intention To Appeal)-APPENDIX I*
 2. *PPAA FORM NO.2 (Statement Of Appeal) – APPENDIX 11*

2.6.9 Matters Which May Be Appealed Against (Section 6, PPAR 2014)

Following are the reasons for appeals.

1. Acceptance or Rejection of a Tender.
2. Award or Proposed Award of a Contract.
3. Inclusion of Unacceptable Provision in the tender document.
4. Unacceptable Tender Process
5. Decision, Act or Omission of the Procuring Entity or Reviewing Authority.
6. Failure or refusal to make a decision within time limit.
7. Blacklisting resulting from the Tender process
8. Or any other matter which the Appeals Authority may deem appealable.

2.7 Compliance audits on Fraud and Corruption

As it is well known that PPRA conducts audits on procurement compliances of PE's, the PPRA Annual report 2016 elaborated the results of the audited reports and in order to collect information about possible symptoms of corruption in the procurement carried out by PEs, PPRA auditors were required to use the Red Flags Checklist jointly developed by PPRA and PCCB. The checklist also serves as a tool to address corruption at the level of the individual PE. It is normally considered that where an entity or a project scores 20 percent or above, there is a likelihood of fraud or corruption.

Furthermore, it is important to point out that a detected red flag is not in itself an evidence of corruption. However, the higher the number of red flags detected, the higher the likelihood that corruption has been involved. In some cases, the higher the

number of red flags detected indicates that the weaknesses observed were not a result of existence of corruption but operational deficiencies.

The Authority conducted compliance audits by using an assessment tool that comprises seven performance indicators namely; institutional setup and performance, appropriate preparation and efficiency in implementing the procurement plan, appropriateness of tender processing, appropriateness of contracts management, management of procurement records, use of systems developed by PPRA; and handling of complaints

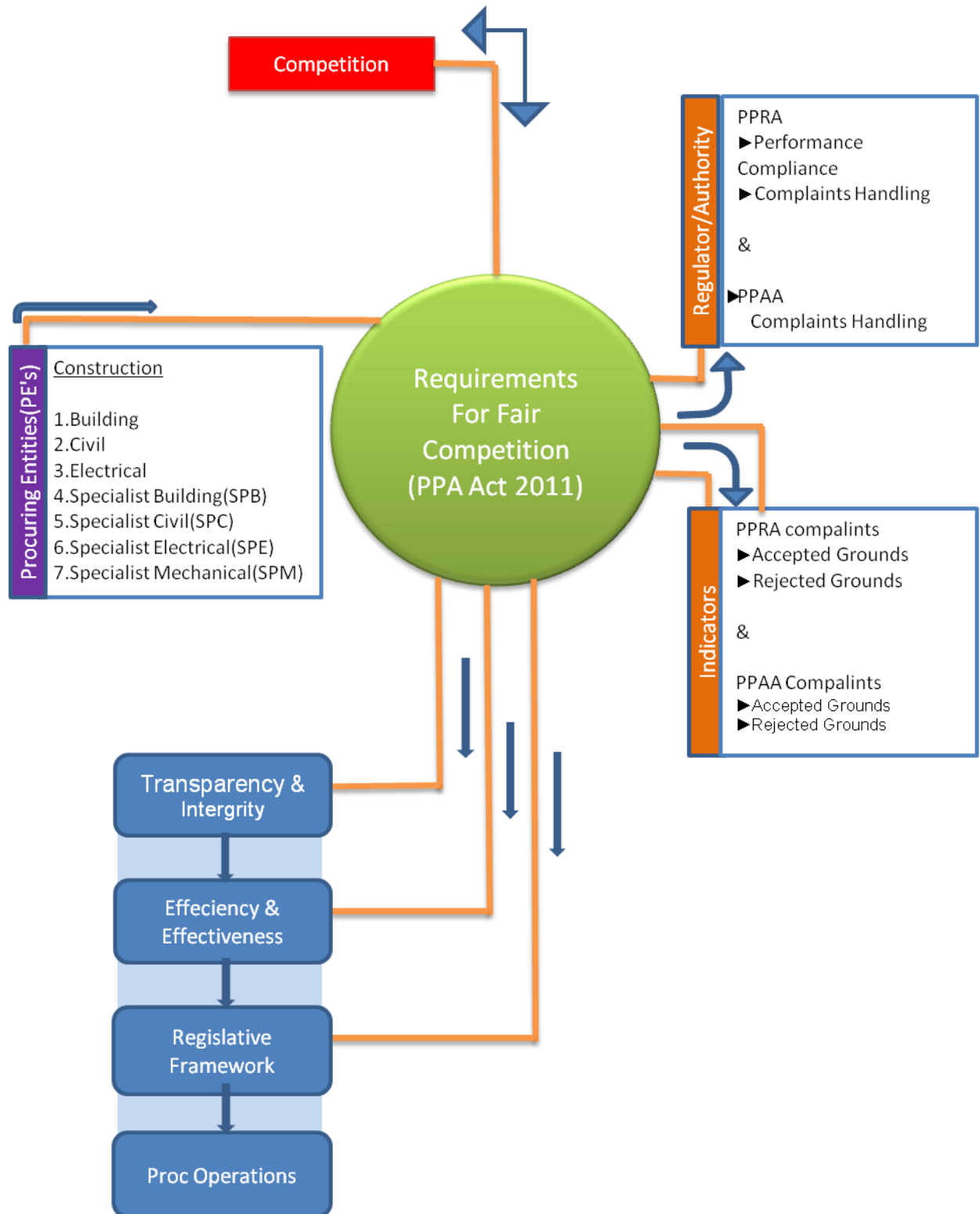
Table 1: PE's with red flags (Source PPRA Annual Report 2016)

S/N	PE	Pre-bid phase (%)	Evaluation and award phase (%)	Contract management phase (%)	Average score (%)
1	National Museum of Tanzania	22.00	25.00	45.00	30.00
2	Dar es Salaam City Council	22.38	37.21	59.17	30.63
3	DART	21.32	25.59	29.57	25.91
4	TCRA	20.03	22.12	44.91	27.46
5	National Assembly	28.56	36.74	15.00	27.96
6	Ministry of Water and Irrigation	18.00	23.00	27.00	23.00
Average		22.04	28.20	36.70	27.49

The red flag checklist for sampled contracts under compliance audits revealed that six out of 64 PEs scored 20 percent or above in three phases namely; pre-bid, evaluation and award as well as contract management.

2.8 Conceptual Frame work

Figure 1: Connection On Requirements Of Fair Selection and the Government Act.



CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.0 Introduction

Research is done aiming at either generating new theories or test a validity of the existing theories. However, in order to reach objectives, have to pass through procedure which is called research methodology. Types of research methods can be classified into several categories according to the nature and purpose of the study and other attributes. Methodology describes a way of systematically solving the research problem and considers the logic behind the method used that is being able to explain why using a particular method and not others such that the result obtained fulfils the desired study objectives and problems.

This chapter discusses the research design and methodology that will be employed during data collection and data analysis. It generally presents the techniques that are to be used in carrying out this research.

3.1 Approach (General)

Qualitative research is particularly useful where the research question involves one of the situations below and people's experiences and views are sought:

- i. Exploration or identification of concepts or views
- ii. Exploration of "implement ability" the real-life context
- iii. Sensitive topics where flexibility is needed to avoid causing distress

(Hancock, et al., 2009)

In the course of executing this research, various approaches were exercised including; documents review and in some selected cases assessment of recorded cases to Public Procurement Appeals Authority (PPAA) and recorded complaints to Public Procurement Regulatory Authority (PPRA).

Qualitative research, on the other hand, is concerned with qualitative phenomenon, i.e phenomena relating to or involving quality or kind. For instance, when we are interested in investigating the reasons for human behavior (i.e. why people think or do certain things), we quite often talk of 'motivation research', an important type of qualitative research (Kothari, 2014). Moreover, due to the nature of this research of analyzing the existing outcry of contractors on the unfair selection of contractors during nomination of contractors and this type of research aims at discovering the underlying motives and desire, using in depth interviews for the purpose. Further Kothari in the book of Research methodology explained other techniques of such research that are word association tests, sentence completion tests, story completion tests and similar other projective techniques, attitude or opinion research i.e research designed to find out how people feel or what they think about a particular subject or institution is also qualitative research. Qualitative research is especially important in the behavioral science where the aim is to discover the underlying motives of human behave. Through such we can analyze the various factors which motivate people to behave in a particular manner or which make people like or dislike a particular thing (Kothari, 2014).

Apart from that, Kothari added another methodology named as descriptive research which includes surveys and fact-finding enquiries of different kinds. The major purpose of descriptive research is description of the state of affairs as it exists at present. In social sciences and business research we quite often use the term Ex-post facto research for descriptive research studies. The main characteristic of this method is that the researcher has no control over the variables; he can only report what has happened or what is happening. Most of ex facto research project are used for descriptive studies in which the researcher seeks to measure such item as for example, frequency of shopping, preferences of people or similar data (Kothari, 2014).

He also explained on Ex post facto studies which also includes attempt by researchers to discover causes even when they cannot control the variables. The methods of research utilized in descriptive research are survey method of all kind, include comparative and correlation methods. in analytical research, on the other hand, the researcher has to use facts of information already available and analyze these to make a critical evaluation of the material.

Drawing extensively on existing literature and published data, the methodology to be adopted for the research consists of multi-stage critical review of:

- i. Public Procurement Act, 2011 (PPA, 2011) and its Regulations.
- ii. Review of the Public Procurement Appeals Authority and Rules 2014 (PPAR, 2014).

- iii. Four consecutive Annual Audit Report of the Public Procurement Regulatory Authority (PPRA) from 2012/2013 to 2015/2016.
- iv. Registered complaints from Public Procurement Appeals Authority for consecutive of four Years Appeals Cases reported starting from 2013/2014 to 2016/2017.

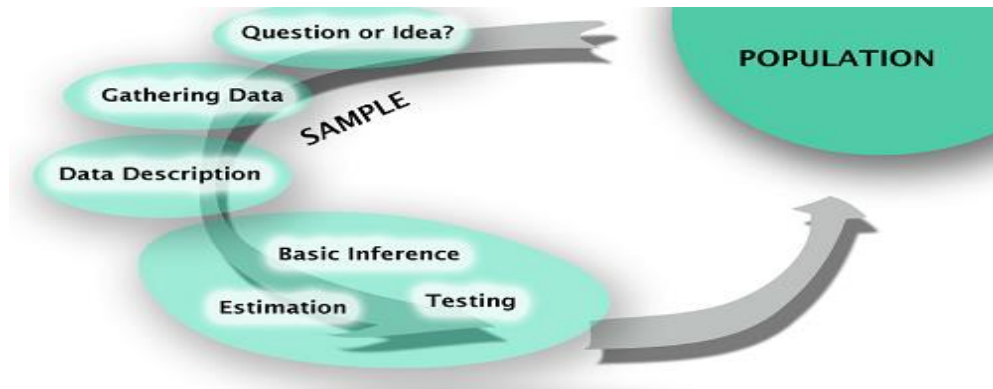
Thus, the qualitative and descriptive research methodologies shall be adopted to come up with the answers for the research questions.

3.2 The Study Population

The purposive sampling technique was used, as the main population size was too large, and the study indicated how the forum was chosen as a preferred avenue to administer the registered complaints primarily because it brought together most of the key players in the construction industry such as contractors, consultants, suppliers and procurement practitioners in government agencies and institutions spread across the length and breadth of the country (Osei, et al., 2014).

For the successful statistical practice sampling shall includes defining the population from which the sample is drawn. A population can be defined as including all people or items with the characteristic one wish to understand. Because there is very rarely enough time or money to gather information from everyone or everything in a population, the goal becomes finding a representative sample (or subset) of that population.

Figure 2: The 'Big Picture' Of Statistics (Source: <https://onlinecourses.science.psu.edu/stat100/>)



Considering explanation above, this research shall use all the registered complaints and appeals from Public Procurement Regulatory Authority (PPRA) and Public Procurement Appeals Authority (PPAA) and sort out for those complaints concerning contractors or projects executed by contractors due to the fact that the study shall be dealing on contractors' selection fairness of project for analysis and critical review. Not only that but also the population from which the sample is drawn may not be the same as the population about which actually wanted information.

3.3 Sampling Technique

Sampling can be described as a concerned with choosing a subset or portion of individuals from a statistical population to estimate characteristics of a whole population. Once the list of complaints is identified, the next step is to get the representative sample for the study. Sampling involves choosing part of a population of interest for inspection. It is a process of selecting a few (sample) from a bigger group (population) to become a basis for estimating or predicting a fact (Kamily,

2011)

Stratified sampling

The preferred sampling technique in this study is stratified sampling method whereby the population is divided into non-overlapping groups which are Clients explanations(Procuring Entities') as respondent part, Contractors explanation as complainant part and Authority observations and conclusion as the Government regulator and samples are taken from within these groups. Stratified sampling can be defined as a method of probability sampling such that sub-populations within an overall population are identified and included in the sample selected in a balanced way.

Moreover Stratified Sampling is possible when it makes sense to partition the population into groups based on a factor that may influence the variable that is being measured. These groups are then called strata. An individual group is called a stratum. With stratified sampling one should:

- i. partition the population into groups (strata)
- ii. obtain a simple random sample from each group (stratum)
- iii. collect data on each sampling unit that was randomly sampled from each group (stratum)

By considering this, in this research work will base on stratified sampling where by the registered complaints from PPAA will be used as source of data in which in one case the following non-overlapping group and samples can be obtained;-

- i. The Contractor as complainant

- ii. The client (Procuring Entity) as defendant
- iii. The PPAA ruling as a Government Authority (Mediator)

A stratified sampling approach is most effective when three conditions are met

- i. Variability within strata are minimized
- ii. Variability between strata are maximized
- iii. The variables upon which the population is stratified are strongly correlated with the desired dependent variable.

Advantages over other sampling methods

- i. Focuses on important subpopulations and ignores irrelevant ones.
- ii. Allows use of different sampling techniques for different subpopulations.
- iii. Improves the accuracy/efficiency of estimation.
- iv. Permits greater balancing of statistical power of tests of differences between strata by sampling equal numbers from strata varying widely in size.

3.4 Sample size

The sample size is an important feature of any study in which the goal is to make inferences about a population from a sample. In practice, the sample size used in a study is determined based on the expense of data collection, and the need to have sufficient statistical power. In complicated studies there may be several different sample sizes involved in the study: for example, in a stratified survey there would be different sample sizes for each stratum. In a census, data are collected on the entire population; hence the sample size is equal to the population size. In experimental

design, where a study may be divided into different treatment groups, there may be different sample sizes for each group.

On previous studies one of the researchers described the purpose of the paper was to answer the questions such as: How many court decisions has The Danish Board of Complaints on Tendering taken? What topics are included in the cases from The Danish Board of Complaints on Tendering? What topics are most frequently brought before the court? Afterwards the discussion was being presented on: Why has the number of cases increased in Denmark? The answers based on statistics available from The Danish Board of Complaints on Tendering and on reports from Danish authorities and institutions (Ussing, 2004). The paper also explained point to note that; very few scientific papers and articles have emerged on the subject, especially regarding the Danish Building Sector.

A case of sample size determination in qualitative studies takes a different approach. It is generally a subjective judgment, taken as the research proceeds. Describing the sample size of this all the recorder contractors' complaints to the authorities for Four consecutive Years shall be used, from Year 2013/2014 to 2016/2017 in order to be precisely with the updated data.

3.5 Data Collection

Data collection is the process of gathering and measuring information on targeted variables in an established systematic fashion, which then enables one to answer relevant questions and evaluate outcomes. The data collection component of research

is common to all fields of study. It helps scientists and analysts to collect the main points as gathered information. While methods vary by discipline, the emphasis on ensuring accurate and honest collection remains the same. The goal for all data collection is to capture quality evidence that then translates to rich data analysis and allows the building of a convincing and credible answer to questions that have been posed.

In this study of the analysis of contractors' complaints on selection fairness, preference is to defining data (qualitative), precise data collection is fundamental to maintaining the integrity of research. Both the selection of appropriate data collection instruments (existing, modified, or newly developed) and clearly delineated instructions for their correct use reduce the likelihood of errors occurring due to the fact that data will be collected in Authorities dealing direct on handling complaints of contractors during tendering stage(Pre contract stage), where by all complaints are well documented from three point of views, which means: Complainant, Respondent and the mediator PPRA/PPAA.

Also a formal data collection process is necessary as it ensures that the data gathered are both defined and accurate and that subsequent decisions based on arguments embodied in the findings are valid, the method used to collected data indicates the validity of findings of the study. Also the process provides both a baseline from which to measure and in certain cases a target on what to improve.

3.6 Data Analysis

The purpose of this study is to answer the main question on What are the validity of complaints, trend and their degree of Fairness in relation Tanzania PPA followed by specific research questions as follows:-

- i. What are the common complaints existing in relation to selection of contractors?
- ii. Which grounds do the complaints bases and their reasons in contractors' selection in public projects?
- iii. How fair is contractors selection and to what extent the selection is fair.

3.6.1 Thematic Analysis

The Data of Four executive Years are collected for PPRA Annual Procurement Evaluation Report on the section of Procurement compliance and Complaints reviewed by the PPAA and the detailed cases of Appeals from data base of Public Procurement Appeals Authority PPAA where by Four consecutive Years cases will be used.

Theme No 1: Study cases careful to understand type of complainant and categorise into groups in order to sort out group of contractors each Year, as it is well known that procurement consist Suppliers, service providers, contractors and consultants, it complaints shall comprise all of them. The sorting shall base on the type of project i.e whether is construction on the stage of contractors tendering or consultancy selection, provision of services or supplying of equipments or materials

Theme No 2: The study shall also look on the Appeals withheld/cancelled or Accepted/Valid by studying each case and each stage of the contractors' selection.

Theme No 3: The followed procedure shall be on studying grounds of filing Appeal or complaint and their validity according to ruling Authorities

Theme No 4: Two scenarios to be picked up to clarify on the accepted and rejected Appeal.

3.6.2 Code System

In additional to that, data shall be processed and provide coding in MAXQDA 10&12 software for data analysis assistance then migrate into MAXQDA 10 software for further analysis ready for discussion of each case.

CHAPTER FOUR

RESULTS AND DISCUSSION

4.0 Introduction

This chapter presents the results gathered from the data collection phase of the research and discussed what the data gathered speaks about, not only that but also this thesis considering the available information to be rich research data that has been collected in line with earlier literatures whereby it was well elaborated in Chapter Three of this research work to put the vivid grounds for the research validity.

Due to the fact that systematic documents from PPRA and PPAA registered complaints will be used as a primary source of data, the document is well analyzed the coding system have been established in order to simply examine the available data in documents

In additional to that a total of 29 registered complaints obtained from PPAA and PPRA for the period of Four consecutive years starting from 2013/2014 to 2016/2017, in which one case the following non-overlapping group and samples can be obtained;-

- The Contractor as complainant
- The client (Procuring Entity) as defendant
- The PPAA ruling as a Government Authority (Mediator)

4.1 Structure of the Case

All cases have the standard structure and the following is a summary of the case structure where by one case can have minimum of 15 pages and no more than 50 pages:-

Part 1: Title – Indicating Appeal case No and the Year filed at the Authority.

Part 2: Detailed Names of Appellant and Respondent

Part 3: Participating groups in the decision where by legal representatives from all parts (Coram, secretariat, for the Appellant, For Respondent) are being recorded and recognised by name.

Part 4: Background history of the tender – Including Project name, tender Number, Invitations to tenderers, Evaluation team, Tender Board and Accounting Officer

Part 5: Submission by the Appellant – Explaining grounds for Appeal and Appellant Pray.

Part 6: Replies by the respondent – Reasons for decision and Respondent pray.

Part 7: Analysis by the Appeals Authority – Issues addressed and decision of the Authority

4.2 General Data Coding

From the literature point of view and information gathered as data, it made possible to code development by creating coding and sub coding in which data analysis simplified by extracting segments developed from the coding and the number of collected segment appealed in each code and sub code, this gives an over view of

arguments appealed in each document as a standalone statement to explain the themes identified to answer research questions.

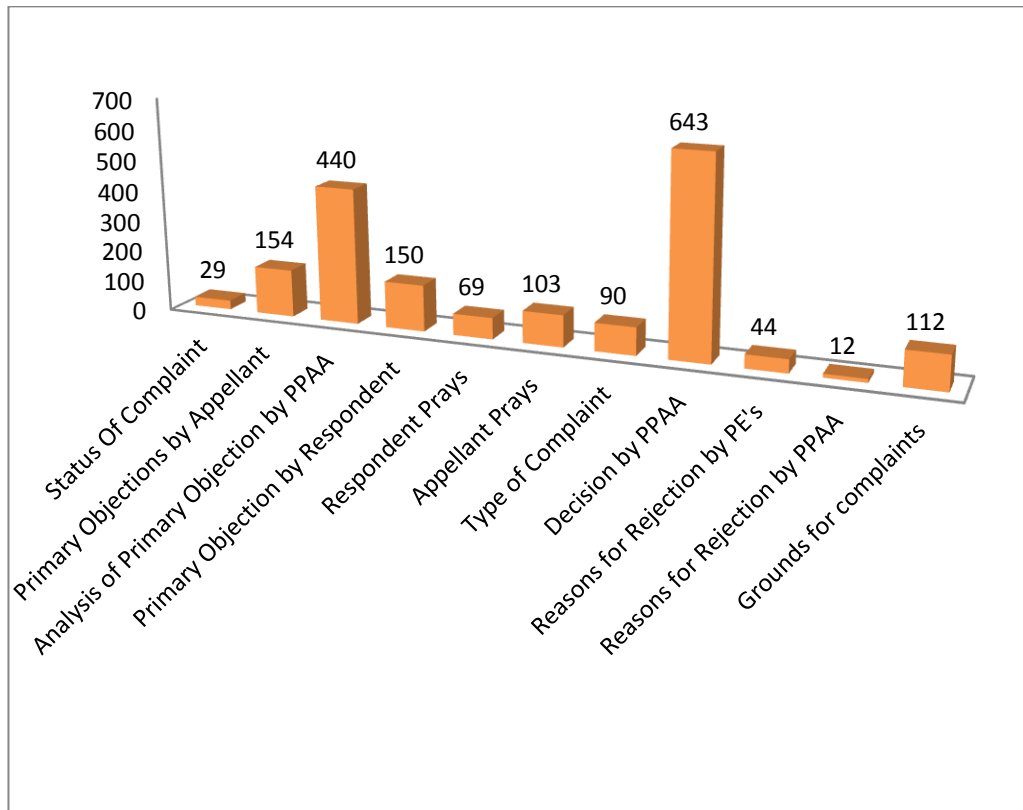
Table 2: Coding System Output Of MAXQDA 12 Software

Code System			
Code No	Parent Code	Sub Code	No Of Segments
1	Status Of Complaint		29
1.1		Rejected Complaint by PPAA	18
1.2		Accepted Complaint by PPAA	11
2	Primary Objections by Appellant		154
3	Analysis of Primary Objection by PPAA		440
4	Primary Objection by Respondent		150
5	Respondent Prays		69
5.1		Tender Process is in Compliance	49
5.2		Any order Appeals Authority May deem fit to grant	10
5.3		Refund of Money	10
6	Appellant Prays		103
6.1		Any order Appeals Authority May deem fit to grant	20
6.2		Refund of Money	32
6.3		Appellant to be awarded the contract	14
6.4		Suspension of Tendering Process/Re tender	37
7	Type of Complaint		90
7.1		Contractors complaint	30
7.2		Consultants Complaint	0
7.3		Suppliers & Service provider related complaint	0
8	Decision by PPAA		643
8.1		Relief if any, are the parties entitled	11
8.2		PPAA Observations and Recommendation	521
8.3		Respondent Pray granted	50

8.4		Appellant Prays Granted	61
9	Reasons for Rejection by PE's		44
9.1		Unavailability of procurement Fund	0
9.2		Interference with normal play of market forces	0
9.3		Exceptional circumstances render normal execution	0
9.4		Tender Cost is Higher than the original budget	0
9.5		Alteration of Economical or Technical data	1
9.6		Non Responsive Tender document	33
9.7		Lack of Effective Competition	10
10	Reasons for Rejection by PPAA		12
10.1		Lack of Appellant Merits as per PE observed	8
10.2		Non observation of proper Appeal procedures	4
10.3		Non Payment of Appeal Fee	0
11	Grounds for complaints		112
11.1		Blacklisting resulting from the tender process	4
11.2		Failure or Refusal to make a decision within time limit	6
11.3		Decision, Act or Omission of the PE of Reviewing Authority	10
11.4		Un acceptable tender process	74
11.5		inclusion of unacceptable provision in a tender document	3
11.6		Award of proposed award of contract	5
11.7		Acceptance or Rejection of Tender	10

Table 3: Parent Code Observed (Number Of Segments).

Parent Code System	Number Of Segments
Status Of Complaint	29
Primary Objections by Appellant	154
Analysis of Primary Objection by PPAA	440
Primary Objection by Respondent	150
Respondent Prays	69
Appellant Prays	103
Type of Complaint	90
Decision by PPAA	643
Reasons for Rejection by PE's	44
Reasons for Rejection by PPAA	12
Grounds for complaints	112

Figure 3: Parent Codes Observed (Number Of Segments).

Thematic Analysis

After MAXQDA 12 computer software to be used for issues capturing to assist on qualitative analysis, a thematic analysis used to archive research objectives. Themes have been developed from the cases after coding development in the software.

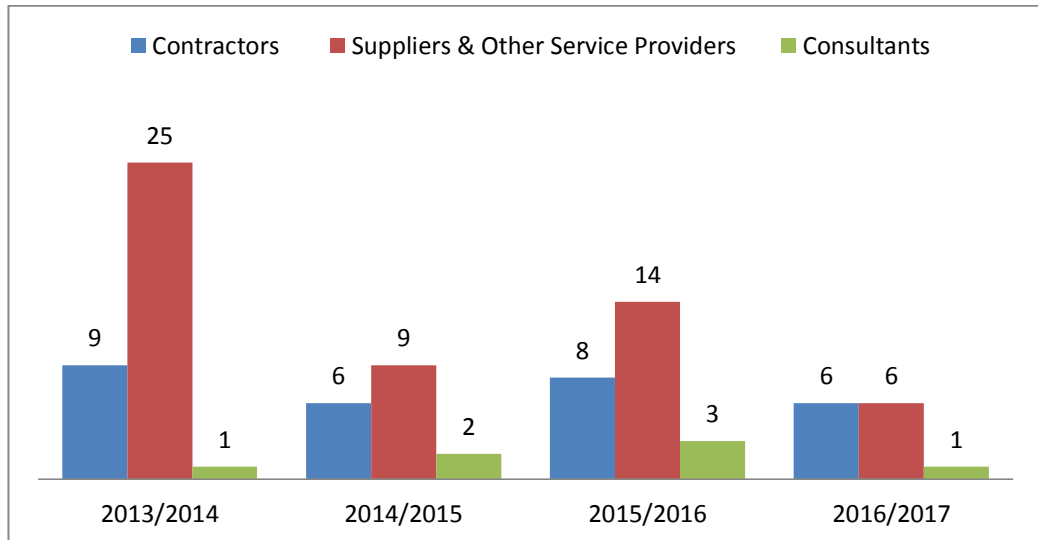
4.3 Theme No 1-Common Complaints in relation to selection of Contractors

This is intended to respond to specific objective number one and three, where by various complaints submitted by contractors to PPAA's are identified in order to unveil issues of concern and to observe the trend of Complaints received. A total of 90 complaints registered by PPAA among them 29 are from contractors, 54 Suppliers & Other Service Providers and 7 Consultants for Four consecutive Years starting from year 2013/2014 up to 2016/2017. The following table 5 and figure 4 gives a clear picture on the collected data.

Table 4: Identification and Trend of Complaints in Four Consecutive Years.

Financial Year	Contractors	Suppliers & Other Service Providers	Consultants
2013/2014	9	25	1
2014/2015	6	9	2
2015/2016	8	14	3
2016/2017	6	6	1

Figure 4: Identification and Trend Of Complaints in four Consecutive Years.



According to the Figure 1 above, Appeals in the year 2013/2014 is great in numbers on the side of contractors cases, followed by year 2015/2016 and the remain two years with the same number of cases, this indicates that there is a rise and fall in the trend and the fall does not go beyond the preveous years fall.

4.3.1 Identification of Complaints registered and the trend of four consecutive Years.

The following table shows the observed list of 29 contractors complained in Four Consecutive Years, where by Year 2016-2017 a total of 6 cases, Year 2015-2016 a total of 8 cases, Year 2015-2014 a total of 6 cases and Year 2014-2013 a total of 9 cases resolved.

Table 5: List Of Appeals by Contractors From PPAA.

No.	Document	Identifies Appeal
1.	Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC
2.	Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC
3.	Cases Year 2016-2017	APPEAL No 4 Cadasp & Group six JV Vs NSSF
4.	Cases Year 2016-2017	APPEAL No. 7 Darworth Limited
5.	Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra
6.	Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC
7.	Cases Year 2015-2016	APPEAL NO 01 Transsys solution & Macro Soft Vs TPA & 23RD Centur
8.	Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC
9.	Cases Year 2015-2016	APPEAL No 10 Perntels co Vs Mkinga DC
10	Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA
11	Cases Year 2015-2016	APPEAL No 23,24,25 JV MBH power & Shreem Electric Vs REA
12	Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC
13	Cases Year 2015-2016	APPEAL No 27 Ernie Enterprises and Jeccs Vs TIA
14	Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University
15	Cases Year 2014-2015	APPEAL No 03-Advent Vs TIA
16	Cases Year 2014-2015	HP APPEAL No 08-KSK Autogarage Vs Temesa
17	Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'anyi Vs Shinyanga MC
18	Cases Year 2014-2015	APPEAL No 41-Technofab Gammon JV Vs DAWASA
19	Cases Year 2014-2015	APPEAL No 42 & 43-Quantam Power E.A & Koch Eng Vs NSSF
20	Cases Year 2014-2015	APPEAL No 46-NMN Eng Vs Pansiasi Wildfield Institute
21	Cases Year 2013-	APPEAL No 01-Cool Care Services Vs SMTA

No.	Document	Identifies Appeal
	2014	
22	Cases Year 2013-2014	APPEAL No 04-Cool Care Services Vs PPF
23	Cases Year 2013-2014	APPEAL No 14-MFI Office Solutions Vs TSAF
24	Cases Year 2013-2014	APPEAL No 17-Builders Paints&General Entr Vs TAA
25	Cases Year 2013-2014	APPEAL No 18-Y.N.Investment Vs Magu DC
26	Cases Year 2013-2014	APPEAL No 23-Palemo Beta Bidding Vs Kahama TC
27	Cases Year 2013-2014	APPEAL No 25-Baraka Solar Specialist Vs Mpanda DC
28	Cases Year 2013-2014	APPEAL No 43-Conference & Exhibition V/s CRB
29	Cases Year 2013-2014	APPEAL No 44-Conference & Exhibition V/s CRB

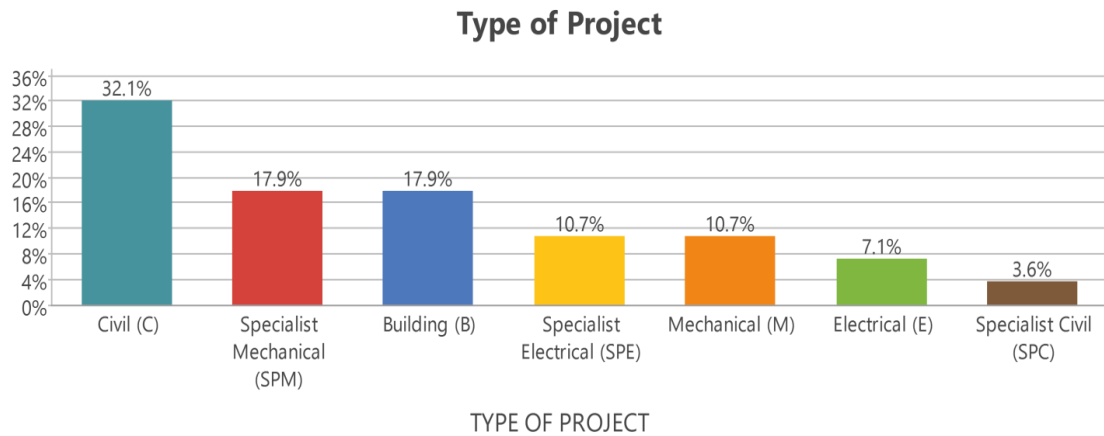
4.3.2 Identification of Complaints registered by type of Project

It was observed that; among 29 contractors complaints 5 were Building category of contractors, 9 are civil, 1 is electrical, 4 are mechanical, 5 are specialist Mechanical, 3 are specialist electrical and 1 is a specialist civil, each of them undertaking works within the same category of specialization. The following table No 7 and Figure 5 showing an overview of the said complaints on contractors' category and type of project identified.

Table 6: Identification by Contractors Category and Their Project Specialization.

Contractor Category	Numbers
Building	5
Civil	9
Electrical	1
Mechanical	4
Specialist Mechanical	5
Specialist Electrical	3
Specialist Civil	1

Figure 5: Identification by Contractors Category and Their Project Specialization



4.3.3 Identification by Classes Of Contractors.

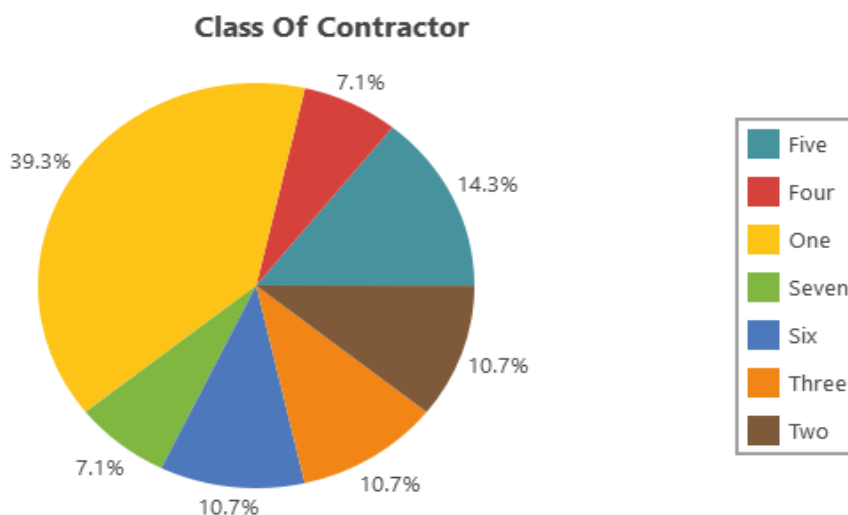
It is observed that; among 29 contractors complaints; - 11(37.9%) are class one contractors, 3(10.3%) are class Two contractors, 4(13.8%) are class Three contractors, 2(6.9%) are class Four Contractors, 4(13.8%) are class five contractors

3(10.3%) are class six contractors and 2 are class seven contractors. The following table 8 and figure 6 showing an overview of the classes identified.

Table 7: Classes Of Projects Identified.

Class Of Contractor	Frequency	Percent
Five	4	13.80
Four	2	6.90
One	11	37.90
Seven	2	6.90
Six	3	10.30
Three	4	13.80
Two	3	10.30
TOTAL	29	100.00

Figure 6: Classes Of Projects Identified.



4.3.4 Identification by Category Of Client

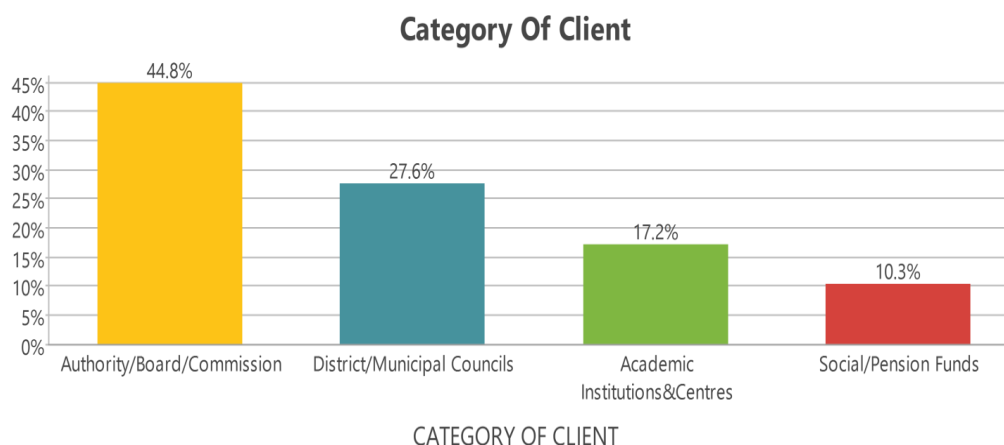
It is observed that; among 29 contractors complaints; - 13 (44.8%) are contractors complaints from Authorities, Boards and Commissions, 8 (27.6%) are contractors complaints from District Councils and Municipal Councils (LGA's) and 5 (17.2%)

are contractors complaints from Academic Institutions & Academic Centers and 3 (10.3%) are contractors complaints from Social Funds and Pension Funds. The following table 9 and figure 7 showing an overview of the classes identified.

Table 8: Category Of Client.

Name	Frequency	Percentage (valid)
Authority/Board/Commission	13	44.83
District/Municipal Councils	8	27.59
Academic Institutions & Centres	5	17.24
Social/Pension Funds	3	10.34
Total (Valid)	29	100.00

Figure 7: Category Of Client.



Discussion of Findings from Theme One

In increase of complaint shows a lack of key requirements in attaining fair competition as per PPA Act 2011 which are transparent & integrity, Efficiency & effectiveness, proper regulative framework and procurement operations. On increase

of the said variables will cause the decrease of complaints of unfair selection in tendering and the vice versa is true. In grounded theories stipulated in the literature point of view of Tukamuhabwa (2012) who conducted a study on conceptualization of the antecedents and consequences of compliance/ non-compliance behaviour in public procurement and he further observed through a review of existing scholarly works, documents, records and reports, a conceptual frame work was developed in which media publicity, enforcement, records management, organizational culture, political interference, professionalism, organizational incentives, perceived rule legitimacy, moral obligation, social influence, familiarity with rules and top management support were identified as antecedents while cognitive dissonance, low employee motivation, low corruption, better corporate governance and low service delivery were established as consequences.

On top of that, according to CRB criteria Civil works comprise water projects and road projects where by as it has been noted by PPRA that; the total volume of procurement handled by Tanesco, Tanroads and PPF was TZS 1,092 billion or 36.40 percent of the total volume of procurement for the 322 PEs for financial Year 2016/2017. The volume of procurement for works was mainly influenced by procurement conducted by Tanroads and PPF while that of goods was influenced by Tanesco and as it is well known that Tanroads mainly deals with civil works. In addition to that part of LGA's and ministry of water deals of civil works, this is due reason of civil works complaints to be in big number compared to other category of works. Consequently, the factors identified must be the reasons affect type of client such as authorities/Boards/Commissions to have more complaints than others. On

contrary class one contractors are more easy to lounge more complaints at PPAA due to the fact that; variables such as transparent & integrity, Efficiency& effectiveness, proper regulative framework and procurement operations factors might not be the only reason but also according to their class the regulations allows them to execute unlimited contract amounts so they have more opportunity to access works in any amount and most of the big projects are more exposed to corruption practice, they also are financially stable due to the reason that lounging a complaints require a fee payment in which lower classes could have been a problem, also timely and adequate staffing such as company lawyers to conduct cases contrary to lower class contractors. In conclusion theme No 2 responding to the research question number i which indicates common complaints existing in relation to selection of contractors.

4.4 Theme No. 2 - Grounds For Complaints and Reasons For Appeal

This is intended to respond to specific objective number Two and research question number two whereby the main purpose is to scrutinize grounds for complaints to reveal reasons thereof. Here are the scrutinies for 29 Number of contractors with their grounds for complaints according to PPA 2011 and its regulations and how they have been handles.

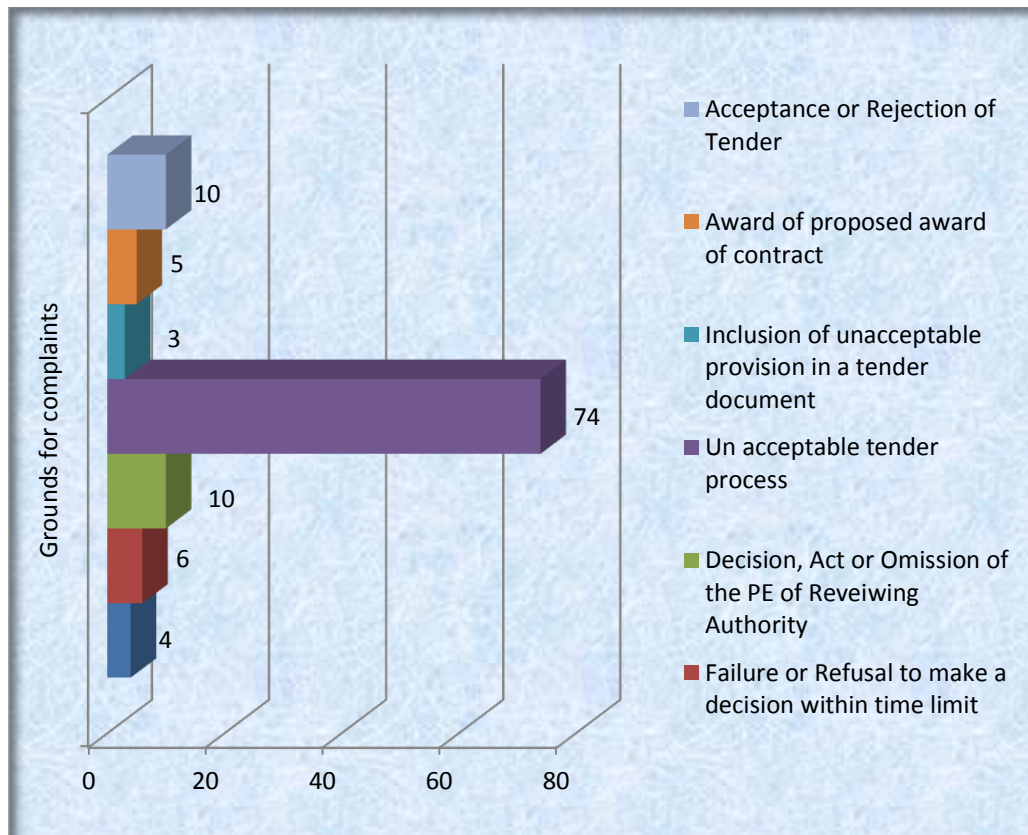
Data of 29 contractors' complaints have been collected from Public Procurement Appeals Authority (PPAA), here are compilation of total No of 112 segments appearing to express grounds of complaints in all 29 appeals where by Unacceptable tender process appearing to have more expression segments of grounds where by 74 segments falls under this ground followed by two grounds which are Decision, Act of Omission of the PEs of the reviewing Authority and Acceptance of Rejection of

Tender where by each ground contain 10 segments expression. Other grounds appearing to have small number segments expression in appeal documents such as Failure or Refusal to make a decision within time limits 6 Segments, Award of Proposed award of contract 5 segments, Blacklisting resulting from the tender process 4 segments and Inclusion of unacceptable tender provision in tender document 3 segments.

Tables 10 and figure 8 bellow express the pointed out segments in each ground for complaints, this gives the picture of the most contractors do not accept tendering process by PEs and the argument of unfair selection of contractors comes in. Not only that but also ground Decision, Act or Omission of the PE of Reviewing Authority and Acceptance or Rejection of Tender appearing to have 10 segments each, which indicate that omissions are done purposely to stand with the decision of evaluation committee and tender Board in which contractors complained about.

Table 9: Grounds Of Complaints.

Grounds for complaints	
Grounds	No Of Segments
Blacklisting resulting from the tender process	4
Failure or Refusal to make a decision within time limit	6
Decision, Act or Omission of the PE of Reviewing Authority	10
Un acceptable tender process	74
Inclusion of unacceptable provision in a tender document	3
Award of proposed award of contract	5
Acceptance or Rejection of Tender	10

Figure 8: Grounds Of Complaints (Number Of Segments).**Table 10: Detailed Segments On Grounds For Complaints (Parent code).**

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Deserved proposed award of contract	That, they participated in the disputed tender and were considered to have won it. That's why the Respondent had invited them for negotiation meeting. The Respondent is therefore bound to award the contract to them as the winners
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Failure or Refusal to make a decision within time limit	That, they participated in the disputed tender and were considered to have won it. That's why the

Document group	Document name	Sub Code	Segment
			Respondent had invited them for negotiation meeting. The Respondent is therefore bound to award the contract to them as the winners
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Grounds for complaints\Failure or Refusal to make a decision within time limit	That, the Respondent is refusing to award the contract to them based on assertion that the bid validity period of the tender had expired. A ground which is unfounded. The Respondent would have extended the bid validity period rather than rejecting their tender
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Grounds for complaints\Failure or Refusal to make a decision within time limit	That, the reason advanced by the Respondent that tender board authorization period had expired is unjustifiable; and is not applicable in the circumstance. The Respondent would have invoked Regulation 62(1) of the Public Procurement Regulations, GN. No. 446 of 2013, (hereinafter referred to as “the GN.NO.446/2013”), to extend the authorization time without changing the terms and conditions of the original contract since the scope of the services has not varied significantly as alleged

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Un acceptable tender process	That, the reason advanced by the Respondent that tender board authorization period had expired is unjustifiable; and is not applicable in the circumstance. The Respondent would have invoked Regulation 62(1) of the Public Procurement Regulations, GN. No. 446 of 2013, (hereinafter referred to as “the GN.NO.446/2013”), to extend the authorization time without changing the terms and conditions of the original contract since the scope of the services has not varied significantly as alleged
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Un acceptable tender process	That, the Respondent is refusing to award the contract to them based on assertion that the bid validity period of the tender had expired. A ground which is unfounded. The Respondent would have extended the bid validity period rather than rejecting their tender
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Acceptance or Rejection of Tender	That, the reason advanced by the Respondent that there is a great change in design (scope of the work) is unjustifiable and disputable. The Appellant is ready and willing to perform the task with the same agreed contractual amount; and the same shall

Document group	Document name	Sub Code	Segment
			not be subjected to any change
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Acceptance or Rejection of Tender	That, the Respondent's accounting officer ought not to have rushed into re-advertising the tender without considering that the Appellant had incurred a lot of cost (sic) in the successfully completed tender; and that he had been waiting to sign the contract with the Respondent since May, 2015.
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Grounds for complaints\Failure or Refusal to make a decision within time limit	That, the Respondent's accounting officer ought not to have rushed into re-advertising the tender without considering that the Appellant had incurred a lot of cost (sic) in the successfully completed tender; and that he had been waiting to sign the contract with the Respondent since May, 2015.
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Failure or Refusal to make a decision within time limit	That, the Appellant had been assured by the Respondent that the Ministry has approved the contract to be signed and that he has been waiting for such an event for long time.
Cases Year 2016-2017	APPEAL No. 10 Sabhi Company Vs Kigoma DC	Decision, Act or Omission of the PE of Reveiwing Authority	That, the Respondent's accounting officer has neglected to respond to two complaints addressed to him by the Appellant regarding the tender.

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That Clause 1(a) of the Special Condition of Contract (SCC) and General Conditions of Contract (GCC) entails that a successful tenderer would sign contract with an unknown person called the Main Contractor, contrary to the requirement of Regulation 233 (1) of the Public Procurement Regulations No. 446 of 2013 (“GN. No.446/2013”). As the tender had been issued by the Respondent, the subcontractors would make offers acceptable to the Respondent
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That, the Respondent purported to have used a Standard Tender Document from the Public Procurement Regulatory Authority (PPRA) which it alleges to have customized to suit its needs knowing it to be false, contrary to Sections 9 and 104(1)(a) of the Act as amended.
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	The Tender Document used by the Respondent not a standard document for medium and large works posted in the Authority’s website in 2014. Thus, the Respondent had contravened Regulation 184 (4) of GN. No. 446/2013.

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Inclusion of unacceptable provision in a tender document	The Tender Document used by the Respondent not a standard document for medium and large works posted in the Authority's website in 2014. Thus, the Respondent had contravened Regulation 184 (4) of GN. No. 446/2013.
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That, while Clauses 5.1 and 5.2 of the GCC require tenderers to understand all provisions contained in the main contract, the Respondent refused to provide the bidders with a copy of the main contract, contrary to Section 3 of the Act.
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	Clause 18. 3 and 19.2 provide that the sub contractor shall not be entitled to any rights unless those rights are claimed in the main contractor's name
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	Clause 21 of the GCC provides that when the main contractor is terminated the sub contractor shall be terminated automatically, but does not provide for remedy to sub-contractor where he is entitled compensation as a result of the main contractor's termination. The Appellant explained that there may be situations where the main contractor is not willing to allow the use of his name by a sub contractor in

Document group	Document name	Sub Code	Segment
			making respective claims
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That, Clauses 22, 23 and 34 of the GCC require a sub-contractor to claim his rights in the name of the main contractor.
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That, during the pre-bid meeting the Respondent did not respond to the Appellant's concerns raised in the second letter addressed to them which concerned with payment of sub-contractor through a main contractor
Cases Year 2016-2017	APPEAL No. 9 Cool care Vs Surface and Marine and Sumatra	Un acceptable tender process	That, the minutes of the pre bid meeting was sent to the Appellant five days later beyond the three days contrary to the requirement of Regulation 189(4) of GN. No. 446/2013. At that time the Appellant had already submitted his application for administrative review to the Respondent's Accounting Officer. The Appellant submitted further that the contents of the GCC and SCC as well as the forms of contract agreement contained in the Respondent's Tender Document proves the Appellant's assertion on the first ground of this Appeal

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 7 Darworth Limited	Decision, Act or Omission of the PE of Reveiwing Authority	That, the Respondent erred in fact and law in disqualifying the Appellant's tender as they had attached evidence of supplying similar items to reputable or Government institutions as per Clause 13.3 of the Instructions To Bidders (ITB)
Cases Year 2016-2017	APPEAL No. 7 Darworth Limited	Acceptance or Rejection of Tender	That, the Respondent erred in fact and law in disqualifying the Appellant's tender as they had attached evidence of supplying similar items to reputable or Government institutions as per Clause 13.3 of the Instructions To Bidders (ITB)
Cases Year 2016-2017	APPEAL No. 7 Darworth Limited	Deserved proposed award of contract	That, the Appellant's tender was the lowest tender and had complied with the requirements of the Tender Document. Thus, it was not proper for the Respondent to award the Tender to another tenderer who had higher price than theirs
Cases Year 2016-2017	APPEAL No. 7 Darworth Limited	Un acceptable tender process	That, the Appellant's tender was the lowest tender and had complied with the requirements of the Tender Document. Thus, it was not proper for the Respondent to award the Tender to another tenderer who had higher price than theirs

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No. 7 Darworth Limited	Acceptance or Rejection of Tender	That, the Appellant's tender was the lowest tender and had complied with the requirements of the Tender Document. Thus, it was not proper for the Respondent to award the Tender to another tenderer who had higher price than theirs
Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC	Un acceptable tender process	That, the JV referred to by the Respondent never existed during the tender opening ceremony held on 29th April 2016, and that, the Respondent had doctored the attendance register to include the JV with M/s Vibe International Company Limited, after the Appellant had lodged the complaint
Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC	Un acceptable tender process	That, since, a Joint Venture is a temporary registered Company (sic), the name of the said JV ought to have appeared at the tender opening ceremony, evaluation process and in the letter of Notice of Intention to award the contract
Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC	Un acceptable tender process	That, basing on the Respondent's earlier Notice of Intention to Award the contract in which the JV was not mentioned, the plugged in JV was not evaluated, since, the same was not present during the tender opening ceremony.

Document group	Document name	Sub Code	Segment
Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC	Un acceptable tender process	That, the purported JV tender document contains the rubber stamp of only one firm M/s Nyangera Construction and General Enterprises Company Limited. If at all the bid was in JV, it ought to have stamps and signatures of both companies.
Cases Year 2016-2017	APPEAL No 3 Engineering Plus Vs Mbulu DC	Un acceptable tender process	That, the Respondent violated Regulation 231(4) of GN No.446 of 2013 as the Appellant was not given the reasons for his tender to be unsuccessful
Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC	Failure or Refusal to make a decision within time limit	That, the Respondent had contravened Clause 38.1 of the ITT for his failure to issue Notice of Intention to award the contract to bidders who participated in the tender process. Hence, denied them the right to seek administrative review
Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC	Decision, Act or Omission of the PE of Reveiwing Authority	That, the Respondent had contravened Clause 38.1 of the ITT for his failure to issue Notice of Intention to award the contract to bidders who participated in the tender process. Hence, denied them the right to seek administrative review
Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC	Un acceptable tender process	That, Respondent behaved coercive (sic) and collusive manner in the tender process with intention to impair or harm the Appellant. This is verified by the Respondent's act to send letters to the

Document group	Document name	Sub Code	Segment
			Appellant fourteen days after they had been written
Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC	Un acceptable tender process	That, the Respondent contravened the requirement of Clause 38.4 of the ITT for failure to provide reasons for the disqualification of the Appellant.
Cases Year 2016-2017	APPEAL No. 2 Godsas Group Vs Masasi TC	Un acceptable tender process	That, the latter reasons given by the Respondent to disqualify his tenders is misleading, as the said Clause 5 of the ITT relates to cost of tender. In no way the said Clause could have been the factor to disqualify them
Cases Year 2016-2017	APPEAL No 4 Cadasp &Group six JV Vs NSSF	Decision, Act or Omission of the PE of Reviewing Authority	The Respondent erred in law for entertaining complaints that were lodged out of time.
Cases Year 2016-2017	APPEAL No 4 Cadasp &Group six JV Vs NSSF	Un acceptable tender process	Conflict of interest between the Respondent and one partner in the Appellant's (JV
Cases Year 2016-2017	APPEAL No 4 Cadasp &Group six JV Vs NSSF	Un acceptable tender process	Non-registration of the JV agreement.
Cases Year 2016-2017	APPEAL No 4 Cadasp &Group six JV Vs NSSF	Un acceptable tender process	Regarding the second ground, the Appellant stated that, the Respondent erred in law by stating that, M/s Group Six International Limited being the main contractor for the project is considered to have access to information regarding the tendering process contrary to Clause 3.6(e) of the Instruction to

Document group	Document name	Sub Code	Segment
			Tenderers (hereinafter referred to as "ITT")
Cases Year 2016-2017	APPEAL No 4 Cadasp &Group six JV Vs NSSF	Un acceptable tender process	The Appellant averred further that; the Respondent's administrative review team erred in fact and law by concluding that M/s Group Six International Limited being the main contractor have more knowledge of the environment of the envisaged works and puts them in more advantageous position compared to others - presence of conflict of interest.
Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC	Acceptance or Rejection of Tender	That, he had submitted all documents including Certificate of Registration from CRB
Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC	Acceptance or Rejection of Tender	That, his tender meets the requirement of Civil Engineering Class V and above
Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC	Grounds for complaints\Deserve d proposed award of contract	That, the Respondent intends to award the Tender to a tenderer who did not submit a registered Power of Attorney at the time of tender opening contrary to the requirement of the Tender Document;
Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC	Acceptance or Rejection of Tender	That, the Respondent intends to award the Tender to a tenderer who did not submit a registered Power of Attorney at the time of tender opening contrary to the requirement of the Tender Document

Document group	Document name	Sub Code	Segment
Cases Year 2015-2016	APPEAL No 8 Nyaring JV Wanka Vs Mpanda DC	Decision, Act or Omission of the PE of Reveiwing Authority	That, his complaint to the Respondent was submitted within time in compliance with the law
Cases Year 2015-2016	APPEAL No 27 Ernie Enterprises and Jeccs Vs TIA	Un acceptable tender process	First that the Respondent erred in law for awarding the tender to M/s Home Africa Investment Corporation Ltd. which is a foreign firm. He submitted that according to the Tender Document the tender was exclusively reserved for local contractors. He stated that under Clause 7 of the Invitation for Tender, bidders were to submit bid security in the form of Tender Securing Declaration, meaning that the tender was reserved for local contractors.
Cases Year 2015-2016	APPEAL No 27 Ernie Enterprises and Jeccs Vs TIA	Un acceptable tender process	Furthermore, the proposed successful tenderer, M/s Home Africa Investment Corporation Ltd. had been registered by the Contractors Registration Board (hereinafter referred to as "CRB") as a foreign contractor. Thus, the proposed successful bidder does not deserve to be awarded the tender.
Cases Year 2015-2016	APPEAL No 27 Ernie Enterprises and Jeccs Vs TIA	Un acceptable tender process	2nd Appellant stated that Clause 2 of the Invitation for Tender had stipulated that the project will be financed exclusively by the Government of Tanzania and according to Section 55(1) of the Public

Document group	Document name	Sub Code	Segment
			Procurement Act No. 7 of 2011 (hereinafter referred to as “the Act”), all works, goods, consultancy and non-consultancy services exclusively financed by a public body with a value not exceeding the threshold specified in the Ninth Schedule of GN 446 of 2013 should be reserved exclusively for local firms or persons
Cases Year 2015-2016	APPEAL No 27 Ernie Enterprises and Jeccs Vs TIA	Acceptance or Rejection of Tender	Reverting to the intention to award the contract to M/s Home Africa Investment Corporation Ltd, the 2nd Appellant stated that the said firm has been registered as a foreign contractor by CRB and since the value of the disputed tender process does not exceed the threshold specified in the ninth schedule of GN No 446 of 2013, M/s Home Africa Investment Corporation Ltd. should not be considered for the award of the contract
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Acceptance or Rejection of Tender	On his part, the Appellant did not agree with reasons founded on his poor performance on previous projects and failure to disclose his litigation history at the pre-qualification stage
Cases Year 2015-2016	APPEAL No 26 Tanzania	Un acceptable tender process	That the Appellant had quoted the lowest price

Document group	Document name	Sub Code	Segment
	Building Works Vs AICC		compared to other tenderers and the Engineers estimate was TZS. 2.754 Billion which was within the Appellant's quoted price.
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Un acceptable tender process	That Respondent subjected the Appellant to post-qualification which was nowhere indicated in the Tender Document.
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Un acceptable tender process	That, the Respondent contravened the Act and it's Regulations by disqualifying the Appellant on the ground that they had concealed litigation history and its performance on previous executed projects which was not accepted by the Respondent.
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Acceptance or Rejection of Tender	That, the Respondent contravened the Act and it's Regulations by disqualifying the Appellant on the ground that they had concealed litigation history and its performance on previous executed projects which was not accepted by the Respondent.
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Inclusion of unacceptable provision in a tender document	During the hearing, the Appellant informed the Appeals Authority that Clause 34.2 of the Tender Document stated clearly that post qualification was not supposed to be conducted as it was not

Document group	Document name	Sub Code	Segment
			covered in the Bid Data Sheet.
Cases Year 2015-2016	APPEAL No 26 Tanzania Building Works Vs AICC	Un acceptable tender process	Further, the alleged poor performance of previous works was attributable to clients' delay in effecting payments. He denied any allegations on litigation history alluded to him.
Cases Year 2015-2016	APPEAL No 23,24,25 JV MBH power&Shree m Electric Vs REA	Un acceptable tender process	That, the Respondent erred in law for using post qualification criteria to disqualify the Appellant who qualified under the pre-qualification process which was conducted in accordance with Clause 25 of the Bid Data Sheet (hereinafter referred to as 'BDS'), Regulation 224(2) of the GN No. 446 of 2013 and Section 53(1) and (2) of the Ac
Cases Year 2015-2016	APPEAL No 23,24,25 JV MBH power&Shree m Electric Vs REA	Un acceptable tender process	That, the Respondent had erred in law for disqualifying the Appellant's tender which was submitted in a Joint Venture, based on unproved allegations against MBH Power Limited (one of the partners in JV). The Respondent had failed to consider that as a Joint Venture the Appellant had more capacity than a single entity.
Cases Year 2015-2016	APPEAL No 23,24,25 JV MBH	Un acceptable tender process	That, they doubt if their disqualification was lawful and the intended award is

Document group	Document name	Sub Code	Segment
	power&Shree m Electric Vs REA		cost effective.
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Blacklisting resulting from the tender process	A close scrutiny of the documents submitted by the Appellant shows that the Appellant has only one ground of appeal, and that is their Company was debarred for a period of two (2) years without being accorded a right to be heard.
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Decision, Act or Omission of the PE of Reviewing Authority	A close scrutiny of the documents submitted by the Appellant shows that the Appellant has only one ground of appeal, and that is their Company was debarred for a period of two (2) years without being accorded a right to be heard.
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Decision, Act or Omission of the PE of Reviewing Authority	The Appellant argued that the Respondent was required to call upon them to show cause why they should not be debarred before making the decision to debar them, insisting as he did, that the Respondent merely acted on unconfirmed information from Kongwa District Council which had defaulted in making payments under the Contract
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Blacklisting resulting from the tender process	Regarding termination of the contract, the Appellant submitted that, they were issued with the letter of

Document group	Document name	Sub Code	Segment
			<p>termination on 12th December 2014 but was dated 17th September 2014, and replied to the said letter on 23rd December 2014. The Appellant complained of the unfair termination and as a result, the procuring entity through its letter with Ref. No. HW/KOG/J.10/1/136 dated 16th February 2015, invited the Appellant for negotiation on how to successfully implement the project</p>
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Blacklisting resulting from the tender process	The Appellant complained that while the above negotiations were on, and before being paid for works done, they were debarred without being given any opportunity to be heard
Cases Year 2015-2016	APPEAL No 16 Intersystems Vs PPRA	Un acceptable tender process	The Appellant complained that while the above negotiations were on, and before being paid for works done, they were debarred without being given any opportunity to be heard
Cases Year 2015-2016	APPEAL No 10 Perntels co Vs Mkinga DC	Un acceptable tender process	First, that the Appellant had executed the works and handed over the same in accordance with the terms of the Contract, as evidenced by the two Interim Payment Certificates No 1 and 2 issued by the 2nd Respondent

Document group	Document name	Sub Code	Segment
Cases Year 2015-2016	APPEAL No 10 Perntels co Vs Mkinga DC	Un acceptable tender process	Second that the Appellant had not been granted the right to be heard prior to being barred and blacklisted by the 1st Respondent
Cases Year 2015-2016	APPEAL No 10 Perntels co Vs Mkinga DC	Blacklisting resulting from the tender process	Second that the Appellant had not been granted the right to be heard prior to being barred and blacklisted by the 1 st Respondent
Cases Year 2015-2016	APPEAL No 10 Perntels co Vs Mkinga DC	Decision, Act or Omission of the PE of Reveiwing Authority	Second that the Appellant had not been granted the right to be heard prior to being barred and blacklisted by the 1 st Respondent
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Deserved proposed award of contract	That, the Respondent did not issue a notice of intention to award the Tender within three (3) weeks as they promised, until after they requested to know the status of the Tender.
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Un acceptable tender process	That, the Respondent did not issue a notice of intention to award the Tender within three (3) weeks as they promised, until after they requested to know the status of the Tender.
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Un acceptable tender process	That, the submission of a bank statement was not necessary as they had attached all relevant documents indicating financial capability to perform the contract including the financial

Document group	Document name	Sub Code	Segment
			statement and evidence
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Inclusion of unacceptable provision in a tender document	That, the submission of a bank statement was not necessary as they had attached all relevant documents indicating financial capability to perform the contract including the financial statement and evidence
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Un acceptable tender process	<p>In support of the first ground, the Appellant claimed that they requested for the status of the Tender from the Respondent vide a letter with Ref. No. EA 03/15/MRK/2016 dated 2nd May 2016, after receiving no response within the promised time of 3 weeks. On 10th May 2016 they received an e-mail attached with the notice of intention to award the tender dated 21st April 2016, which notified all tenderers, the Appellant inclusive, of the intention to award the Tender to M/s Bright Technical Systems and General Supplies Ltd.; and that the Appellant was disqualified for failure to submit CRB Registration Certificate as per Clause 11.1 h (i) of the Tender Document.</p>

Document group	Document name	Sub Code	Segment
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Un acceptable tender process	Dissatisfied, the Appellant applied for administrative review via a letter dated 16 th May 2016, challenging the disqualification, claiming that they had submitted the CRB Registration Certificate together with all other required documentation
Cases Year 2015-2016	APPEAL No 32 EA brothers co Vs Mzumbe University	Un acceptable tender process	The Respondent vide a letter with Ref. No. MU/CF/CB.2/8/VOL.XIX/74 dated 27 th May 2016 made a correction, stating that disqualification was due to failure to submit a bank statement as per Clause 11.1 h (i) of the Instructions to Tenderers (ITT) and not the CRB Registration Certificate. In support of the second ground, the Appellant submitted that, bank statements only show history of bank transactions done on a particular.
Cases Year 2015-2016	APPEAL NO 01 Transsys solution& Macro Soft Vs TPA & 23RD Centur	Un acceptable tender process	That, the bid security submitted was in favor of the Respondent (procuring entity) and not in favour of M/s Transsys Solutions of Dar es salaam. The beneficiary of the bid security in question was the Respondent as it is addressed to them and the text of the bid security confirms that the guarantor binds itself to the Respondent. Therefore, it is

Document group	Document name	Sub Code	Segment
			wrong to claim that the bid security was in favor of any other than the Respondent
Cases Year 2015-2016	APPEAL NO 01 Transsys solution& Macro Soft Vs TPA & 23RD Centur	Un acceptable tender process	It was submitted further that, the inclusion of M/s ERP Software Technologies' address in the bid security does not constitute material deviation as it does not meet any of the characteristics of the same as stipulated under Clause 28.2 of the ITB. Further to that, Regulation 207(2)(b) of GN 446 of 2013 gives procuring entity flexibility to ignore minor deviations which could have been easily clarified as per Regulation 207(1) of GN 446 of 2013. Thus, the Respondent's act of making conclusions without seeking any clarifications as permitted by the law, deprived them the benefits of free and open competition
Cases Year 2015-2016	APPEAL NO 01 Transsys solution& Macro Soft Vs TPA & 23RD Centur	Un acceptable tender process	That, the Tender Document and addenda require tenderers to have 2 references in the port industry. M/s Twenty Third Century Systems, to whom the Respondent intends to award the contract, does not have such references. This is due to the fact that the reference letters attached to the statement of appeal do not

Document group	Document name	Sub Code	Segment
			confirm that M/s Twenty Third Century Systems has 2 references in port industry as required by the Tender Document; hence, its tender ought to have been disqualified
Cases Year 2015-2016	APPEAL NO 01 Transsys solution& Macro Soft Vs TPA & 23RD Centur	Un acceptable tender process	That, Clause 1.2.50 of Technical Specifications (Section VII of the Tender Document) stipulates the implementation period to be within a minimum of six (6) months which can be extended to nine (9) months. The delivery period indicated in the notice of intention to award the contract is nine (9) months. That indicates that M/s Twenty Third Century PVT Ltd had failed to comply with requirements of the Tender Document, hence his bid ought to have been disqualified
Cases Year 2015-2016	APPEAL NO 01 Transsys solution& Macro Soft Vs TPA & 23RD Centur	Un acceptable tender process	Upon being notified on the existence of this appeal, the 2nd Appellant joined and raised the following grounds of Appeal; i) That, submission of a Power of Attorney which lacked the signature of the donee does not make the tender submitted by the 2 nd Appellant to be substantially non responsive as that could be treated as minor deviation. The Respondent ought to have considered proposed

Document group	Document name	Sub Code	Segment
			<p>solutions for the project and not to disqualify the 2nd Appellant's tender on the preliminary evaluation stage as the noted defect in the Power of Attorney was minor and could have been corrected</p>
Cases Year 2015-2016	<p>APPEAL NO 01 Transsys solution & Macro Soft Vs TPA & 23RD Centur</p>	<p>Un acceptable tender process</p>	<p>That, under Clause 32 of the BDS tenderers were required to show that the proposed system had been successfully implemented by the manufacturer, tenderer or both of them in at least two sites of similar scope and scale in the ports industry in sub-Saharan Africa over the last five years. According to the 2nd Appellant, Clause 32 limits participation of tenderers in the disputed tender process contrary to the requirement of the law which requires tender criteria to be neutral and standard so as to encourage participation of tenderers and increase competition.</p>
Cases Year 2015-2016	<p>APPEAL NO 01 Transsys solution & Macro Soft Vs TPA & 23RD Centur</p>	<p>Un acceptable tender process</p>	<p>That, the whole tender process was biased as it was conducted in a way which clearly indicates that the award was intended to be made to M/s Twenty Third Century PVT Ltd. The successful tenderer was the only bidder who qualified or meets the additional</p>

Document group	Document name	Sub Code	Segment
			information provided in the Tender Document.
Cases Year 2014-2015	APPEAL No 41-Technofab Gammon JV Vs DAWASA	Un acceptable tender process	its tender price was lower than the price proposed by the successful tenderer
Cases Year 2014-2015	APPEAL No 41-Technofab Gammon JV Vs DAWASA	Un acceptable tender process	that according to the procurement method used by the Respondent, the Appellant should have been awarded the tender, taking into account that they had been executing two major projects in Tanzania and were familiar with terrain and costs structures of the country
Cases Year 2014-2015	APPEAL No 41-Technofab Gammon JV Vs DAWASA	Deserved proposed award of contract	that according to the procurement method used by the Respondent, the Appellant should have been awarded the tender, taking into account that they had been executing two major projects in Tanzania and were familiar with terrain and costs structures of the country
Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'any i Vs Shinyanga MC	Un acceptable tender process	The 1 st Appellant strongly argued that the proposed contractor does not meet the requirements in executing such works which are complex in nature. He maintained that the said company should have completed road projects of similar nature and complexity of at least 39.3 km in the last 10 years

Document group	Document name	Sub Code	Segment
			including key activities like stabilization to tune of 27,311 m ³ , CRS – 65540 and Asphalt – 6424m ³ . (Emphasis added).
Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'any i Vs Shinyanga MC	Un acceptable tender process	1st Appellant asserted that there was a purposeful or targeted correcting of errors. Making reference to Clause 28 of the ITT, the Appellant admitted that the said Clause makes allowances for correction of errors and there is no mechanism to differentiate between trivial and gross errors in the tender. That notwithstanding, the appellant insisted that the tender prices read out at the opening ceremony were by far very different from the corrected bid prices. He could not appreciate why the bidder who had quoted the bid price of Tshs. 17,047,144,284/= should be awarded the tender at a price of Tshs. 18,215,344,285/= after the arithmetical corrections. To him, whatever corrections were made were targeted and that was against the spirit of competitive bidding. He concluded his submissions by stating that the arithmetical corrections so made were gross or material deviation which, if allowed to stand, would unfairly

Document group	Document name	Sub Code	Segment
			affect the position of other tenderers with substantial responsive tenders.
Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'any i Vs Shinyanga MC	Un acceptable tender process	That, the Appellant had submitted alongside the tender documents respective evidence showing his firm's experience in works of similar nature as demanded in the tender document, notwithstanding the fact that the scope of work or experience requirement was not relevant to class 1 contractors
Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'any i Vs Shinyanga MC	Un acceptable tender process	That, the tender document did not impose a requirement for certification of Technical personnel certificates. What was stipulated was to initial all unprinted parts of the tender document.
Cases Year 2014-2015	APPEAL No 37 & 38 - Nyanza Rd & Nyakirang'any i Vs Shinyanga MC	Un acceptable tender process	That, it had attached a valid business licence to the tender document. The alleged copy of the expired business license is evidence that the Respondent and or his agents had tampered with the tender documents

Document group	Document name	Sub Code	Segment
Cases Year 2014-2015	APPEAL No 08-KSK Autogarage Vs Temesa	Un acceptable tender process	That, their complaints were dismissed on the ground that, the extension of time was due to minimal responses in respect of tenders. They were dissatisfied with such decision since the tender under appeal had high responses compared to others. That, their Appeal is based on the following grounds:- i. That there was a breach of the PPA/2011. ii. That there was no compliance with the Tender Document. iii. That the ground which led to extension of time was contrary to Section 59 (2) (a) (b) of the PPA/2011
Cases Year 2014-2015	APPEAL No 03-Advent Vs TIA	Un acceptable tender process	That, the intended successful tenderer has insufficient experience.
Cases Year 2014-2015	APPEAL No 03-Advent Vs TIA	Un acceptable tender process	That, the intended successful tenderer has no competence
Cases Year 2014-2015	APPEAL No 03-Advent Vs TIA	Un acceptable tender process	That, there was inadequate and insufficient diligence in the evaluation process
Cases Year 2014-2015	APPEAL No 03-Advent Vs TIA	Un acceptable tender process	That, the Appellant had higher qualifications than the other tenderers including the intended successful tenderer.
Cases Year 2013-2014	APPEAL No 44-Conference & Exhibition V/s CRB	Un acceptable tender process	The Appeals Authority to condemn the Respondent for not adhering to the Act when undertaking procurements especially

Document group	Document name	Sub Code	Segment
			transparency and fairnes
Cases Year 2013-2014	APPEAL No 43-Conference & Exhibition V/s CRB	Un acceptable tender process	First ,that no notice of intention to award the tender was issued by the Respondent, contrary to Section 60(3) of the Public Procurement Act of 2011(hereinafter referred to as “the Act”
Cases Year 2013-2014	APPEAL No 43-Conference & Exhibition V/s CRB	Grounds for complaints\Un acceptable tender process	Second, that no reasons were stated for disqualifying their offer which was more competitive than that of the winning bidder. During the hearing, the Appellant submitted further that the Schedule of Requirements did not specify the types of booths required for the exhibition, however it appears they were disqualified on the basis of the type of the booths they had offered, as was contended by the Respondent in their Statement of reply. They complained that they were disqualified basing on an alien criterion.
Cases Year 2013-2014	APPEAL No 25-Baraka Solar Specialist Vs Mpanda DC	Un acceptable tender process	That, the award of the tender to the successful tenderer was not proper at law, because they were the ones to be awarded the tender
Cases Year 2013-2014	APPEAL No 25-Baraka Solar Specialist Vs	Un acceptable tender process	That, upon being requested by the Respondent to clarify on the figure quoted for labour charges they

Document group	Document name	Sub Code	Segment
	Mpanda DC		maintained that their figure was correct. With regard to discount, they provided that their quoted price had no discount
Cases Year 2013-2014	APPEAL No 23-Palemo Beta Bidding Vs Kahama TC	Un acceptable tender process	That, the award of the tender to M/s China Henan International Cooperation Group Co. Ltd, was marred by procedural irregularities, favouritism and political interference
Cases Year 2013-2014	APPEAL No 23-Palemo Beta Bidding Vs Kahama TC	Un acceptable tender process	That, the Respondent's failure to communicate the award and other related information, led to unequal treatment of tenderers
Cases Year 2013-2014	APPEAL No 23-Palemo Beta Bidding Vs Kahama TC	Un acceptable tender process	The award of the tender to the successful tenderer be nullified if the Authority proves that, the tender procedures were not adhered to by the Respondent
Cases Year 2013-2014	APPEAL No 17-Builders Paints&General Entr Vs TAA	Un acceptable tender process	That, they are dissatisfied with the whole process of awarding the tender since they were ranked as the "second winner" but the same had been awarded to the "fifth winner" without reasonable explanation
Cases Year 2013-2014	APPEAL No 17-Builders Paints&General Entr Vs TAA	Un acceptable tender process	That, the whole tender process did not consider value for money since the price for the tender increased every year while the tender area decreased as a result of a number of buildings being erected therein

Document group	Document name	Sub Code	Segment
Cases Year 2013-2014	APPEAL No 17-Builders Paints&General Entr Vs TAA	Un acceptable tender process	That, there was undue influence in the tender process by one official of the Tender Board resulting in, harassment by police and Prevention and Combating of Corruption Bureau (Hereinafter referred to as "PCCB"), tarnishing of their name and their ultimate unfair disqualification and a discriminatory award
Cases Year 2013-2014	APPEAL No 14-MFI Office Solutions Vs TSAF	Un acceptable tender process	That, the award of tender to the successful tenderer is questionable since they had never been awarded Government tenders or World Bank contracts
Cases Year 2013-2014	APPEAL No 04-Cool Care Services Vs PPF	Decision, Act or Omission of the PE of Reviewing Authority	That, they were dissatisfied for being disqualified on the ground that, they submitted an Insurance Bond instead of a Banker's Cheque or a Bank Guarantee for the Bid Security
Cases Year 2013-2014	APPEAL No 04-Cool Care Services Vs PPF	Un acceptable tender process	That, they were dissatisfied for being disqualified on the ground that, they submitted an Insurance Bond instead of a Banker's Cheque or a Bank Guarantee for the Bid Security
Cases Year 2013-2014	APPEAL No 01-Cool Care Services Vs SMTA	Decision, Act or Omission of the PE of Reveiwng Authority	That, they were dissatisfied with the Respondent's act of omitting Clause 4.2 of GITA, thus sought for administrative review to the Respondent who rejected their application. They later

Document group	Document name	Sub Code	Segment
			on filed an application for administrative review to PPRA who failed to issue its decision within 30 days as required by law

Discussion of Findings from Theme Two

Since variables for fairness in tender selection such as transparent & integrity, Efficiency & effectiveness, proper regulative framework and procurement operations factors are concern there should not be any grounds for complaining against unfair competition, the occurrence of all the detailed grounds are the specific grounds mentioned in PPRA Act 2013 and in its regulations that if a tenderer is not satisfied with decision of PE should go ahead and appeal to the appeals authority for further decision. This happening due to insufficient professionalism of officials especially in construction projects procurement, the lack of transparency in procurement and inadequate accountability and control mechanisms. Thus the mentioned are the grounds and their reasons as bases in contractors' for complaints on selection fairness in public projects

4.5 Theme No. 3 – Determination of Fairness to contractors selection and the extent of fairness

This theme designed to put foundation to the objective number three and the bases to direct on how fair and the extend of selection fairness. Over and above segments about primary objection and pray by appellant, primary objection and pray by

Respondent, Procuring entity's reasons for rejections and PPAA analysis as per PPA 2011 regulations and its regulations.

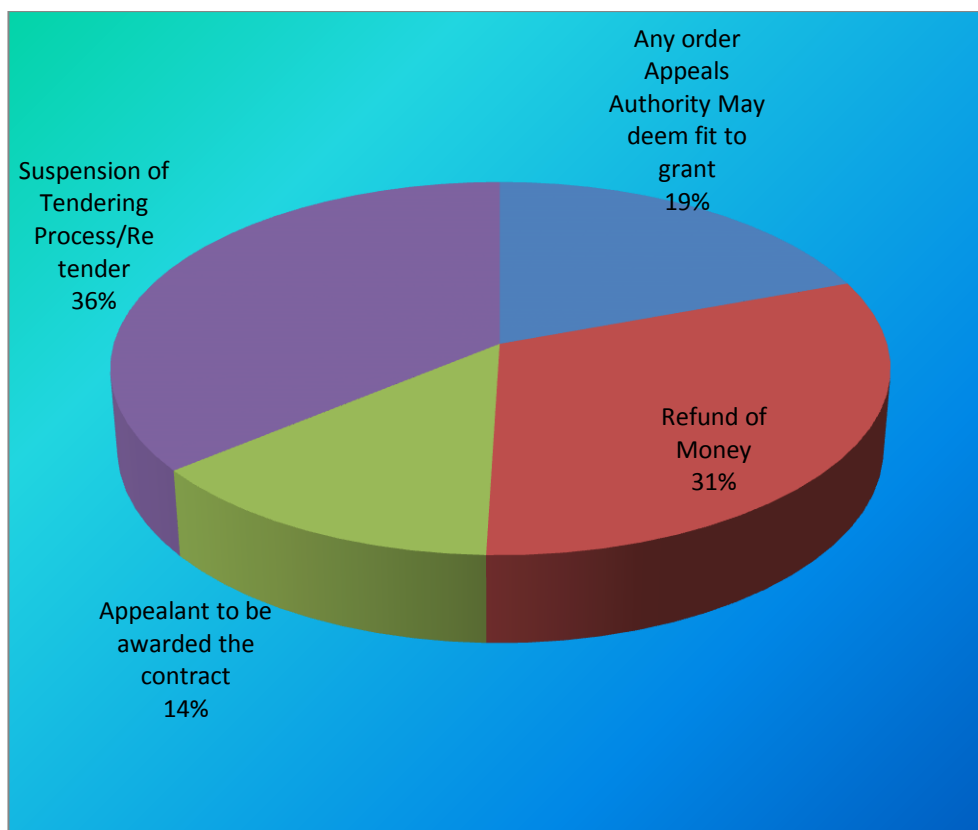
4.5.1 Primary Objection and Pray by Appellant.

Appellant objection are series of issued which are well documented in each case explaining the whole tendering procedures, evaluation process, selection of contractor and complaint handling before reaching PPAA and why the appellate dissatisfied with the recommendations of the selected tenderer and the Appellant prays explaining the request of appellant for PPAA to consider the tendering Fair, transparency and integrity.

Table 11: Pray By Appellant (Number Of Segments).

Appellant Pray	Number Of Segments	% Of Segments
Any order Appeals Authority may deem fit to grant	20	19
Refund of Money	32	31
Appellant to be awarded the contract	14	14
Suspension of Tendering Process/Re tender	37	36

Figure 9: Pray b Appellant (Percentage of Segments).



Considering Table 12 and figure 9 above, reflecting numbers and percentage of segment appearing in the parent code of Pray by appellant with a total of 103 segments where by the distribution of sub codes appearing to have large numbers of segments requesting PPAA to suspension of tendering process or re-tender process to be done (36%), followed by request to be refunded money for the cost appellant incurred (31%), request on any order Appeals Authority may deem fit to grant (19%) then request on appellant to be awarded the contract (14%).

4.5.2 Primary Objection and Pray by Respondent

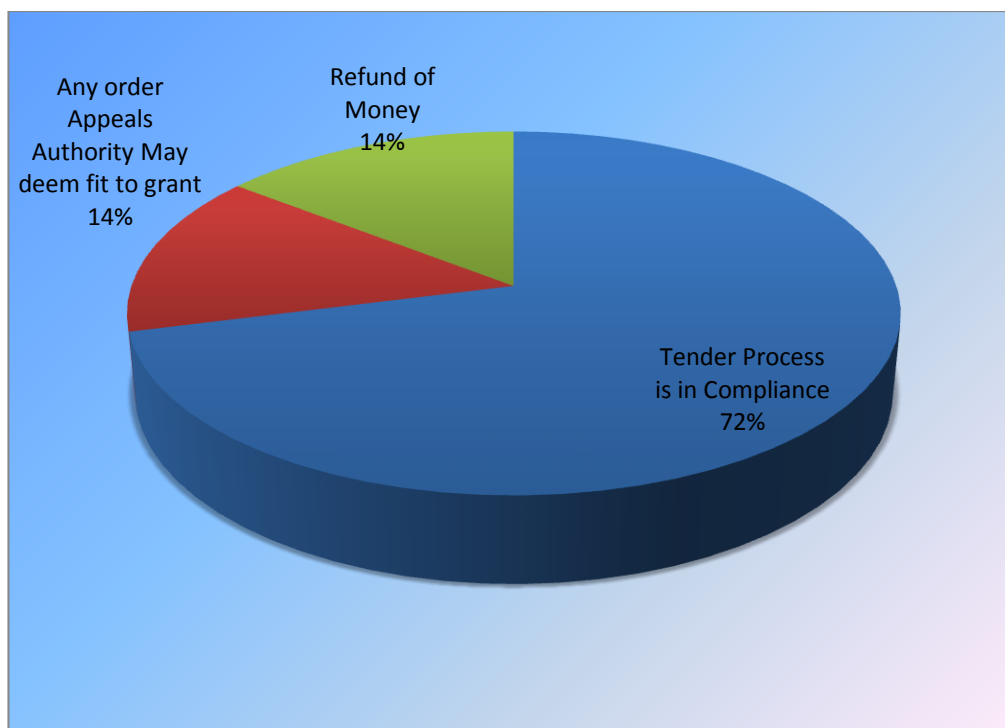
Respondent objections are series of issued which are well documented in each case explaining the whole tendering procedures, evaluation process, selection of contractor and complaint handling before reaching PPAA indicating how the PE abide with PPA Act 2011 and its regulations and that their recommendations on selection of the win tenderer considered to be Fair, transparency with integrity.

Table 13 and figure 10 below, reflecting numbers and percentage of segment appearing in the parent code of Pray by appellant with a total of 69 segments where by the distribution of sub codes appearing to have large numbers of segments claiming to PPAA that tender process is in Compliance (71%) and followed by equal number of segments of two subcodes which are the request to be refunded money for the cost respondent incurred (14%) and request on any order Appeals Authority may deem fit to grant (14%).

Table 12: Pray by Respondent (Number Of Segments).

Respondent Pray	Number Of Segments	% Of Segments
Tender Process is in Compliance	49	72
Any order Appeals Authority May deem fit to grant	10	14
Refund of Money	10	14

Figure 10: Pray by Respondent (Percentage Of Segments).



4.5.3 Decision by PPAA

After PPAA going through all the primary objections from both sides, then comes with the parent code named decision by PPAA which decides objections as per united republic of Tanzania rules and regulations then parent codes are being born by options to conclude the matter and grants prays by appellants and respondents of each case by quoting the PPA Act 2011, amendments and its regulations.

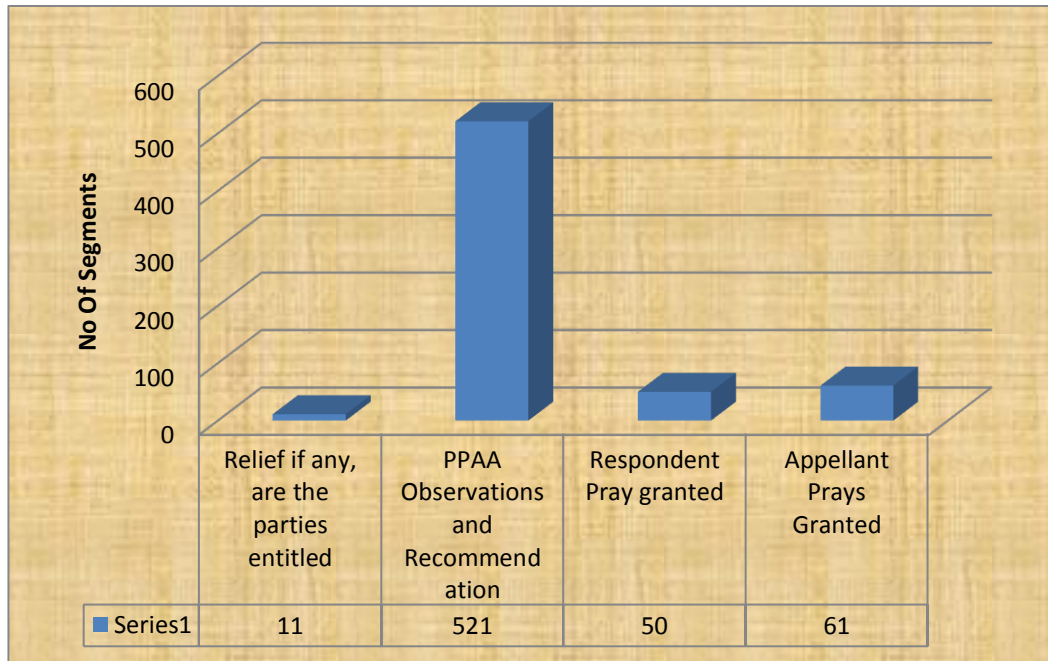
A total of 646 numbers of segments on decision by PPAA found and the secretion of 521 of observations and recommendations, which lead to 61 numbers of segments of granted, prays by appellant, 50 numbers of segments of granted prays by responded

and 11 segments explaining relief if any are the parties entitled.(Table 14 and Figure 11)

Table 13: Decision by PPAA (Number Of Segments).

Decision by PPAA	No Of Segments
Relief if any, are the parties entitled	11
PPAA Observations and Recommendation	521
Respondent Pray granted	50
Appellant Prays Granted	61

Figure 11: Decision by PPAA (number Of Segments).



4.5.4 Reasons for Rejection by PE's

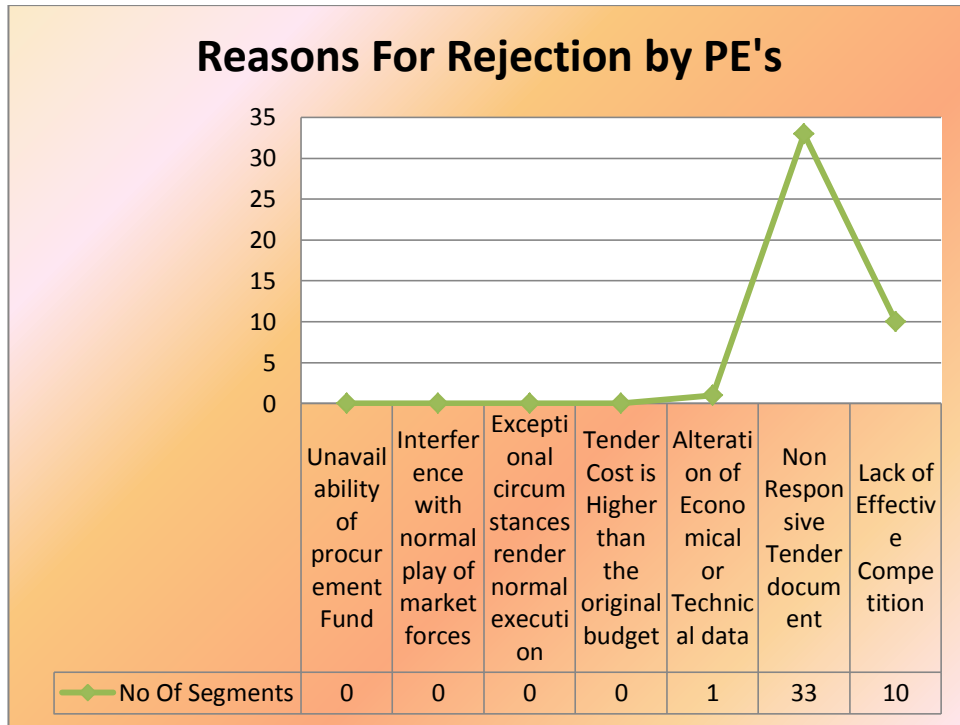
The study scrutinized on the reasons given by Procuring entities to reject the complainant tender during selection, a total of 44 segments on the parent code and distributed into seven reasons which might lead to rejection of tender as per PPA Act and its regulations. And the following were observed; there was no reasons in our all 29 cases fall under unavailability of procurement fund, interference with normal play of market forces, exceptional circumstances render normal execution and tender cost to be higher than the original budget but this research work come up with only 1 reason on alteration of economical or technical data, 10 segments of reasons on lack of effective competition and 33 segments explaining reasons on non responsive tender document

As per table 15 and figure 12 below indicates

Table 14: Reasons for Rejection by PE's (Number Of Segments).

Reasons for Rejection by PE's	No Of Segments
Unavailability of procurement Fund	0
Interference with normal play of market forces	0
Exceptional circumstances render normal execution	0
Tender Cost is Higher than the original budget	0
Alteration of Economical or Technical data	1
Non Responsive Tender document	33
Lack of Effective Competition	10

Figure 12: Reasons for Rejection by PE's (Number Of Segments).



4.5.5 Reasons for Rejection by PPAA

This study not only scrutinize the reasons for rejection by PEs but also dig into the reasons for rejects of appeals logged to the PPAA office by appellant where by three main categories in the reviewed cases such as Lack of Appellant Merits as per PE observed (8 segments) and Non observation of proper Appeal procedures (4 segments) as per table 16 and figure 13.

Table 15: Reasons for Rejection by PPAA (number Of Segments).

Reasons for Rejection by PPAA	No Of Segments
Lack of Appellant Merits as per PE observed	8
Non observation of proper Appeal procedures	4
Non Payment of Appeal Fee	0

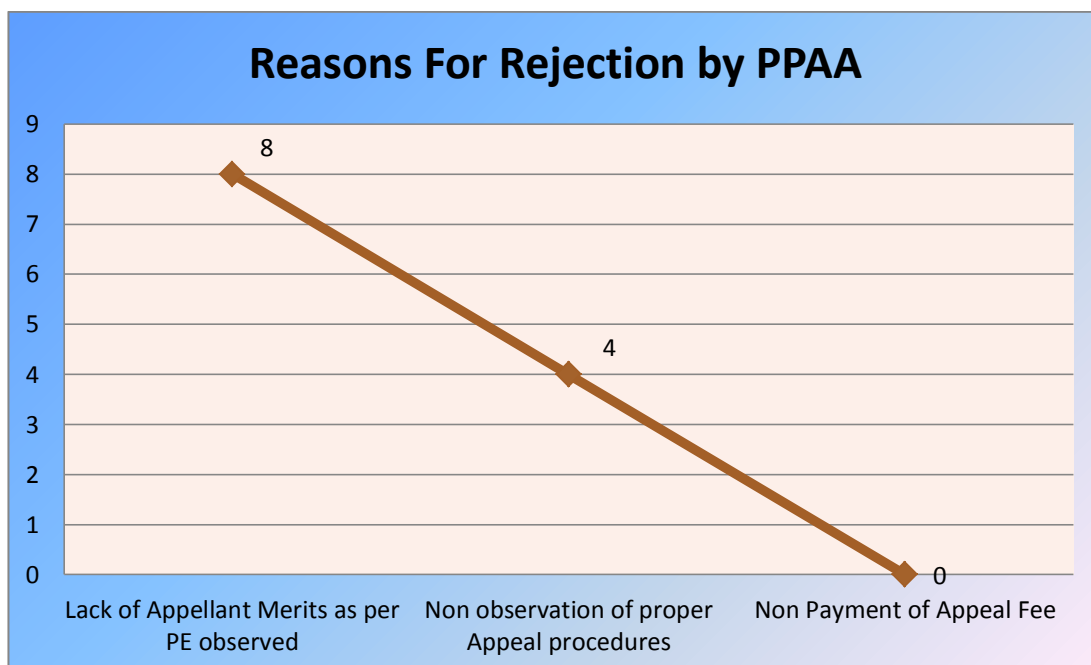
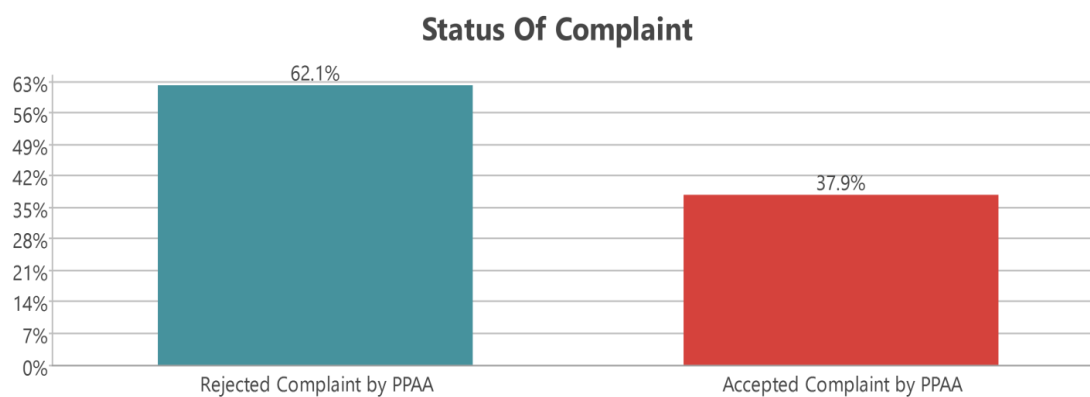
Figure 13: Reasons for rejection by PPAA (number Of Segments).

Figure 14: Status of Contractors Complaints.

Among 29 contractors appeals, 11 (37.9%) complaints accepted by PPAA and the rest Withheld

4.5.6 Discussion of Findings for Theme No 3 by Scenarios

On analyzing details of the cases, here are some cases samples for accepted case and withheld case for further analysis and discussion;

Table 16: Scenario Number One: Case Withheld and reasons thereof.

Code	Segment
Status Of Complaint\Rejected Complaint by PPAA	APPEAL CASE NO. 2 OF 2016-17. BETWEEN M/S GODSAS GROUP LIMITED.....APPELLANT AND MASASI TOWN COUNCILRESPONDEN
Type of Complaint\contractors complaint	Tender No. LGA/135/2015-2016/02, 03 and 07 respectively for the Routine Maintenance of Lisekese- Nanyindwa, Mtakuja-Mraushi, Mtakuja-Chibali, Masasi-Nangose Juu Roads
Grounds for complaints\Decision, Act or Omission of the PE of Reviewing Authority	That, the Respondent had contravened Clause 38.1 of the ITT for his failure to issue Notice of Intention to award the contract to bidders who participated in the tender process. Hence, denied them the right to seek administrative review
Grounds for complaints\Failure or Refusal to make a decision within time limit	That, the Respondent had contravened Clause 38.1 of the ITT for his failure to issue Notice of Intention to award the contract to bidders who participated in the tender process. Hence, denied them the right to seek administrative review

Code	Segment
Grounds for complaints\Un acceptable tender process	<p>That, Respondent behaved coercive (sic) and collusive manner in the tender process with intention to impair or harm the Appellant. This is verified by the Respondent's act to send letters to the Appellant fourteen days after they had been written</p> <p>That, the Respondent contravened the requirement of Clause 38.4 of the ITT for failure to provide reasons for the disqualification of the Appellant.</p> <p>That, the latter reasons given by the Respondent to disqualify his tenders is misleading, as the said Clause 5 of the ITT relates to cost of tender. In no way the said Clause could have been the factor to disqualify them</p>
Appellant Prays\Suspension of Tendering Process/Re tender	<p>Revoke the Respondent's award of contracts to the awarded bidders for all lots and order for re-evaluation of the tenders in accordance with the law</p> <p>The Appeals Authority give to the Respondent clear instructions on how evaluation process should be done in the future</p>
Appellant Prays\Refund of Money	Order the Respondent to the pay the Appellant TZS. 200,000/- being Appeal filing fees;
Appellant Prays\Refund of Money	Order the Respondent to pay the Appellant TZS. 500,000/-being costs for transport and accommodation for prosecuting the Appeal;
Appellant Prays\Any order Appeals Authority May deem fit to grant	Any other remedies which this Appeals Authority may deem just and fit to grant
Decision by PPAA\PPAA Observations and Recommendation	On the hearing date, neither the Appellant nor the Respondent entered appearance and none of them offered any reason for failure to do so
Decision by PPAA\PPAA Observations and Recommendation	<p>As both parties were absent, the Appeals Authority perused the documents which had been filed by the Appellant and observed as follows:-</p> <p>i. The Appellant lodged his complaint to the Respondent on 26th July 2016. Therefore, the Accounting Officer ought to have delivered his written decision on or before 4th August 2016, which he did not. Appellant lodged his Appeal to this Appeals Authority on 23rd August 2016. From this sequence of event, the Appeal to this Appeals Authority ought to have been lodged on or before 16th August 2016. That is to say it was lodged out of time.</p> <p>ii. As the Appellant had filed the Appeal out time and without leave to do so, it meant that the Appeal ought to have been dismissed for being filed out of time and that should have marked the end of the matter before the Appeals Authority in terms of Section 97 (2) (a) of the Act</p> <p>As indicated earlier that the Respondent refused and or neglected to file the statutory statement of defense as required. The refusal to file the relevant documents required by law has denied the Appeals Authority the opportunity to conduct the review of the procurement process to verify the validity of the procurement contracts</p>

Code	Segment
Decision by PPAA\Appellant Granted Pray	As indicated earlier that the Respondent refused and or neglected to file the statutory statement of defense as required. The refusal to file the relevant documents required by law has denied the Appeals Authority the opportunity to conduct the review of the procurement process to verify the validity of the procurement contracts
Reasons for Rejection by PPAA\Non observation of proper Appeal procedures	On basis of the above findings, the Appeals Authority dismisses the Appeal for being filed out of time and without leave to do so. <i>Decision by PPAA\Respondent granted Pray</i>
Decision by PPAA\PPAA Observations and Recommendation	Further, the Appeals Authority finds it appropriate to require relevant authorities to conduct procurement audit in respect of the said contract in which it has been reported that the Respondent refused to submit the relevant documents

As it can be seen in the scenario number one case, the main reason for rejection was the appeal was being filed out of time and the respondent was granted to proceed, through this case it have been learnt , the appellant might had a concrete reasons for appeal but one way or other was out of time, also this type of case appeared to APPEAL No 46 of NMN Engineering Vs Pansiasi Wild field Institute whereby decisions, observations and recommendation by PPAA ruled by withholding the case by only the due reasons explained is; *The Appellant instead of lodging complaint to the Appeals Authority he lodged complaint to PPRA on 17th April 2015 which has no locus in the matter. Subsequently the Appellant submitted a letter of his complaint to the Appeals Authority on 27th April 2015. It was noted that, despite submitting a complaint letter on 27th April 2015, the Appellant neither paid the prescribed appeal filing fees nor filled in the requisite PPAA Form No. 2 prescribed under Rules 10 (1) and 14 (1) (2) of G.N No. 411/2014. The referred Rules above are reproduced hereunder for ease of reference; “R. 10 (1) The Appeal under Rule 9 shall be in writing or electronic form and shall be filled in accordance*

with PPAA Form No. 2(Appendix No I) as set out in the first Schedule to these Rule, PPAA ruling went further by saying “R. 14(1) The appellant shall, at the time of filling his appeal, pay fees as set out in the Second Schedule to these Rules. (2) The Appeals Authority shall not entertain any appeal unless the appropriate fees have been paid.

This indicates that, authority apart from rejecting valid complaints due to fees and timing; there is lack of awareness of Appeals procedures and insufficient funds to cover appeals fees hindering contractors to appeal, so the recorded complaints at PPAA cannot present all the complaints out there although some of the appeals were fairly withheld by PPAA.

In scenario number two below indicates that; according to PPAA ruling which considers PPA Act and its regulation, it is a real that there is validity on the complaints in unfair selection of contractors in tendering of public works, this also is in line with the conclusion of the study undertaken by Rays, et al., (1996) that; It appears, therefore, that the validity of the principles contained in the codes, and therefore their ethical validity, is uncertain as a result, the failure or otherwise of the players to observe the codes, provides little guidance on either the ethical validity of the codes or the actions of the players (Rays, et al., 1996).

Table 17: Scenario Number Two-Case Accepted and Reasons thereof

Code	Segment
Status Of Complaint\Accepted Complaint by PPAA	<p>APPEAL NO. 4 OF 2013/14 BETWEEN</p> <p>M/S COOL CARE SERVICES LIMITED.....APPELLANT AND BOARD OF TRUSTEES OF THE PARASTATAL PENSIONS FUND.....RESPONDEN</p>
Type of Complaint\contractors complaint	<p>Tender No. PA/038/HQ/2013/W/1A for Air Conditioning and Ventilation Installation for the Proposed Construction of PPF Plaza on Plot No. 15 Corridor Area in Arusha Municipality</p>
Analysis of Primary Objection by PPAA	<p>At the preliminary evaluation stage, three tenders were found to be non responsive to the Tender Document. The tenders submitted by M/s Cool Care Services Ltd and M/s M.A.K Engineering Co. Ltd were disqualified on the ground that, they had submitted the Bid Security in form of an Insurance Bond instead of a Bankers' Cheque or a Bank Guarantee as per the requirements of the Tender Document. The tender by M/s China Railway Jianchang was disqualified for submitting an invalid Power of Attorney</p> <p>The remaining nine tenders were found to be substantially responsive and were then subjected to detailed evaluation; whereby, the tender submitted by M/s Electromechanical Agencies (EMA) was found to be the lowest evaluated tender</p> <p>M/s Electromechanical Agencies (EMA) was subjected to Post-qualification, whereby it was established that, they lacked the requisite experience as a prime contractor and essential equipment or tools for HVAC. Having disqualified them, the Evaluation Committee proceeded to conduct post qualification to the 2nd ranked tenderer, namely, M/s Daikin Tanzania Limited who was found to be qualified and was recommended for an award of tender at a contract price of Tshs. 2,564,652,378.42. The Respondent's Tender Board at its meeting held on 15th May, 2013, approved the recommendations of the Evaluation Committee.</p> <p>On 2nd July, 2013, the Respondent vide a letter referenced PPF/AC.193/270/01C/26 communicated the award of tender to the Successful Tenderer. Having learnt that the Bid Validity period for the disputed tender had already expired and they were yet to be informed about the tender results, the Appellant vide a letter referenced CCSL/TA/35/13 dated 27th June, 2013 which was received by the Respondent and 1st July, 2013, requested to be informed about the tender results</p> <p>On 3rd July, 2013 the Respondent vide a letter referenced PPF/CD/186/02/107 informed the Appellant that, their tender was</p>

Code	Segment
	<p>unsuccessful on the reason that they had submitted an Insurance Bond as a bid security while the Tender Document required them to submit either a Banker's Cheque or a Bank Guarantee. The said letter was received by the Appellant on 8th July, 2013. Upon being dissatisfied with the reason given for their disqualification, the Appellant on 12th July, 2013, lodged their Appeal to this Authority</p>
<p>Grounds for complaints\Decision, Act or Omission of the PE of Reviewing Authority\Un acceptable tender process</p>	<p>That, they were dissatisfied for being disqualified on the ground that, they submitted an Insurance Bond instead of a Banker's Cheque or a Bank Guarantee for the Bid Security</p>
<p>Appellant Prays\Suspension of Tendering Process/Re tender\Refund of Money\Any order Appeals Authority May deem fit to grant Appellant Prays</p>	<p>The Respondent to Re-evaluate the tenders to reach a lawful decisio The Respondent to pay the Appellant a sum of Tshs 3,120,000/= as per the following breakdown; i. Appeal filing fees Tshs.120,000/- ii. Legal fees Tshs.3,000,000/. To take any other orders deemed necessary. To dismiss the Appeal in its entirety. To declare that, the evaluation and the award made by the Respondent was transparent, fair, lawful and in the public interest. To declare that the complaint submitted by the Appellant is nothing but fictitious and maliciously with intent to robe the Respondent's pensions funds</p>
<p>Respondent Pray\Any order Appeals Authority May deem fit to grant\Refund of Money</p>	<p>To give direction to the Respondent to consider blacklisting the Appellant from bidding for tenders advertised by the Respondent. To order the Appellant to pay the Respondent a sum of Tshs 0.1 % of the main contract per day from the time they received the Appeal which stopped the process until the date of the Authority's decision. To order the Appellant to pay the costs of defending the Appeal amounting to Tshs. 5 Million</p>
<p>Analysis of Primary Objection by PPAA \Decisions by PPAA\PPAA Observations and Recommendation</p>	<p>Having gone through the documents and having heard the oral arguments from parties, the Authority is of the view that, the Appeal is centred on the following issues, namely; Whether the disqualification of the Appellant's tender for submitting an Insurance Bond instead of a Bank Guarantee or a Banker's Cheque was proper at law. To what reliefs, if any, are the parties entitled. In resolving this issue the Authority revisited parties oral and written submissions as already stated earlier on in order to ascertain their legal validity. In so doing, the Authority deemed it prudent to revisit Regulation 88(1)(b) and (2)</p>

Code	Segment
	<p>of GN No. 97/2005 relied upon by the Respondent that was their basis when specifying the forms of security that were required in the tender under Appeal. For purposes of clarity the Authority reproduces the said provisions as follows; Reg. 88(1) “When the procuring entity requires suppliers, contractors, service providers or asset buyers submitting tenders to provide a tender security. The solicitation document may stipulate that the issuer of the tender security and the confirmer, if any of the tender security as well as the form and terms of the tender security, must be acceptable to the procuring entity”. Accordingly, the Authority is of the settled view that Regulation 88(2) of GN. No. 97/2005 and Section 53 (1) of the Act, empower procuring entities to specify in their tender Documents the form of bid security which they require.</p> <p>Furthermore, the Authority revisited Section 53(1) of the Act and noted that, it allows the procuring entities to specify the required form of bid security in their Tender Document. In addition, the Authority considered the Appellant’s argument that, the Respondent’s act of specifying the form of bid security under Clause 13 of the Bid Data Sheet had contravened the PPRA’s User Guidelines which are made pursuant to Section 53(2) of the Act. According to the PPRA’s User Guidelines for Procurement of Medium and Large Works, Clause 17.1 of the ITB is supposed to be modified in the Bid Data Sheet by indicating the currency and amount of bid security required.</p> <p>In order to substantiate the validity of the Appellant’s argument, the Authority revisited PPRA’s User Guidelines in order to ascertain the acceptable modifications which are allowed to be done in the Bid Data Sheet in relation to Clause 17.1 of the ITB. In so doing, the Authority noted that, PPRA’s guidelines provides for the following; BDS Clause 13 modifies Clause 17.1 of the ITB “17.1 The amount of Bid Security shall be [Insert the amount in local currency] or an equivalent amount in a freely-convertible currency. With regard to the Respondent’s other prayers, the Authority rejects them since the Appeal has merit.</p> <p>On the basis of the aforesaid findings, the Authority upholds the Appeal and orders; the Respondent to re-evaluate the tenders in observance of the law; and the Appellant be awarded costs to the tune of Tshs. 1,120,000/= only</p>

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the summary of conclusions drawn from the findings and recommendations that were made. The conclusions and recommendations drawn were in quest of addressing research objectives in examination of contractors' complaints on selection fairness during tendering as an overview of procurement of public construction projects in Tanzania. Also shall look on policy implications show things that need to be done in order to bring improvement on adherence on fair and effective selection of contractors in Tanzania.

5.2 Conclusion

The study was about analysis of contractors' complaints on selection fairness in Tanzania. The study checked an overview of procurement of public construction projects in Tanzania and explored what has been done in relation to complaints on contractors' selection practice in public construction projects and their influence on the construction industry development. The interest in carrying out this study was on the point that the researcher had in mind from the reason that it has been an outcry of contractors in Tanzania that the selection of contractors for public works are not being followed fairly by not abiding to PPRA Act and its regulations requirements.

Bias and inconsistent decision are the reason where decision-making process is totally depends on intuition, subjective judgment or emotion. In making transparent decision and healthy competition tendering by following the exists PPA Act 2011 and its regulations where the whole procedures are being complained for, this can be

amplified by a lack of transparency or governance of the processes established to judge and report on the levels of performance and value for money actually achieved, as a result there are poor work performance, contractors abandoning sites and projects not completed in time.

On thorough study of registered complaints by PPAA and PPRA study finds the validity of complaints by exploring the existence of the tenders appealed which have been ruled and ordered by the appeals authority to be re-tender and reevaluated. In this respect the study make the following four conclusions.

After thorough examination of appeals the complaints were identified in different categories such as yearly grouped complaints, list of detailed complaints, specialization group, contractor's classes groups and category of clients groups. The details of the said identification have been pointed out as follows:-

- i. Firstly complaints were identified by group of years appeal lodged at PPAA which also show the trend of complaints whereby among 90 complaints, 29 are from contractors and the trend seem to be fluctuating year to the next to the saturation level due to variables of fair competition.
- ii. Secondly identification was made specifically by named of appellant against respondent to come up with the list of appeals of specified duration.
- iii. Thirdly appeals identified by the type of project where by Civil works seems to be on highest side followed by building works, specialist works, Mechanical works, specialist electrical, Electrical and specialist civil works. This implicate the lack of fair selection in civil works comparing to other

specialization and automatically the groups of clients deals with civil works such as tanroads and LGA's fall under default.

- iv. Fourthly appeals identified by the class of contractor, starting from class one up to class seven the smallest and class one observed to being lounged more complaints than other classes; apart from variables for fair selection, other addition reasons shall be considered such as; regulations allows them to execute unlimited contract amounts so they have more opportunity to access works in any amount and most of the big projects are more exposed to corruption practice, they also are financially stable due to the reason that lounging a complaints require a fee payment in which lower classes could have been a problem, also timely and adequate staffing such as company lawyers to conduct cases contrary to lower class contractors.

Also, all the detailed grounds are the specific grounds mentioned in PPA Act 2013 and in its regulations that if a tenderer is not satisfied with decision of PE should go ahead and appeal to the appeals authority for further decision. According to the study study 29 contractors appeals, 11 (37.9%) complaints and their grounds were accepted by PPAA and the rest Withheld, this also grants appellant prays such as PE's have been ordered to re-evaluate the tender, pay compensation and start the tendering procedure in order to attain value for money for public projects. Although the remaining percentage of appeals withheld is great that accepted, some of reasons to reject appeals by the authority such as fees and timing to appeal might hide the real grounds for complaint, apart from rejecting valid complaints due to fees and timing, there is lack of awareness of Appeals procedures and insufficient funds to cover appeals cost hindering contractors to appeal, so the recorded complaints at

PPAA cannot present all the complaints out there although some of the appeals were fairly withheld by PPAA. A study conducted in Kenya and it was revealed that Complaints Review Mechanism plays a significant role in ensuring the enforcement of Procurement rules and it enhances transparency in awarding contracts (Mwikali, 2014). The study is further concludes that Procurement codes of ethics are a necessary part of any procuring entity and adoption of good practices and ethical standards help achieve both value for money and an open and effective competition which is healthy for purposes of improving the procuring process.

5.3 Recommendations

Basing on conclusion, the study recommends the following in order to attain transparent and non-discriminatory in selection of contractors:

- All construction stakeholders to effectively implement Procurement governance practices such as Procurement planning, Procurement Disposal procedures, Procurement Record management, Procurement Code of ethics and Complaints Review mechanism.
- Due to the fact of the importance of contractors in the construction industry growth, the government should see the possibility of introducing the standard Computerized system for valuation to minimize the possibility of conflict of interest which lead to disqualify the most competitive tender and by not recommending favourites of politicians or those in authority, other times corrupt bidders pay their way through the evaluation team to use all foul means to disqualify other bidders to their advantage. E-Procurement technologies are not entirely new to Tanzania and have been utilized to

varying degrees for a number of years but in case of harmonizing contractors selection practice, should be more improved and implemented especially in public organs.

- Professionalism construction industry should abide to their code of ethics and professionalism, no single entity on its own will succeed.
- More training and awareness should be done on procurement best practice to all construction industry stakeholders and the public in general.
- Oversight professional Boards should strengthen their role of enforcing the law to attain compliance to the code of ethics.
- Construction projects are different from other procurements and its procurement practice should be treated differently by using construction professionals.
- Politicians should disengage themselves in procurement activities as this will remove conflict of interest in the bidding process resulting into awarding the contract to the competent and qualified bidder.
- Complaints Satisfaction Monitoring Surveys should be conducted, although there is clear micro evidence of the advantages to transparency and oversight mechanisms, we should also accept their limitations. This may suggest the more appropriate oversight focus for any direct community oversight role,
- There is a need for the policy makers to keep reviewing the current Procurement Act and its regulation to suit the changes.

5.4 Limitations Areas for Further study

In similarity to almost all research, this thesis has limitations, which subsequently, leads to opportunities for future research. Firstly, the findings cannot be generalized to all contractors and PE's since the study only included few cases which are registered cases at PPAA and PPRA (Active complaints) but out of it there must be complaints which were not lodged to the authorities (Silence Complaints), the study should establish the survey to what extend the silent complaints on unfair selection of contractors during tendering is. Secondly, this thesis looked specifically at contractors only but further research can be done concerning consultants, service providers and suppliers. Thirdly, this research considered the action taken before the contract has been awarded and possibly signed or complaints during tendering but further study can be conducted on post contract complaints during execution of projects. Moreover due to this study, decision by PPAA and high court are considered to be fair as per PPA 2011 and its regulations, and this brings in the gap also for the future researchers to look extra miles beyond the PPAA decisions.

REFERENCES

- (2000). Progress In Public Procurement Reform In Tanzania: A Pilot Joint Review
By The Hoap Group.
- Adams, O. A. (1995). Indigenous Contractors' Perceptions of the Constraints on
Contractors' Performance and Development Programmes Required in
Nigeria. De Montfort University, Leicester, UK. *Habitat Intl.* Vol. 19, No. 4,
pp. 599-613
- Akese, E, Glidden, L & Shizume, T. (2009). A Comparative Study of Procurement
Management in China's Petrochemical Companies. Worcester Polytechnic
Institute: Southeast University (China)
- Anvuur, A & Kumaraswamy, M. & Male, S.(2006). Taking Forward Public
Procurement Reforms in Ghana. CIB W107 Construction in Developing
Countries International Symposium "Construction in Developing Economies:
New Issues and Challenges" January 18th – 20th; 2006– Santiago, Chile
- Basheka, B.C, Tumutegyereize, M & Sabiiti, C. K. (2011) Procurement Governance
and Administrative Efficiency In Uganda: An Empirical Relational Analytical
Framework. Kampala. Uganda
- Biramata, R. A. (2014). Challenges Of Compliance To Public Procurement Act No.
7 Of 2011 The Case Of Tanzania Ports Authority. Open University Of
Tanzania.
- Bos, K.V.D, Bruin, J, Wilke, H.A.M & Dronkert, E. (1999). Sometimes Unfair
Procedures Have Nice Aspects: On the Psychology Of the Fair Process
Effect. *Journal Of Personality and Social Psychology* 1999, Vo. 77, No 2,
324-336. The American Psychological Association, Inc

- Boxall, L. D822 Investigating the Social World. TMA02
- Brockmann, C. (2011), Collusion and corruption in the construction sector. In G.D. Valence (ed.), *Modern Construction Economics: Theory and Application*. Oxford: Spon Press, pp. 29–62.
- Chiragi, F. (2000). *Building Construction Industry in Tanzania, Case study: Youth Sports Centres Complex at Mwananyamala, Dar-es-salaam*. Building Economist/Quantity Surveyor Ministry of Lands and Human Settlement Development. Building Research Unit Department, Tanzania
- Decarolis, F, Giorgiantonio, C & Giovanniello, V. (2010). The awarding of public works in Italy: an analysis of the mechanisms for the selection of contractors. Banca D'Italia Eurosystema Questioni di Economia e Finanza (Occasional papers) No 83. www.bancaditalia.it.
- Deep, S, Singh D & Ahmad S. A. (2017) A Review of Contract Awards to Lowest Bidder in Indian Construction Projects via Case Based Approach. Department of Civil Engineering, Integral University, Lucknow, India. *Open Journal of Business and Management* , 5, 159 - 168: <http://www.scirp.org/journal/ojbm>. ISSN Online: 2329-3292. ISSN Print: 2329-3284
- Engineering and construction sector analysis of PwC's (2014). *Global Economic Crime Survey. Fighting corruption and bribery in the construction industry*. www.pwc.com/crimesurvey
- Enshassi, A, Mohamed, S & Modough, Z. (2013). Contractors' Selection Criteria: Opinions Of Palestinian Construction Professionals. *The International Journal of Construction Management* (2013) Vol. 13 No.1, 19-37 . Gaza City, Gaza Strip – Palestinian Authority.

- Grafisk, S. (2002). Report concerning the Study on Pre-Contract Problem-Solving Systemsy. The Danish Competition Authority. Copenhagen. Denmark.
www.ks.dk
- Heravi, A. (2014). Improving Construction Management: An Investigation Into The Influences Of Effective Stakeholder Involvement On Project Quality Outcomes. Science and Engineering Faculty Queensland University of Technology.
- HOAP-Harmonization In Overseas Audit Practices. (2006). Progress In Public Procurement Reform In Tanzania: A Pilot Joint Review By The Hoap Group.
- Kagendo,N. M. (2010). Effects Of Public Procurement And Disposal Act On Procurement In Parastatals In Kenya. School Of Business, University Of Nairobi.
- Kenny, C. (2007). Publishing Construction Contracts and Outcome Details. World Bank. <http://www.igovernment.in/site/condition-of-indias-rural-roads-found-unsatisfactory>
- Kotoka, A.F.(2012). Assessing The Level Of Compliance With The Public Procurement Act 2003, (Act 663) In Public Entities In Ashanti Region Of Ghana . Kwame Nkrumah University Of Science And Technology.Ghana.
- Lema, A. M. (2013). Assessment Of Factors Affecting Implementation Of Annual Procurement Plan In Local Government Authorities: A Case Study Of Meru District Council. The Open University of Tanzania.
- Marshall, C & Hopkins, M.(2012). *Corporate Complaints Monitoring Report Annual Report*. Local Government Ombudsman

- Mazigo, D. (2014). Causes Of Corruption In Construction Public procurement In Tanzania:A Case Of Manyara Region. Master of Business Administration (Corporate Management) :Mzumbe University. Morogoro.
- Mchopa, A, Huka, H, Panga, F & Ruoja, C. (2014). *Contracts Management And Value For Money In Public Procurement Of Works: A Case Of Muccobs*. Research Report Series. Vol. 2, Issue No. 2, 2014 ISSN 0856-9681
- Mwandobo, L. J. (2013). The Role Of Procurement Processes On The Effectiveness Of The Public Procurement System In Tanzania. Open University Of Tanzania
- Mwikali, F. (2016). Procurement Governance and Procurement Performance of Small Medium-Sized Enterprises In Nairobi Central Business District, University Of Nairobi
- OECD. (2006). Methodology For Assessment Of National Procurement Systems. Organization for Economic Co-Operation And Development (OECD). Version 4.
- OECD. (2007). Integrity in Public Procurement Good Practice From A to Z. Organization for Economic Co-Operation And Development (OECD). Center (CCC): 222 Rosewood Drive Danvers, MA 01923, USA
- Özbek, V, Alniaçik, Ü & Koçthe, F.(2012). Impact Of Unfair Business Practices On Bank Customers: An Experimental Study. Ege Academic Review. Cilt: 12 • Sayı: 1 • Ocak 2012 ss. 23-30
- Republic of Kenya. (2007). Assessment of the Procurement System in Kenya Public Procurement Oversight Authority. Kenya Government Printers

- Salewi, K & Mauro, P. (2013). Assessment of procuring entity capacity to disclose project information in Tanzania. Construction Sector Transparency Initiatives (COST): Dar es Salaam.
- Sutinen, J. (1999). A socio-economic theory of regulatory compliance on Department of Environmental and Natural Resource Economics. University of Rhode Island, Kingston, USA, and K. Kuperan Department of Natural Resource Economics, Universiti Pertanian Malaysia: Malaysia. International Journal of Social Economics, Vol. 26 No. 1/2/3, 1999, pp. 174-193, © MCB University Press, 0306-8293
- Tanzania Civil Engineering Contractors Association-TASECA. (2008). A Proposal For Monitoring Effectiveness Of Anti-Corruption Initiatives In The Construction Sector In Tanzania.
- Tian, M. T. (2008). “The Chinese learner” or “learners from China”? A multiple case study of Chinese masters’ students in the University of Bath. UK.
- Tukamuhabwa, B.R. (2012). Antecedents and Consequences of Public Procurement Non-compliance Behavior. Journal of Economics and Behavioral Studies. Vol. 4, No. 1, pp. 34-46, Jan 2012 (ISSN: 2220-6140. Makerere University Business School. Kampala-Uganda.
- Tutu, E , Nyako K , Ameyaw, C and Ampofo, K. (2014). Conflict Of Interest And Related Corrupt Practices In Public Procurement In Ghana. International Journal of Civil Engineering Construction and Estate Management. Published by European Centre for Research Training and Development UK, Vol.1,No.2,pp.1-15.

- United Republic of Tanzania (2004), *Public Procurement Act Number 21 of 2004*,
Dar es Salaam: Government Printers.
- United Republic of Tanzania. (2008). A Proposal For Monitoring Effectiveness Of
Anti-Corruption Initiatives In The Construction Sector In Tanzania. Tanzania
Civil Engineering Contractors Association Report.
- United Republic of Tanzania. (2014). A Study On Cost Control In Public
Procurement. A Case Study of Air Ticketing and Construction Of Buildings.
A Report of the Controller and Auditor General of the United Republic Of
Tanzania: Government Printers
- Wami, L. S. (2009): *Effectiveness of procurement contract management process: the
case of President's Office-Public Service Management (PO-PSM)*,
Unpublished MBA-PLM Dissertation, Dar es Salaam: Mzumbe University.
- Wells, J. (2014). Corruption and collusion in construction: a view from the industry:
Edgar Online.
- Yin, R. K. (2003). *Case Study Research: Design and Methods, 3rd Edition*.
Thousand Oaks-California: Sage Publication Inc.

APPENDICES

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of the intended

APPEAL NO..... OF

BETWEEN

.....**APPELLANT**

AND

.....**RESPONDENT**

NOTICE OF INTENTION TO APPEAL

(Rule 8 (4))

TAKE NOTICE that (the Appellant's name) being aggrieved by the decision of (the Respondent's name) made on the.....day of 20..... regarding Tender No..... intends to appeal against (award/disqualification etc)

Name of the Appellant:
Address:

Dated thisday ofof 20
Name:
Signedby (the Appellant/Legally Authorized representative)

FOR OFFICIAL USE ONLY (PPAA):

Received by PPAA on theday of.....20at (am/pm)

Name:.....Designation.....

Signature..... Official stamp.....

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of appeal

APPEAL NO.....OF

BETWEEN

.....**APPELLANT**

AND

..... **RESPONDENT**

STATEMENT OF APPEAL

(Under Rule 9, 10)

1. PARTICULARS OF THE APPELLANT

- a) Name:.....
- b) Nature of business
- c) Postal address
- d) City, Municipality, Town
- e) Telephone No.....
- f) Fax No. E-mail address
- g) Tender No.for
.....(type of tender).

2. STATEMENT OF FACTS SUPPORTING THE APPEAL:

(If space provided is not adequate, attach as many additional pages as needed for the statements):

(a) Date of the tender advertisement/invitation.....

(b) Date of the tender opening (if applicable)

3. Grounds/ reasons for the appeal:

.....

4 LIST OF DOCUMENTS OR ITEMS TO BE PRODUCED BEFORE THE APPEALS AUTHORITY

(Give brief description of each document or Items attached to the Statement of Appeal and number them accordingly:

Appendix No.	Subject	Date	Source/Author

5. REMEDIES/RELIEFS/CLAIMS: (number them consecutively)

- i.
- ii.
- iii.
- iv.
- v.
- vi.

6. PARTICULARS OF WITNESS

Name	Designation	Address

Dated this.....day of 20

Name.....

Designation.....

Signedby (the Appellant/Legally Authorized representative).

FOR OFFICIAL USE ONLY:

(Received by PPAA on theday of.....20.....at(am/pm)

Name:.....Designation.....

Signature.....Official stamp.....

7. Statement of Appeal served upon:

Name:

Address:

Date:

Signature:.....

Designation:.....

Official stamp