

**PART VIII - AUTHORITY POWERS TO ENSURE
COMPLIANCE**

Information to
Authority.

101. A public entity shall provide the Authority with such information relating to procurement as the Director-General may require in writing.

Investigations.

102.(1) The Director-General may order an investigation of procurement proceedings for the purpose of determining whether there has been a breach of this Act, the regulations or any directions of the Authority.

(2) An investigation shall be conducted by an investigator appointed for the purpose by the Director-General.

Powers of
investigators.

103.(1) For the purpose of carrying out an investigation of procurement proceedings an investigator has the following powers —

- (a) the investigator shall have access to all books, records, returns, reports and other documents of the procuring entity or a person who participated in the procurement proceedings, including electronic documents;
- (b) the investigator may remove or make copies of any documents the investigator has access to under paragraph (a); and
- (c) the investigator may require any of the following to provide explanations, information and assistance —
 - (i) an employee or official of the procuring entity; or
 - (ii) an employee or official of a person who participated in the procurement proceedings.

(2) In addition to the powers under subsection (1), an investigator shall have such powers as are prescribed.

(3) The powers of an investigator are subject to such

conditions and limitations as are prescribed.

Report of
investigation.

104. After completing his investigation, an investigator shall prepare and submit a report thereon to the Director-General.

Order by
Director-
General.

105.(1) If, after considering the report of an investigator, the Director-General is satisfied that there has been a breach of this Act, the regulations or any directions of the Authority, the Director-General may, by order, do any one or more of the following —

- (a) direct the procuring entity to take such actions as are necessary to rectify the contravention;
- (b) cancel the procurement contract, if any;
- (c) terminate the procurement proceedings; or

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- (a) prepare and submit a summary of the investigator's findings and recommendations to the procuring entity and to the Kenya Anti-Corruption Commission established under the Anti-Corruption and Economic Crimes Act 2003.

(2) Before making an order under subsection (1), the Director-General shall give the following persons an opportunity to make representations —

- (a) the procuring entity; and
- (b) any other person whose legal rights the Director-General believes may be adversely affected by the order.

Request for a
review.

106.(1) The procuring entity and any other person who was entitled to be given an opportunity to make representations under section 105(2) may request the Review Board to review the order of the Director-General under section 109.

(2) A request for a review may only be made within twenty-one days after the order was made.

(3) A request for a review shall be accompanied by the prescribed fee.

Dismissal of frivolous requests, etc.

107. The Review Board may dismiss a request for a review if the Review Board is of the opinion that the request is frivolous or vexatious.

Convening of review.

108. The Review Board shall meet to conduct a review within twenty-one days after receiving the request for the review.

Parties to review.

109. The parties to a review are —

- (a) the person who requested the review;
- (b) the procuring entity; and
- (c) such other persons as the Review Board may determine.

Completion of review.

110. The Review Board shall complete its review within thirty days after receiving the request for the review.

Powers of Review Board.

111. Upon completing a review the Review Board may do any or both of the following —

- (a) confirm, vary or overturn the Director-General's order; and
- (b) order the payment of costs as between parties to the review.

Appeals.

112. A party to the review may appeal against the decision of the Review Board to the High Court within fourteen days after the decision is made.

Right to review is additional right.

113. The right to request a review under section 106 is in addition to any other legal remedy a person may have.

No investigation if issue before Review Board.

114.(1) No investigation shall be commenced or continued under this Part, and no order shall be made under this Part, in relation to an issue that the Review Board is reviewing or has reviewed under Part VII.

(2) Subsection (1) ceases to apply if, after the Review Board has completed its review, information comes to the attention of the Director-General that was not brought before the Review Board in the course of its review.