

Uganda

## Public Procurement and Disposal of Public Assets Act, 2003

Act 1 of 2003

Legislation as at 10 February 2006

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## Uganda

# Public Procurement and Disposal of Public Assets Act, 2003 Act 1 of 2003

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**Assented to on 19 December 2002**

**Commenced on 21 February 2003 by Public Procurement and Disposal of Public Assets Act (Commencement) Instrument, 2003**

*[This is the version of this document as it was from 10 February 2006 to 2 March 2014.]*

*[Amended by Local Governments (Amendment) Act, 2006 (Act 2 of 2006) on 10 February 2006]*

**An Act to establish the Public Procurement And Disposal of Public Assets Authority to formulate policies and regulate practices in respect of public procurement and disposal activities and other connected matters.**

BE IT ENACTED by Parliament as follows:

### Part I – Preliminary

#### 1. Short title and commencement

- (1) This Act may be cited as the Public Procurement And Disposal of Public Assets Act, 2003.
- (2) This Act shall commence on a day appointed by the Minister by statutory instrument.

#### 2. Application of the Act

- (1) This Act shall apply to all public procurement and disposal activities and in particular shall apply to—
  - (a) all public finances—
    - (i) originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever form these may take;
    - (ii) that may be earmarked for external obligation purposes, except those resources that may be earmarked for payments of membership subscriptions and contributions; and
    - (iii) of a procuring and disposing entity;
  - (b) resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programmes; and
  - (c) procurement or disposal of works, services, supplies or any combination however classified by—
    - (i) entities of Government within and outside Uganda; and
    - (ii) entities, not of Government, but which benefit from any type of specific public funds specified in paragraph (a) of this sub-section.
- (2) Any dispute arising from the application of this Act shall be referred to the Authority for its decision following procedures to be prescribed by regulations made under this Act.

### 3. Interpretation

In this Act, unless the context otherwise requires—

“**Accounting Officer**” means the Accounting Officer of a procuring and disposing entity so appointed by the Secretary to the Treasury, and for the avoidance of doubt includes the Accounting Officer of a Local Government or a statutory body;

“**Authority**” means the Public Procurement and Disposal of Public Assets Authority established in [section 5](#) of this Act;

“**award**” means a decision by a Tender Board established under the Local Governments Act, 1997 or Contracts Committee provided for in paragraph (b) of [section 24](#), or any other subsidiary body of a procuring and disposing entity to which a Contracts Committee or a Tender Board may delegate powers of adjudication and award within a specified financial threshold, to determine the successful bidder;

“**best practices**” means the industry standards defined in this Act;

“**bid**” means an offer to provide or to acquire works, services or supplies or any combination thereof, and shall include pre-qualification where applicable;

“**bidder**” means a physical or artificial person intending to participate or participating in public procurement or disposal proceedings;

“**bidding documents**” means solicitation documents;

“**Bid Notice**” means any advertisement by which eligible providers are invited to submit written offers to provide or acquire works, services and supplies, or any combination of them in case of procurement and disposal respectively;

“**contract**” means an agreement between a procuring and disposing entity and a provider, resulting from the application of the appropriate and approved procurement or disposal procedures and proceedings as the case may be, concluded in pursuance of a bid award decision of a Contracts Committee or any other appropriate authority;

“**Contracts Committee**” is the committee provided for under Part III of this Act;

“**Contractor**” means a provider as defined in this Act;

“**corrupt practice**” includes the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“**currency point**” has the meaning assigned to it in the First Schedule;

“**Defence and National Security organs**” means Uganda Peoples’ Defence Forces, Uganda Police Force, Uganda Prisons Service, Intelligence Services and National Security Council;

“**disposal**” means the divestiture of public assets, including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means, including sale, rental, lease, franchise, auction, or any combination however classified other than those regulated by the Public Enterprise Reform and Divestiture Statute, 1993;

“**disposal process**” means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract;

“**emergency**” means circumstances which are urgent, unforeseeable and not caused by dilatory conduct;

“**foreign provider**” means a provider whose business is not registered in Uganda;

“**fraudulent practice**” includes a misrepresentation of facts in order to influence a procurement or disposal process or the execution of a contract to the detriment of the procuring or disposing entity, and includes collusive practices among bidders prior to or after bid submission designed to establish bid prices

at artificial non-competitive levels and to deprive the procuring and disposing entity of the benefits of free and open competition;

“**guidelines**” means directives issued by the Authority under [section 97](#) of this Act;

“**industry standards**” means those standards defined and codified by internationally recognized providers’ associations and professional bodies in the respective fields and includes best practices;

“**listed provider**” means a provider registered by the Authority in accordance with this Act;

“**Minister**” means the Minister responsible for Finance;

“**national provider**” means a provider registered in Uganda and wholly owned and controlled by Ugandans;

“**pre-qualification**” means a screening process designed to ensure that invitations to bid are confined to capable providers;

“**procurement**” means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise, or any other contractual means, of any type of works, services or supplies or any combination;

“**Procurement and Disposal Unit**” means a division in each procuring and disposing entity responsible for the execution of the procurement and disposal function;

“**procurement process**” means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management;

“**procuring and disposing entity**” means a statutory body, department of the central government, local government and any other body or unit established and mandated by government to carry out public functions;

“**provider**” means a natural person or an incorporated body including a consultant, contractor or supplier licensed by a competent authority to undertake business activities;

“**public funds**” means monetary resources appropriated to procuring and disposing entities through budgetary processes, including the Consolidated Fund, grants and credits put at the disposal of the procuring and disposing entities by foreign donors; and revenues generated by the procuring and disposing entities;

“**resident provider**” means a provider registered in Uganda who is not a national provider;

“**services**” means any object of procurement or disposal other than works and supplies, and includes professional, non professional and commercial types of services as well as supplies and works which are incidental to, but not exceeding the value of those services;

“**specifications**” means the description of an object of procurement or disposal in accordance with national and international standards adopted and approved by the Authority, after consultation with the National Bureau of Standards, or other appropriate trade associations and professions, the use of which shall be mandatory in all bidding documents;

“**solicitation documents**” means bidding documents or any other documents inviting bidders to participate in procurement or disposal proceedings; and includes documents inviting potential bidders to pre-qualify, and standard bidding documents;

“**supplies**” means goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as works or services incidental to the provision of those supplies where the value of the works or services does not exceed the value of the supplies;

“**tender**” means “bid”;



“**User Department**” means any department, division, branch or section of the procuring and disposing entity, including any project unit working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements; and

“**works**” means any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater, and includes the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build own and operate projects, build operate and transfer projects or any arrangement of this nature, or any other form of private and public partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning and training; as well as supplies or services incidental to those works where the value of the incidental supplies or services does not exceed the value of the works.

#### 4. International obligations

- (1) Where this Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more states, or with an international organization, the provisions of the agreement shall prevail over this Act.
- (2) Where an agreement referred to in this section contains a preference or preferences in favour of national and resident providers, a procuring and disposing entity shall ensure that the applicable preference or preferences are clearly stated in the bidding documents.

### Part II – The Public Procurement and Disposal of Public Assets Authority

#### 5. Establishment of the Authority

- (1) There is established an autonomous body to be known as the “Public Procurement and Disposal of Public Assets Authority”, in this Act referred to as the “Authority”.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued in its corporate name and, subject to this Act, may borrow money, acquire and dispose of property, and do all other things a body corporate may lawfully do.
- (3) The application of the seal of the Authority on any document shall be authenticated by the signatures of the Chairperson and the Executive Director, and in the absence of the Chairperson, by any two members of the Board, and the Executive Director.
- (4) Every document purporting to be an instrument issued by the Authority, sealed with the seal of the Authority and authenticated in accordance with subsection (3), shall be deemed to be an instrument of the Authority and shall be received in evidence without further proof.

#### 6. Objectives the Authority

The objectives of the Authority are to—

- (a) ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and disposal standards and practices;
- (b) harmonize the procurement and disposal policies, systems and practices of the Central Government, Local Governments and statutory bodies;
- (c) set standards for the public procurement and disposal systems in Uganda;
- (d) monitor compliance of procuring and disposing entities; and
- (e) build procurement and disposal capacity in Uganda.

## 7. Functions of the Authority

The functions of the Authority are to—

- (a) advise Central Government, Local Governments and statutory bodies on all public procurement and disposal policies, principles and practices;
- (b) monitor and report on the performance of the public procurement and disposal systems in Uganda and advise on desirable changes;
- (c) set training standards, competence levels, certification requirements and professional development paths in consultation with competent authorities;
- (d) prepare, update and issue authorized versions of the standardized bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (e) ensure that any deviation from the use of the standardized bidding documents, procedural forms and any other attendant documents is effected only after the prior, written approval of the Authority;
- (f) issue guidelines under [section 97](#) of this Act;
- (g) organize and maintain a system for the publication of data on public procurement and disposal opportunities, awards and any other information of public interest as may be determined by the Authority;
- (h) maintain a register of providers of works, services and supplies;
- (i) conduct periodic inspections of the records and proceedings of the procuring and disposing entities to ensure full and correct application of this Act;
- (j) institute—
  - (i) procurement or disposal audits during the bid preparatory process;
  - (ii) contract audits in the course of the execution of an awarded bid; and
  - (iii) performance audit after the completion of the contract in respect of any procurement or disposal, as may be required;
- (k) adopt, adapt and update common specifications standards, the use of which shall be mandatory for all procuring and disposing entities;
- (l) determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (m) develop policies and maintain an operational plan on capacity building, both for institutional and human resource development;
- (n) agree on a list, which shall be reviewed annually, of works, services and supplies in common use by more than one procuring and disposing entity which may be subject to common procurement or disposal;
- (o) establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal;
- (p) undertake procurement and disposal research and surveys nationally and internationally;
- (q) undertake any activity that may be necessary for the execution of its functions; and
- (r) administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act.

## 8. Powers of the Authority

In the exercise of its regulatory functions, the Authority shall have the power to—

- (a) require any information, documents, records and reports in respect of any aspect of the public procurement and disposal process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any procuring and disposing entity or provider;
- (b) summon witnesses, call for the production of books of accounts, plans, documents, and examine witnesses and parties concerned on oath;
- (c) commission or undertake investigations and institute procurement or disposal contract and performance audits;
- (d) cause to be inspected any procurement or disposal transaction to ensure compliance with a bid award by a procuring and disposing entity;
- (e) act upon complaints by procuring and disposing entities, providers and any other entity or person in respect of any party to a procurement or disposal activity in accordance with the procedure set out in Part VII of this Act.

## 9. Action on recommendations of the Authority

- (1) The Authority may recommend to the competent authority, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act—
  - (a) the suspension of officers concerned with the procurement or disposal process in issue;
  - (b) the replacement of the head of a Procurement and Disposal Unit or the Chairperson of a Contracts Committee as the case may be;
  - (c) the disciplining of the Accounting Officer; or
  - (d) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency.
- (2) A competent authority shall respond in writing to the Authority's recommendations under subsection (1) within a period prescribed by regulations made under this Act.
- (3) Where the competent authority rejects the Authority's recommendations under subsection (1), the Authority shall—
  - (a) communicate its recommendations and all related supporting documentation to the relevant law enforcement and oversight agencies for their action; and
  - (b) request for any other appropriate action within the power of the competent authority.
- (4) The competent authority shall respond in writing to the Authority's recommendations within a period to be specified in regulations made under this Act, on the precise action taken on the Authority's recommendation, or give an explanation if no action is deemed necessary.
- (5) The Authority shall, in its Annual Performance Evaluation Report include—
  - (a) its audited findings and complaints investigated;
  - (b) its recommended corrective measures in each case;
  - (c) the response of the—
    - (i) respective competent authority;
    - (ii) relevant law enforcement and oversight agencies.
  - (d) any remedial measures taken.

## 10. Establishment of the Board of Directors

- (1) There is established a Board of Directors of the Authority, in this Act referred to as the “Board” which shall execute the functions and powers of the Authority specified in sections 7 and 8 of this Act.
- (2) Notwithstanding the provisions of subsection (1), the Board shall be responsible for—
  - (a) the formulation of policy of the Authority; and
  - (b) the approval of the budget of the Authority.

## 11. Composition of the Board

- (1) The Board shall be composed of—
  - (a) a non-executive chairperson;
  - (b) not less than four and not more than six non-executive members; and
  - (c) the Executive Director of the Authority.
- (2) The Chairperson and the non-executive members mentioned in paragraphs (a) and (b) respectively, of subsection (1), shall be appointed by the Minister, in consultation with Cabinet from a multi-sectoral professional background.
- (3) Members of the Board shall be appointed from among persons in good standing in society and recognized for their high levels of professional competence and integrity.

## 12. Conditions of service of the Board members

The Minister, in consultation with Cabinet, shall determine the terms and conditions of service of the members of the Board save for the Executive Director.

## 13. Tenure of Board members

The tenure of the Board members save for the Executive Director shall be four years and they may be reappointed for only one further term.

## 14. Meetings of the Board

- (1) The Board shall meet as often as is necessary for the proper discharge of its functions but, in any event, not less than once in two months.
- (2) In the absence of the Chairperson, the Executive Director shall call the meetings and the members present shall elect, from among their number, an acting Chairperson.
- (3) The quorum of the Board shall be four members; except that when a member has declared an interest in an agenda item, or in a matter before the Board, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.
- (4) A member, on receiving the agenda of the meeting of the Board, or on notification of a matter being brought to the attention of the Board shall—
  - (a) sign a declaration form in the Second Schedule, indicating whether he or she has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring the Board’s consideration and decision; and
  - (b) where such an interest exists, not participate in the deliberations or decision-making process of the Board in relation to the agenda item or the matter in question.

- (5) The decision of the Board shall be by a majority of votes, and where there is an equality of votes, the Chairperson shall have a casting vote.
- (6) The proceedings of each meeting of the Board shall be confirmed at the next meeting of the Board.
- (7) Subject to this Act and regulations made under this Act, the Board shall regulate its procedure in the conduct of its business.

## 15. Committees of the Board

- (1) The Board may establish—
  - (a) a Complaints Review Committee which shall handle complaints from providers and any other interested parties arising out of the execution of the procurement or disposal function by the procuring and disposing entities;
  - (b) an Advisory Committee which shall review the performance of the Authority, the procuring and disposing entities and the Complaints Review Committee; and
  - (c) any other committee that may be necessary for the better carrying out of the functions of the Authority.
- (2) The Board shall determine the terms of reference of the committees, their composition and, in consultation with the Minister, their terms and conditions of service.

## 16. Termination of office of Board members

- (1) The Minister may, at any time, terminate the appointment of a member of the Board other than the Executive Director for—
  - (a) abuse of office;
  - (b) corruption;
  - (c) incompetence;
  - (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
  - (e) failure to attend three consecutive scheduled Board meetings without reasonable grounds;
  - (f) conviction of an offence involving moral turpitude;
  - (g) being adjudged bankrupt by a court of law; and
  - (h) any other reasonable ground.
- (2) Any member of the Board other than the Executive may resign from the Board by giving not less than one month's prior notice in writing.

## 17. Appointment and functions of the Executive Director of the Authority

- (1) The Board shall appoint an Executive Director on contract for three years, renewable for only one further term, and on terms and conditions to be specified in his or her instrument of appointment.
- (2) Subject to the general supervision and direction of the Board, the Executive Director, who shall be the Accounting Officer of the Authority, shall be responsible for the—
  - (a) management and operations of the Authority;
  - (b) management of the funds, property and business of the Authority;
  - (c) administration, organization and control of the officers and staff of the Authority; and

- (d) promoting, training and disciplining of the officers and staff of the Authority in accordance with their terms and conditions of appointment.
- (3) The Executive Director shall not engage in any business, profession, occupation or paid employment elsewhere.
- (4) The Board may terminate the appointment of the Executive Director for—
  - (a) abuse of office;
  - (b) corruption;
  - (c) incompetence;
  - (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
  - (e) failure to attend three consecutive board meetings without reasonable grounds;
  - (f) conviction of an offence involving moral turpitude;
  - (g) being adjudged bankrupt by a court of law; or
  - (h) any other reasonable ground.

#### **18. Other staff of the Authority**

- (1) The Board shall appoint a Secretary to the Board, to perform such functions as shall be determined by the Board on terms and conditions to be specified in his or her instrument of appointment.
- (2) The Executive Director, on directive by the Board, shall appoint other staff as may be required for the performance of the functions of the Authority on terms and conditions of service determined by the Authority.

#### **19. Funds of the Authority**

- (1) The funds of the Authority shall consist of —
  - (a) money appropriated by Parliament for the purposes of the Authority;
  - (b) loans or grants received by the Authority for its activities; and
  - (c) revenues collected from services that are rendered by the Authority.
- (2) The Authority shall open and maintain bank accounts in banks approved by the Board.

#### **20. Management plan and budget**

- (1) The Executive Director shall, not later than three months before the end of each financial year, prepare and submit to the Board an Annual Management Plan which shall include a budget for its approval for the next financial year.
- (2) The Executive Director may, at any time before the end of a financial year, prepare and submit to the Board for approval any estimates supplementary to the budget of the current financial year.
- (3) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the fiscal year in which the expenditure is to be incurred, or in the supplementary budget for that year.

#### **21. Accounts and audit**

- (1) The Authority shall keep proper books of accounts and records of all its transactions.

- (2) The annual accounts of the Authority shall be audited by the Auditor-General.

## 22. Reporting

- (1) The Authority shall, within three months after the end of each financial year, submit to—
- (a) the Minister an Annual Performance Evaluation Report in respect of that year's activities consisting of—
    - (i) financial statements and the Annual Management Plan;
    - (ii) an evaluation of the operations of the Authority and the procuring and disposing entities; and
    - (iii) any other information the Board may direct; and
  - (b) the Auditor-General—
    - (i) the accounts of the Authority for the financial year; and
    - (ii) the Annual Performance Evaluation Report referred to in paragraph (a).
- (2) The Minister shall lay before Parliament the Annual Performance Evaluation Report within two months from the date of his or her receiving the report, or at the next sitting of Parliament, whichever comes first.
- (3) The Auditor-General shall submit the Audited Report to Parliament within four months from the date of receiving the accounts.

## 23. Internal audits and periodic audit reports

- (1) In addition to any other functions assigned to him or her by the Board or the Executive Director, the Head of Internal Audit shall be responsible for the internal auditing of the Authority's accounts and shall submit to the Executive Director a report in respect of every three months' period of a financial year.
- (2) The Executive Director shall submit every report referred to in sub-section (1) to the Board for its consideration at the next meeting of the Board after the Executive Director received the report.

## Part III – Procuring and disposing entities

### 24. Composition of procuring and disposing entities

For the purpose of this Act, a procuring and disposing entity shall be composed of—

- (a) an Accounting Officer defined in [section 3](#);
- (b) contracts committees;  
*[paragraph (b) substituted by section 4 of [Act 2 of 2006](#)]*
- (c) a Procurement and Disposal Unit;
- (d) a User Department as defined in [section 3](#); and
- (e) an Evaluation Committee.

### 25. Powers of a procuring and disposing entity

- (1) A procuring and disposing entity shall be responsible for the management of all procurement and disposal activities within its jurisdiction in accordance with this Act, regulations and guidelines made under this Act.

- (2) Notwithstanding the provisions of subsection (1) the Authority shall contract out its procurement and disposal activities, except micro procurement or disposal activities.

## 26. Accounting Officer

The Accounting Officer of a procuring and disposing entity shall have overall responsibility for the execution of the procurement and disposal process in the procuring and disposing entity, and in particular, shall be responsible for—

- (a) establishing a Contracts Committee in accordance with this Act;
- (b) appointing the members of a Contracts Committee specified in the Third Schedule;
- (c) causing to be established a Procurement and Disposal Unit staffed at an appropriate level;
- (d) advertising bid opportunities;
- (e) communicating award decisions;
- (f) certifying the availability of funds to support the procurement or disposal activities;
- (g) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;
- (h) investigating complaints by providers;
- (i) submitting a copy of any complaints and reports of the findings to the Authority; and
- (j) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award.

## 27. Composition of a Contracts Committee

- (1) Subject to sub-section (2), a Contracts Committee shall be composed of the members specified in the Third Schedule.
- (2) The Members of the Contracts Committee shall be nominated by the Accounting Officer and approved by the Secretary to the Treasury.
- (3) A Contracts Committee may co-opt advisers to assist it in the discharge of its functions.
- (4) The Accounting Officer shall inform the Authority of the composition of the Contracts Committee and the qualifications of its members not later than fourteen days from the date of its appointment.
- (5) Members of the Contracts Committee shall be appointed with regard to their technical competence and skills required for the discharge of the functions of the Contracts Committee.
- (6) The tenure of the members of the Contracts Committee shall be three years and a member may be re-appointed for only one further term.

## 28. Functions of a Contracts Committee

A Contracts Committee shall be responsible for—

- (a) adjudication of recommendations from the Procurement and Disposal Unit and award of contracts;
- (b) approving the Evaluation Committee;
- (c) approving bidding and contract documents;
- (d) approving procurement and disposal procedures;
- (e) ensuring that best practices in relation to procurement and disposal are strictly adhered to by procuring and disposing entities;



- (f) ensuring compliance with this Act; and
- (g) liaising directly with the Authority on matters within its jurisdiction.

## **29. Powers of a Contracts Committee**

A Contracts Committee shall—

- (a) authorize—
  - (i) the choice of a procurement and disposal procedure;
  - (ii) solicitation documents before issue;
  - (iii) technical, financial or combined evaluation reports;
  - (iv) contract documentation in line with the authorised Evaluation Report; and
  - (v) any amendment to an awarded contract;
- (b) recommend for the delegation of a procurement or disposal function by the Accounting Officer whenever the necessity arises; and
- (c) award contracts in accordance with applicable procurement or disposal procedures as the case may be.

## **30. Composition of a Procurement and Disposal Unit**

A procuring and disposing entity shall cause to be established a Procurement and Disposal Unit staffed at an appropriate level.

## **31. Functions of a Procurement and Disposal Unit**

A Procurement and Disposal Unit shall—

- (a) manage all procurement or disposal activities of the procuring and disposing entity except adjudication and the award of contracts;
- (b) support the functioning of the Contracts Committee;
- (c) implement the decisions of the Contracts Committee;
- (d) liaise directly with the Authority on matters within its jurisdiction;
- (e) act as a secretariat to the Contracts Committee;
- (f) plan the procurement and disposal activities of the procuring and disposing entity;
- (g) recommend procurement and disposal procedures;
- (h) check and prepare statements of requirements;
- (i) prepare bid documents;
- (j) prepare advertisements of bid opportunities;
- (k) issue bidding documents;
- (l) maintain a providers list;
- (m) prepare contract documents;
- (n) issue approved contract documents;
- (o) maintain and archive records of the procurement and disposal process;

- (p) prepare monthly reports for the Contracts Committee;
- (q) co-ordinate the procurement and disposal activities of all the departments of the procuring and disposing entity;
- (r) prepare any other such reports as may be required from time to time.

### **32. Powers of a Procurement and Disposal Unit**

A Procurement and Disposal Unit shall have the powers to—

- (a) recommend the composition of evaluation committees for the approval of the Contracts Committee;
- (b) contract independent advice as may be necessary in the discharge of its functions;
- (c) ensure compliance with this Act, regulations and guidelines made under this Act, and best practices;
- (d) manage bid proposals and pre-qualification submissions and make recommendations on them to the Contracts Committee;
- (e) provide bid clarifications; and
- (f) receive bids.

### **33. Disagreement between a Contracts Committee and a Procurement and Disposal Unit**

- (1) Where a Contracts Committee disagrees with the recommendations of a Procurement and Disposal Unit, it may—
  - (a) return the submission to the Procurement and Disposal Unit for review giving written reasons for its disagreement; or
  - (b) request for independent advice from the Authority.
- (2) Where a Procurement and Disposal Unit disagrees with the views of the Contracts Committee on its recommendations under subsection (1), it may request for independent advice from the Authority.
- (3) A party seeking for advise from the Authority under subsections (1) and (2) shall state in writing the reasons for its disagreement.

### **34. Functions of the User Department**

- (1) The User Department of a Procuring and Disposing Entity shall perform the following functions—
  - (a) liaise with and assist the Procurement and Disposal Unit throughout the procurement or disposal process to the point of contract placement;
  - (b) initiate procurement and disposal requirements and forward them to the Procurement and Disposal Unit;
  - (c) propose technical inputs to statements of requirements for procurement requirements to the Procurement and Disposal Unit;
  - (d) propose technical specifications to the Procurement and Disposal Unit when necessary;
  - (e) input with technical evaluation of Bids received as required by the Procurement and Disposal Unit;
  - (f) arrange for payments to providers;
  - (g) report any departure from the terms and conditions of an awarded contract to the Procurement and Disposal Unit;

- (h) forward details of any required contract amendments to the Procurement and Disposal Unit for action;
  - (i) maintain and archive records of contracts management; and
  - (j) prepare any reports required for submission to the Procurement and Disposal Unit, the Committee or the Accounting Officer.
- (2) The User Department shall prepare a work plan for procurement based on the approved budget, which shall be submitted to the Procurement and Disposal Unit for implementation when required.

### **35. Powers of the User Department**

In the exercise of its functions a User Department shall—

- (a) initiate procurement and disposal requirements;
- (b) recommend Statements of Requirements to the Procurement and Disposal Unit;
- (c) undertake conformity assessments;
- (d) issue change orders in accordance with the terms and conditions of the contract; and
- (e) certify invoices for payments to providers.

### **36. Disagreement between a Procurement and Disposal Unit and a User Department**

- (1) Where a Procurement and Disposal Unit disagrees with a User Department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the two parties may jointly consult with any two members of the Contracts Committee for a review and guidance in resolving the disagreement.
- (2) Where such review fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the Contracts Committee for a formal decision by the Contracts Committee.

### **37. Evaluation Committee**

- (1) All evaluations shall be conducted by an Evaluation Committee, which shall report to the Procurement and Disposal Unit.
- (2) The membership of the Evaluation Committee shall be recommended by Procurement and Disposal Unit, in accordance with Regulations made under this Act, and approved by the Contracts Committee.
- (3) The number of the members of the Evaluation Committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three members.
- (4) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement requirement.
- (5) Members of the Evaluation Committee may be external to the Procuring and Disposing Entity, where the required skills or experience are not available within the Procuring and Disposing Entity or where members are indisposed or have a conflict of interest.
- (6) All members of the Evaluation Committee shall sign the Code of Ethics provided under the regulation made under this Act, declaring that they do not have a conflict of interest in the procurement requirement.
- (7) The meetings of the Evaluation Committee, the conduct of the evaluation and the evaluation methodologies shall be executed in accordance with the regulation made under this Act.

### **38. Independence of functions and powers**

Subject to the provisions of this Act, the Accounting Officer, the Contracts Committee, the Procurement and Disposal Unit, the User Department and the Evaluation Committee shall act independently in relation to their respective functions and powers.

### **39. Delegation of powers by the Accounting Officer**

An Accounting Officer may delegate the procurement or disposal function of the procuring and disposing entity to—

- (a) a sub-division of that entity; or
- (b) another procuring and disposing entity; or
- (c) a third party procurement agency, in accordance with the terms and conditions specified in regulations made under this Act.

### **40. Third party procurement and disposal**

- (1) Where it is deemed that there is lack of technical capacity, and subject to guidelines and prior approval of the Authority, a procuring and disposing entity may engage third party procurement and disposal services.
- (2) On deciding to invite third party procurement services, a procuring and disposing entity shall—
  - (a) secure prior written assurance of the Accounting Officer that funds are available to pay in full and on time for those services;
  - (b) obtain those services from among firms prequalified by the Authority; and
  - (c) follow the procedure laid down by the Authority in its guidelines.

### **41. Records of a procuring and disposing entity**

- (1) A procuring and disposing entity shall maintain records on its procurement and disposal proceedings for a period of seven years from the date of a decision to terminate the procurement or disposal action, or the date of the contract completion whichever comes later, except where a contract is on going or is challenged, in which case, the records shall be kept for an additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.
- (2) The records of the procurement and disposal process shall be open to inspection by the Authority during working hours.

### **42. Defence and National Security Organs**

- (1) For the avoidance of doubt, the Defence and National Security organs shall comply with this Act subject to subsections (2) and (3).
- (2) The Defence and National Security Organs shall manage their procurement and disposal on the basis of a dual list, covering items subject to open and restricted procurement or disposal methods respectively.
- (3) The Defence and National Security Organs shall agree annually with the Authority on the category of restricted items to be included on the restricted list and on which restricted procurement or disposal methods, set out in Part VI, shall apply to each category of item on the restricted list.
- (4) The restricted list of items shall be subjected to classified audit and laid before Parliament in the Annual Performance Evaluation Report.

## Part IV – Basic public procurement and disposal principles

### 43. Application of the basic principles of public procurement and disposal

All public procurement and disposal shall be conducted in accordance with the basic principles set out in sections 44 to 54 of this Act.

### 44. Non-discrimination

A bidder shall not be excluded from participating in public procurement and disposal on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

### 45. Transparency, accountability and fairness

All procurement and disposal shall be conducted in a manner which promotes transparency, accountability and fairness.

### 46. Competition

Subject to this Act, all procurement and disposal shall be conducted in a manner to maximize competition and achieve value for money.

### 47. Confidentiality

A procuring and disposing entity shall not, except when required to do so by an order of court, disclose any information where the disclosure would—

- (a) amount to a breach of the law;
- (b) impede law enforcement;
- (c) prejudice legitimate commercial interests of the parties;
- (d) inhibit fair competition; or
- (e) in any way not be in the public interest,

until the successful bidder is notified of the award.

### 48. Economy and efficiency

All procurement and disposal shall be conducted in a manner which promotes economy, efficiency and value for money.

### 49. Ethics

All procurement and disposal shall be carried out in accordance with the Codes of Ethics that may be specified from time to time by the Authority.

### 50. Preference and reservation

- (1) A procuring and disposing entity shall permit providers to participate in the procuring process without regard to nationality, except in cases in which the procuring and disposing entity decides to limit the participation on the basis of nationality on grounds specified either in regulations made under this Act or by any other competent authority.

- (2) A procuring and disposing entity that limits participation on the basis of nationality on grounds set out in sub-section (1) shall—
  - (a) obtain prior written approval of the Authority; and
  - (b) include the exception to nationality and the grounds relied on in the bidding documents as well as in the record of that procurement or disposal process.

### **51. Open competitive bidding**

A procuring and disposing entity shall use open bidding as the preferred method of procurement and disposal.

### **52. Best evaluated bids**

A contract shall be awarded to the bidder with the best evaluated offer ascertained on the basis of the methodology and criteria detailed in the bidding documents.

### **53. Public accessibility**

Copies of the Act, regulations, Guidelines, and forms made under this Act, standard bidding documents and decisions of the Authority shall be made accessible to the public by the Authority.

### **54. Publication of opportunities and information**

The Authority shall organize and maintain a system for the publication of data on public procurement and disposal opportunities, awards and any other information of public interest that may be determined by the Authority.

## **Part V – Public procurement and disposal rules**

### **55. Application of public procurement and disposal rules**

All public procurement and disposal shall be carried out in accordance with the rules set out in this Part of the Act, any regulations and guidelines made under this Act.

### **56. Records**

- (1) A procuring and disposing entity shall—
  - (a) maintain detailed records of all its proceedings; and
  - (b) preserve, maintain and safeguard all relevant documents it issues and receives.
- (2) A procuring and disposing entity shall use the standard forms issued by the Authority to record all details of the procurement or disposal process, except where it obtains the consent of the Authority to use forms other than those provided by the Authority.
- (3) Where a document or form does not exist for a given circumstance, a procuring and disposing entity may apply to the Authority for permission to use an alternative document or form until the time the Authority issues the standard document or form.
- (4) The application mentioned in sub-section (3), shall state the circumstances giving rise to the need for the Authority to produce a particular standard form or document.

**57. Communication**

- (1) All communication between a procuring and disposing entity, bidder, or provider, shall be in writing and communication in any other form shall be referred to and confirmed in writing.
- (2) English shall be the language of communication unless otherwise specified by the Authority.
- (3) Forms of communication shall be specified in the solicitation documents.

**58. Procurement and disposal planning**

A procuring and disposing entity shall plan its procurement and disposal in a rational manner and in particular shall—

- (a) avoid emergency procurement and disposal wherever possible;
- (b) aggregate its requirements wherever possible, both within the procuring and disposing entity and between procuring and disposing entities, to obtain value for money and reduce procurement costs;
- (c) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;
- (d) avoid splitting of procurements or disposals to defeat the use of appropriate procurement or disposal methods;
- (e) integrate its procurement budget with its expenditure programme; and
- (f) integrate the disposal of assets both listed and unlisted in its Asset Register as well as in its income and expenditure budget.

**59. Initiation of procurement or disposal requirements and confirmation of funding**

- (1) All procurement or disposal requirements shall be documented prior to the commencement of any procurement or disposal proceedings.
- (2) Procurement or disposal shall only be initiated or continued on the confirmation that funding, in the full amount over the required period, is available or will be made available at the time the contract commitment is made.
- (3) All procurement or disposal requirements shall be approved by the Accounting Officer prior to the commencement of any procurement or disposal process.

**60. Statements of requirements**

All statements of requirements—

- (a) specifications;
- (b) terms of reference;
- (c) scope of works;
- (d) drawings;
- (e) bills of quantities; or
- (f) their equivalent as may be appropriate;

giving a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.

**61. Best practice and industry standards**

Procuring and disposing entities shall at all times use industry standards defined and codified by internationally recognised trade associations and professional bodies in the appropriate fields.

**62. Solicitation documents**

- (1) A procuring and disposing entity shall use the standard documents provided by the Authority as models for drafting all solicitation documents for each individual procurement or disposal requirement.
- (2) All solicitation documents shall—
  - (a) detail the terms and conditions, which shall apply to any resulting contract; and
  - (b) contain the General Conditions of Contract, or a statement of the General Conditions of Contract which shall apply.
- (3) The General Conditions of Contract shall not be modified except through Special Conditions inserted into the solicitation documents or contract.
- (4) A procuring and disposing entity shall obtain the prior consent of the Authority to place a contract against the General Conditions of Contract other than those contained in the standard solicitation documents provided by the Authority.

**63. Selection of bidders**

All methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure maximum competition.

**64. Bidding period**

The bidding period shall be sufficient to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition.

**65. Clarification of solicitation documentation**

- (1) At any time prior to the deadline for bid submission, a procuring and disposing entity may, on its own initiative, or in response to a request for clarification by a bidder, modify the solicitation documents by issuing an addendum.
- (2) Where a procuring and disposing entity considers it necessary, it may extend the closing date to enable bidders to take the addendum fully into account while preparing their bids.

**66. Form of bids**

A procuring and disposing entity shall require bidders to submit sealed written bids unless otherwise provided for in this Act or regulations made under this Act.

**67. Bid submission methods**

The method for bid submission shall be prescribed by regulations made under this Act and shall be determined in the regulations by the type, complexity and evaluation method of the procurement or disposal being handled by the procuring and disposing entity.



**68. Withdrawal of bids**

A bidder may withdraw his or her bid at any time before the deadline for bid submission unless otherwise prescribed by the Minister by regulations made under this Act.

**69. Bid receipt and openings**

All bidding processes shall include a formal bid receipt and a bid opening.

**70. Basic qualification of bidders**

A procuring and disposing entity shall require all bidders participating in public procurement or disposal to meet the qualification criteria set out in the bidding documents which in all cases shall include the following basic qualifications—

- (a) that the bidder has the legal capacity to enter into the contract;
  - (b) that the bidder is not—
    - (i) insolvent; or
    - (ii) in receivership; or
    - (ii) bankrupt; or
    - (iv) being wound up;
- [Please note: numbering as in original]*
- (c) that the bidder's business activities have not been suspended;
  - (d) that the bidder is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b); and
  - (e) that the bidder has fulfilled his or her obligations to pay taxes and social security contributions.

**71. Evaluation**

- (1) The choice of an evaluation methodology shall be determined by the type, value and complexity of the procurement or disposal.
- (2) All solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.
- (3) No evaluation criteria other than that stated in the bidding documents shall be taken into account.

**72. Change in bid details**

There shall not be any alterations or any changes in the substance of bids, including changes in price, after the date and time of bid closing, except as may be otherwise prescribed by regulations made under this Act.

**73. Clarification of bids received**

A procuring and disposing entity may ask bidders for clarification of their bids in order to assist in an evaluation and to clarify details that were not apparent or could not be finalised at the time of bidding, in accordance with procedures prescribed by regulations made under this Act.

**74. Negotiations in accordance with regulations**

Negotiations shall not be permitted except as prescribed by the regulations.

**75. Rejection of bids**

A procuring and disposing entity may reject any or all the bids at any time prior to the award of a contract.

**76. Contracts**

- (1) For the purposes of this Act, an award decision is not a contract.
- (2) An award shall not be confirmed by a procuring and disposing entity until—
  - (a) the period specified by regulations made under this Act has lapsed; and
  - (b) funding has been committed in the full amount over the required period.
- (3) An award shall be confirmed by a written contract signed by both the provider and the procuring and disposing entity only after the conditions set out in subsection (2) have been fully satisfied.
- (4) The award decision shall be posted in a manner prescribed by regulations during the period specified in paragraph (a) of sub-section (2).

**77. Change in bidders circumstances**

Any change in the circumstances of a bidder during the procurement or disposal process that could materially affect the bidder's capacity to execute the contract shall be immediately drawn to the attention of the Contracts Committee by the bidder.

**78. Prohibition of Public Officers**

Public Officers shall not participate in the disposal process as bidders except where specific items are offered to the Public Officials of a procuring and disposing entity subject to—

- (a) internal advertisement and competition;
- (b) the sale price being no less than the authorized valuation of the items to be offered;
- (c) the concurrence of the Head of the Procurement Unit, the Contracts Committees and the Accounting Officer; and
- (d) the complete record of each offer being kept by the procuring and disposing entity for inspection and record, a copy of which documentation shall be forwarded by the Accounting Officer to the Authority within seven working days.

**Part VI – Methods of procurement and disposal****79. Choice of procurement or disposal method**

- (1) A procuring and disposing entity in respect of—
  - (a) each procurement activity shall use any of the methods in sections 80 to 86; and
  - (b) each disposal activity shall, in addition to the methods in sections 80 to 86, use any of the disposal methods in section 87 whenever the circumstances demand it,and their conditions for use specified in the Fourth Schedule.
- (2) The choice of a procurement or disposal method shall first be approved by the Contracts Committee.
- (3) A procuring and disposing entity shall first obtain the consent of the Authority before it uses any other method than the ones set out in this Part of the Act.

**80. Open domestic bidding**

- (1) Except as provided for in this Act or regulations made under this Act, a procuring and disposing entity shall use the open domestic bidding method.
- (2) Open domestic bidding is a procurement or disposal method which is open to participation on equal terms by all providers through advertisement of the procurement or disposal opportunity.
- (3) Open domestic bidding shall be used to obtain maximum possible competition and value for money.
- (4) Nothing shall prevent a foreign or international bidder from participating in open domestic bidding.

**81. Open international bidding**

- (1) Open international bidding is the procurement or disposal method which is open to participation on equal terms by all providers, through advertisement of the procurement or disposal opportunity and which specifically seeks to attract foreign providers.
- (2) Open international bidding is used to obtain the maximum possible competition and value for money, where national providers may not necessarily make this achievable.

**82. Restricted domestic bidding**

- (1) Restricted domestic bidding is the procurement or disposal method where bids are obtained by direct invitation without open advertisement.
- (2) Restricted domestic bidding is used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit the open bidding procedure.

**83. Restricted international bidding**

- (1) Restricted international bidding is the procurement or disposal procedure where bids are obtained by direct invitation without open advertisement and the invited bidders include foreign providers.
- (2) Restricted international bidding shall be used to obtain competition and value for money to the extent possible where the value or circumstances do not justify or permit an open bidding method and the short listed bidders include foreign providers.

**84. Quotation and Proposals**

- (1) Quotation and Proposals are simplified procurement and disposal methods which compare price quotations obtained from a number of providers.
- (2) The Quotation and Proposal method shall be used to obtain competition and value for money to the extent possible, where the value or circumstances do not justify or permit open or restricted bidding procedures.
- (3) Quotations shall be used in works and supplies while Proposals shall be used for services.

**85. Direct procurement or disposal**

- (1) Direct procurement or disposal is a sole source procurement or disposal method for procurement or disposal requirements where exceptional circumstances prevent the use of competition.
- (2) Direct procurement or disposal shall be used to achieve efficient and timely procurement or disposal, where the circumstances do not permit a competitive method.

**86. Micro-procurement or disposal**

- (1) Micro procurement or disposal is a simple direct procurement or disposal method which shall be used for very low value procurement requirements.
- (2) Micro procurement or disposal shall be used to achieve efficient and timely procurement where the value does not justify a competitive procedure.

**87. Other methods of disposal of public assets**

- (1) Disposal of public assets may also be by way of the following methods—
  - (a) public auction where the professional valuation of an individual asset or lot does not exceed the value stated in the guidelines;
  - (b) direct negotiation where disposal on the open market would raise legal or human rights issues and the consideration received is not less than the professional valuation;
  - (c) destruction of assets where there is no residual value or no grounds of national security or public interest;
  - (d) conversion or classification of assets into another form for disposal by sale such as scrap metal or land fill;
  - (e) trade-in; and
  - (f) transfer to another procuring and disposing entity.
- (2) The procedures for the methods in subsection (1) shall be prescribed by regulations made under this Act.

**88. Selection of providers**

The detailed procedures for selection of providers shall be prescribed by regulations.

**Part VII – Administrative review****89. Administrative review**

A bidder may seek administrative review for any omission or breach by a procuring and disposing entity of this Act, or any regulations or guidelines made under this Act or of the provisions of bidding documents, including best practices.

**90. Review by the Accounting Officer**

- (1) A complaint by a bidder against a procuring and disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint.
- (2) On receiving a complaint, the Accounting Officer shall make a decision in writing within fifteen working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he or she deems it necessary and giving reasons for his or her decision.
- (3) Where—
  - (a) the Accounting Officer does not make a decision within the period specified in sub-section (2); or

- (b) the bidder is not satisfied with the decision of the Accounting Officer

the bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.

### **91. Review by the Authority**

- (1) Upon receipt of a complaint, the Authority shall promptly give notice of the complaint to the respective procuring and disposing entity, suspending any further action thereon by the procuring and disposing entity until the Authority has settled the matter.
- (2) The Authority shall, unless it dismisses the complaint—
  - (a) prohibit a procuring and disposing entity from taking any further action; or
  - (b) annul in whole or in part an unlawful act or decision made by the procuring and disposing entity.
- (3) Before taking any decision on a complaint, the Authority shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring and disposing entity.
- (4) The Authority shall issue its decision within twenty-one working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.

## **Part VIII – Miscellaneous**

### **92. Protection from prosecution**

No action shall lie against any member or staff of the Authority or a procuring and disposing entity for any act or omission done in good faith.

### **93. Codes of conduct**

- (1) Public Officers as well as experts engaged to deliver specific services shall sign the Code of Ethical Conduct specified in the Fifth Schedule.
- (2) All providers of works, services or supplies shall be required to sign a declaration of compliance with those codes of conduct determined by the Authority from time to time.

### **94. Suspension of providers**

A provider who does not comply with this Act, regulations or guidelines made under this Act, shall be suspended by the Authority from engaging in any public procurement or disposal function for a period to be determined by the Authority on a case by case basis.

### **95. Offences and penalties**

- (1) A person commits an offence who—
  - (a) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under paragraphs of sub-section (1) of [section 8](#);
  - (b) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required by paragraph (b) of sub-section (1) of [section 8](#); and

(c) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or a procuring and disposing entity in the performance of his or her functions or in the exercise of his or her power under this Act:

(d) connives or colludes to commit a fraudulent act or a corrupt act defined in [section 3](#).

and on conviction is liable to a fine of not less than two hundred and fifty currency points but not exceeding one thousand currency points or to a term of imprisonment not exceeding three years or both.

(2) Where a procuring and disposing entity consistently contravenes this Act, it shall, on the recommendation of the Authority and on the approval of the Minister, have its procurement and disposal function transferred to a third party procurement agency until the Authority is satisfied that the causes of the contravention have been rectified.

## 96. Regulations

- (1) The Minister may, on the recommendation of the Authority, issue regulations for the better carrying out of the objectives and functions of this Act.
- (2) Regulations made under this section may prescribe for a contravention of any of the provisions of the regulations or any guidelines issued under this Act, a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.

## 97. Guidelines

The Authority may issue guidelines from time to time which shall be laid before Parliament and shall be *Gazetted* for the better carrying out of the objectives of and functions under this Act.

## 98. Transitional provisions

- (1) All property, except that property the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Central Tender Board, on the date of the commencement of this Act shall immediately vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting that property.
- (2) All legal obligations, proceedings and claims pending in respect of the Central Tender Board shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.
- (3) Except as provided for under this Act, this Act shall take precedence over all other enactments establishing Tender Boards or like mechanisms, and the responsible procuring and disposing entities shall within twelve months after this Act comes into force, bring their practices in conformity with this Act.

## 99. Repeal of S.I. No. 64 of 2000

The Public Finance Procurement Regulations are repealed.

## First Schedule (Section 3)

### Currency point

A currency point is equivalent to twenty thousand Uganda shillings.

## Second Schedule (Section 14(4)(a))

### Standard declaration form

I, \_\_\_\_\_ do solemnly swear to abide by the rules of the Public Procurement and Disposal Public Assets Authority including the principles of natural justice, equity, the Code of Ethical Conduct and best practices in the performance of my duties as a member of the Board of Directors of the Public Procurement and Disposal of Public Assets Authority.

I also confirm that I do not have any direct or indirect interests of whatsoever nature in any item on the Agenda that may give rise to the principles of conflict of interest or cause unfair advantage to any party that is directly or indirectly involved in the particular agenda item.

I shall also, at all times, maintain the required level of confidentiality and professional standards in the performance of my duties as a member of the Board of Directors.

Subscribed and solemnly declared by me at \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_ 200\_\_

Signed by \_\_\_\_\_

*Board Member*

## Third Schedule (Section 27(1))

### Composition of a Contracts Committee

A Contracts Committee shall be composed of the following members—

- (a) a chairperson;
- (b) a secretary; and
- (c) a maximum of three other members appointed by the Accounting Officer one of whom shall be a lawyer.

## Fourth Schedule (Section 79(1))

### Conditions for use of procurement and disposal methods

#### 1. Open domestic bidding

- (1) Open domestic bidding shall be open to all bidders following a public advertisement of a Bid Notice in at least one widely read national newspaper.
- (2) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the respective Contracts Committees.
- (3) A public bid opening shall be held in accordance with procedures prescribed by regulations.

#### 2. Open international bidding

- (1) Open international bidding may be used instead of open domestic bidding where competition will not be effective without foreign bidders or where foreign bids will increase value for money.
- (2) Nothing shall prevent a domestic bidder from participating in open international bidding.
- (3) The procurement or disposal process under open international bidding shall follow the procurement or disposal process to be set out in regulations.

- (4) Open international bidding shall be open to all bidders following the public advertisement of a Bid Notice in a publication of wide international circulation.
- (5) Bidding documents may be issued to prospective bidders at a fee, the cost of which shall be agreed upon by the Contracts Committee but, in all cases shall be in line with guidelines.
- (6) A public bid opening shall be held in accordance with the procedure prescribed by regulations.

### **3. Restricted domestic bidding**

- (1) Restricted domestic bidding may be used where—
  - (a) the supplies, works or services are available only from a limited number of providers; or
  - (b) there is insufficient time for an open bidding procedure in an emergency situation; or
  - (c) the estimated value of the procurement or disposal does not exceed the threshold stated in the procurement guidelines issued under this Act.
- (2) The procurement or disposal process under restricted domestic bidding shall follow the procurement or disposal procedures prescribed by regulations and as follows—
  - (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a Bid Notice.
  - (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations, and
  - (c) a public bid opening shall be held in accordance with the procedure prescribed by regulations.

### **4. Restricted international bidding**

- (1) Restricted international bidding may be used where the supplies, works or services are available only from a limited number of providers and—
  - (a) there is insufficient time for an open bidding procedure in an emergency situation; or
  - (b) the estimated value of the procurement does not exceed the threshold stated in the procurement guidelines.
- (2) The procurement and disposal process under restricted international bidding shall follow the procedure prescribed by regulations and made under this Act as follows—
  - (a) the invitation to bid shall be addressed to a limited number of potential bidders without advertising the opportunity in a Bid Notice;
  - (b) the selection of bidders shall be in accordance with the procedure prescribed by regulations; and
  - (c) a public bid opening shall be held in accordance with the procedure to be prescribed by regulations.

### **5. Quotations and proposal**

- (1) Quotations or proposal procurement or disposal may be used where—
  - (a) there is insufficient time for an open or restricted bidding procedure such as in an emergency situation; or
  - (b) where the estimated value of the procurement or disposal does not exceed the threshold stated in the procurement guidelines.



- (2) The process under quotations procurement or disposal shall be as follows—
- (a) the solicitation document shall be addressed to a limited number of potential bidders without advertising the opportunity;
  - (b) the selection of the bidders shall be in accordance with regulations made under this Act;
  - (c) a procuring and disposing entity shall obtain at least three bids; and
  - (d) an internal bid opening shall be held in accordance with procedures to be prescribed by regulations.

## 6. Direct procurement

- (1) Direct procurement or disposal may be used—
- (a) where—
    - (i) there is insufficient time for any other procedure such as in an emergency situation; or
    - (ii) the works, services or supplies are available from only one provider; or
    - (iii) an existing contract could be extended for additional works, services or supplies of a similar nature and no advantage could be obtained by further competition, if the prices on the extended contract are reasonable; or
    - (iv) additional works, services or supplies are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional works, services or supplies from the original supplier, provided the prices on the additional contract are reasonable; or
    - (v) it is essential or preferable to purchase additional works, services or supplies from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable;
  - (b) in the circumstances set out in paragraph (a) where the value of the new works, services or supplies does not exceed 15% of the value of the original or existing contract and the original or existing contract has been awarded through a competitive process; and
- (2) A procuring and disposing entity may engage in micro procurement or disposal where the goods or services are below the threshold stated in regulations.
- (3) Where a procuring and disposing entity engages in micro procurement—
- (a) the original invoice or receipt evidencing the supplies procured and the price paid shall be obtained and signed by the official procuring the supplies; and
  - (b) it shall be responsible for ensuring that value for money is obtained to the extent practical under the procurement procedure.

## **Fifth Schedule (Section 93(1))**

### **Code of Ethical Conduct in Business**

#### **1. Ethical principles**

- (1) Employees shall not use their authority or office for personal gain and shall seek to uphold and enhance the reputation of the Ugandan Government at home and abroad by—
  - (a) maintaining an impeccable standard of integrity in all business relationships both inside and outside the organisations in which they are employed;
  - (b) fostering the highest possible standards of competence;
  - (c) optimising the use of resources for which they are responsible to provide the maximum benefit to Uganda; and
  - (d) complying both with the letter and the spirit of—
    - (i) the laws of Uganda and regulatory guidance;
    - (ii) accepted business practices in commercial markets; and
    - (iii) contractual conditions.

#### **2. Conflict of interest**

Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's business dealings with an industry.

#### **3. Confidentiality and accuracy of information**

- (1) Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain.
- (2) Information given by employees in the course of business dealings shall be true and fair and not designed to mislead.

#### **4. Competition**

Employees shall avoid any business arrangement that might prevent the effective operation of fair competition.

#### **5. Business gifts**

Employees shall not accept business gifts from current or potential Government suppliers unless such gifts are of very small intrinsic value such as a calendar or a pen.

#### **6. Hospitality**

Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality.

#### **7. Restrictiveness**

A member of the Authority, a procuring and disposing entity or expert contracted to deliver specific services shall not use to his or her personal or organizational advantage, information acquired by him or

her by virtue of his or her association with the Authority or a procuring and disposing entity for a period of one year after vacating office or ceasing to render the specific services.