

Uganda

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

Act 1 of 2003

Legislation as at 3 March 2014

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

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## Uganda

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

*Published in Uganda Gazette 3 on 17 January 2003*

**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 3 March 2014 to 30 September 2015.]*

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

*[Amended by Public Procurement and Disposal of Public Assets (Amendment) Act, 2011 (Act 11 of 2011) on 3 March 2014]*

**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 and disposal by a procuring and disposing entity, within or outside Uganda;  
*[paragraph (c) substituted by section 2(a) of Act 11 of 2011]*
  - (d) procurement financed from specific public finances specified in paragraph (a), in the case of an entity not being of Government, except where the Authority confirms in writing, that the procurement system of the entity is satisfactory;  
*[paragraph (d) added by section 2(b) of Act 11 of 2011]*

- (e) procurement and disposal by a company registered under the Companies Act, in which a procuring and disposing entity has majority interest.

*[paragraph (e) added by section 2(b) of [Act 11 of 2011](#)]*

- (1a) For the avoidance of doubt, the following activities by a procuring and disposing entity are not procurement to which this Act applies—

- (a) the acquisition of an asset or of equipment, where the asset or equipment is being disposed of by another procuring and disposing entity in accordance with [section 87](#);
- (b) the acquisition of a service provided by another procuring and disposing entity, except a service normally offered by that procuring and disposing entity for a fee; and
- (c) the recruitment of the services of an individual as an employee of a procuring and disposing entity in accordance with the administrative policies of the procuring and disposing entity.

*[subsection (1a) inserted by section 2(c) of [Act 11 of 2011](#)]*

- (1b) Subject to subsection (1c), this Act shall not apply to the Auditor General in the selection of private audit firms to undertake any assignment under the mandate of the Auditor General.

*[subsection (1b) inserted by section 2(c) of [Act 11 of 2011](#)]*

- (1c) The Auditor General shall in exercise of his or her mandate in subsection (1b) apply the principles of transparency and competition in order to ensure value for money.

*[subsection (1c) inserted by section 2(c) of [Act 11 of 2011](#)]*

- (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—

- (a) an accounting officer appointed as such by the Secretary to the Treasury;
- (b) a person appointed under an Act of Parliament or under an instrument of appointment made under an Act of Parliament, including the Companies Act, to perform the functions of accounting officer of a procuring and disposing entity; or
- (c) a person appointed to perform the functions of accounting officer of an entity not being of Government, to which [section 2\(1\)\(d\)](#) applies;

*[definition of “accounting officer” substituted by section 3(a) of [Act 11 of 2011](#)]*

**“authorised officer”** means a person appointed as an authorised officer under [section 8](#);

*[definition of “authorised officer” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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;

**“competent authority”** means a Government office which has the mandate to perform a specified function;

*[definition of “competent authority” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“consultancy service”** means a service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field or profession; and includes, but is not limited to, engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform;

*[definition of “consultancy service” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“consultant”** means an individual who, or a firm, company, corporation, organisation or partnership which provides consultancy services to a procuring and disposing entity;

*[definition of “consultant” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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;

**“emergency situation”** means a circumstance which is urgent or unforeseeable or a situation which is not caused by dilatory conduct where—

- (a) Uganda is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;
- (b) life or the quality of life or environment may be seriously compromised;

- (c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness;
- (d) an investment project is seriously delayed for want of minor items; or
- (e) a Government programme would be delayed or seriously compromised unless a procurement is undertaken within the required time frame;

*[definition of “emergency situation” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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;

**“information”** means written, visual, aural and electronic information;

*[definition of “information” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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;

**“non-consultancy service”** means a service of a skilled or a non-skilled nature, which is not a consultancy service; and includes, cleaning, security and maintenance and repair services;

*[definition of “non-consultancy service” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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 notice board”** means the notice board of a procuring and disposing entity, which is used to display notices required to be displayed under this Act and regulations made under this Act and to display any other information relating to the procurement and disposal activities of the procuring and disposing entity;

*[definition of “procurement and disposal notice board” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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;

**“procurement specialist”** means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement or who is certified or registered by a procurement professional body;

*[definition of “procurement specialist” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“procuring and disposing entity”** means—

- (a) a Ministry or department of Government;
- (b) a district council or a municipal council;
- (c) a body corporate established under an Act of Parliament other than the Companies Act;
- (d) a company registered under the Companies Act in which Government or a procurement and disposing entity—
  - (i) controls the composition of the board of directors of the company;
  - (ii) is entitled to cast, or controls the casting of more than fifty percent of the maximum number of votes that may be cast at a general meeting of the company; or
  - (iii) controls more than fifty percent of the issued share capital of the company, excluding any part of the issued share capital that does not carry a right to participate beyond a specified amount in the distribution of profits or capital; and
- (e) an entity not being of Government, to which [section 2](#) (1) (d) applies;

and includes—

- (f) a commission established under the Constitution or under an Act of Parliament;
- (g) a public university and a public tertiary institution established under the Universities and other Tertiary Institutions Act, 2001;
- (h) Bank of Uganda except in exercise of the functions specified in section 4 of the Bank of Uganda Act; and
- (i) any other procuring and disposing entity as may be prescribed by the Minister;

*[definition of “procuring and disposing entity” substituted by section 3(b) of [Act 11 of 2011](#)]*

**“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 asset”** means any property, tangible or intangible, owned by Government or by a procuring and disposing entity, including physical property, shares, proprietary rights and land, except land held by the Uganda Land Commission or a district land board or land which is compulsorily acquired by Government in accordance with the law;

*[definition of “public asset” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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, livestock, assets, land 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;

*[definition of “supplies” amended by section 3(c) of [Act 11 of 2011](#)]*

**“tender”** means “bid”;

**“urgent”** does not include circumstances that—

- (a) should have been foreseen by the procuring and disposing entity;
- (b) are a result of inadequate planning; or
- (c) are a result of delays by or within the procuring and disposing entity;

*[definition of “urgent” inserted by section 3(d) of [Act 11 of 2011](#)]*

**“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.

#### 4A. Procurement procedures under bi-lateral tied loans

- (1) Where a bilateral loan or negotiated grant contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with this Act.
- (2) Notwithstanding subsection (1), where there is a conflict between this Act, regulations made under this Act or guidelines issued by the Authority and a condition imposed by the donor of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds.

*[section 4A inserted by section 4 of [Act 11 of 2011](#)]*

## 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) advise Government, local governments and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary, on their harmonisation;

*[paragraph (b) substituted by section 5 of [Act 11 of 2011](#)]*

- (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

(1) The functions of the Authority are to—

- (a) advise Central Government, Local Governments and other procuring and disposing entities on all public procurement and disposal policies, principles and practices;

*[paragraph (a) amended by section 6(b) of [Act 11 of 2011](#)]*

- (b) monitor and report on the performance of the public procurement and disposal systems in Uganda and advise on desirable changes;
- (c) advise competent authorities on standards for procurement education and training, competence levels and certification requirements;

*[paragraph (c) substituted by section 6(c) of [Act 11 of 2011](#)]*

- (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 a procurement and disposal capacity building strategy for institutional and human resource development;
 

*[paragraph (m) substituted by section 6(d) of [Act 11 of 2011](#)]*
  - (n) where applicable, determine the prices of works, services and supplies which are used in common by two or more procuring and disposing entities and which may be subject to common procurement; and review the prices from time to time;
 

*[paragraph (n) substituted by section 6(e) of [Act 11 of 2011](#)]*
  - (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.
- (2) The Authority may contract a third party to carry out procurement audits, investigations and inspections.
- [subsection (2) added by section 6(f) of [Act 11 of 2011](#)]*
- [section 7 amended by section 6(a) of [Act 11 of 2011](#)]*

## 8. Powers of the Authority

- (1) 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 or any other entity or person, in respect of any procurement or disposal activity, following the procedure in [section 91](#);

*[paragraph (e) substituted by section 7(b) of [Act 11 of 2011](#)]*

- (f) suspend a provider from engaging in any public procurement or disposal process, in accordance with [section 94](#).

*[paragraph (f) added by section 7(c) of [Act 11 of 2011](#)]*

- (2) For the purpose of conducting procurement and disposal audits, or compliance checks and investigations, the Executive Director may in writing—

- (a) authorise an officer of the Authority; or
- (b) appoint any person to be an authorised officer,

to enter any premises of a procuring and disposing entity, at a reasonable time and inspect the premises and to make any inquiries that may be necessary for the collection of information.

*[subsection (2) added by section 7(d) of [Act 11 of 2011](#)]*

- (3) Where an officer of the Authority or an authorised officer is refused entry or is prevented from entering premises, contrary to subsection (2), a magistrate may, on application by the Authority, issue a warrant authorising the Police to enter the premises, using such force as may be reasonably necessary and to conduct the search and obtain the required information.

*[subsection (3) added by section 7(d) of [Act 11 of 2011](#)]*

*[section 8 amended by section 7(a) of [Act 11 of 2011](#)]*

## 9. Action on recommendations of the Authority

- (1) Where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, the Authority may—

- (a) direct the concerned procuring and disposing entity to take such corrective action as may be necessary in the circumstances, to rectify the breach; or
- (b) recommend to a competent authority—
  - (i) to suspend the officer responsible for the breach;
  - (ii) to replace the head of the procurement and disposal unit or the Chairperson of the Contracts Committee, as the case may be;
  - (iii) to discipline the accounting officer;
  - (iv) to transfer temporarily, the procuring and disposing function of a procuring and disposing entity to a third party procurement agency

*[subsection (1) substituted by section 8(a) of [Act 11 of 2011](#)]*

- (2) A competent authority shall respond in writing to the Authority's recommendations under subsection (1)(b) within a period prescribed by regulations made under this Act.

*[subsection (2) amended by section 8(b) of [Act 11 of 2011](#)]*

- (3) Where the competent authority rejects the Authority's recommendations under subsection (1)(b), 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.

*[subsection (3) amended by section 8(b) of [Act 11 of 2011](#)]*

- (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, appointed by the Minister in consultation with Cabinet;
  - (b) the following non-executive members—
    - (i) the Secretary to the Treasury or a person nominated by him or her in writing;
    - (ii) not less than three and not more than five other members appointed by the Minister in consultation with Cabinet; and
  - (c) the Executive Director of the Authority who shall be an *ex officio* member and who shall not vote.
- (2) The chairperson and the non-executive members to be appointed under subsection (1)(b)(ii) shall—
  - (a) be from among persons nominated by—
    - (i) the organisations specified in Schedule 1A, with each organisation nominating two persons;
    - (ii) any other two professional organisations as the Minister may determine, with each organisation nominating two persons; and
  - (b) include one person nominated by the Minister, who shall be a procurement specialist.
- (3) The chairperson and the non-executive members shall be persons of good standing in society and recognised for their high level of professional competence and integrity.



- (4) In making the appointments under this section, the Minister shall take into consideration the principle of equal opportunities.

*[section 11 substituted by section 9 of [Act 11 of 2011](#)]*

## **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.

### 15A. Delegation of functions and powers

- (1) The Board may, by instrument of delegation, delegate to the Chairperson, a member of the Board and the Executive Director, any of the functions or powers of the Board, except—
  - (a) the function of monitoring and reporting on the performance of the public procurement and disposal systems in Uganda and advising on desirable changes;
  - (b) the function of advising competent authorities on the development of training standards, competence levels and certification requirements;
  - (c) the function of preparing, updating and issuing authorised versions of the standardised bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
  - (d) the function of issuing guidelines;
  - (e) the function of instituting—
    - (i) procurement or disposal audits during the preparatory process;
    - (ii) contract audits in the course of the execution of an awarded bid; and
    - (iii) performance audits after the completion of the contract in respect of any procurement or disposal, as may be required;
  - (f) the power to 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; and
  - (g) the power to suspend a provider from engaging in a public procurement or disposal process.
- (2) The terms and conditions of delegation of functions and powers under this section shall be in the instrument of delegation.
- (3) A person who exercises a delegated function or powers shall comply with the terms and conditions of delegation and with any directives or guidelines the Board may in writing communicate.
- (4) A person aggrieved by a decision made under this section may appeal to the Board.

*[section 15A inserted by section 10 of [Act 11 of 2011](#)]*

### 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.

**19A. Financial year**

The financial year of the Authority shall be the same as the financial year of Government.

*[section 19A inserted by section 11 of [Act 11 of 2011](#)]*

**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 and the procurement and disposal activities of the Authority shall be audited by the Auditor General.

*[subsection (2) substituted by section 12 of [Act 11 of 2011](#)]*

**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.

### **23A. Compliance with the Public Finance and Accountability Act, 2003**

The Authority shall at all times comply with the Public Finance and Accountability Act, 2003.

*[section 23A inserted by section 13 of [Act 11 of 2011](#)]*

## **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 subsection (1), the Secretary to the Treasury shall, for each financial year, appoint an agent to carry out the procurement and disposal activities of the Authority, except the micro procurement activities as described in [section 86](#) and the Fourth Schedule to this Act, which shall be carried out by the Authority.

*[subsection (2) substituted by section 14 of [Act 11 of 2011](#)]*

### **26. Accounting Officer**

- (1) 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.
- (2) Notwithstanding subsection (1)(g), an accounting officer shall not sign a contract before a procurement is approved by the Contracts Committee except where due to an emergency situation, the Contracts Committee cannot meet to approve the procurement.  
*[subsection (2) added by section 15(b) of [Act 11 of 2011](#)]*
- (3) Where the accounting officer signs a contract for a procurement to be made for the purposes of an emergency situation under subsection (2), the accounting officer shall—
  - (a) inform the Contracts Committee of the contract within seven working days of signing the contract; and
  - (b) within ten working days after signing the contract, submit in respect of the contract, a report to the Authority.*[subsection (3) added by section 15(b) of [Act 11 of 2011](#)]*
- (4) Prior to the commencement of a procurement process, an accounting officer shall undertake an assessment of the market price of the supplies, services or of the unit costs of the works in respect of which the procurement is to be made by a procuring and disposing entity.  
*[subsection (4) added by section 15(b) of [Act 11 of 2011](#)]*
- (5) Subject to [section 74](#), an accounting officer shall not sign a contract, where the price quoted by the bidder who is evaluated by a Contracts Committee as the best evaluated bidder is higher than the market price established by the accounting officer in accordance with subsection (4).  
*[subsection (5) added by section 15(b) of [Act 11 of 2011](#)]*  
*[section 26 amended by section 15(a) of [Act 11 of 2011](#)]*

## 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.
- (2a) The following officers of a procuring and disposal entity are not eligible for nomination to the Contracts Committee of that procuring and disposal entity—
  - (a) the head of the procurement and disposal unit;
  - (b) the head of the finance department, but not the head of the accounts department, where the positions are held by different officers; and
  - (c) the staff of the department of internal audit.*[subsection (2a) inserted by section 16(a) of [Act 11 of 2011](#)]*
- (2b) Where the Accounting Officer nominates Members of the Contracts Committee, but before the nomination is approved by the Secretary to the Treasury in accordance with subsection (2), there is an emergency situation in respect of which a procurement activity has to be performed, the Accounting Officer shall perform the role of the Contracts Committee.  
*[subsection (2b) inserted by section 16(a) of [Act 11 of 2011](#)]*

- (2c) Where an Accounting Officer performs the role of the Contracts Committee following subsection (2b), the Accounting Officer shall submit a report of the procurement activity carried out, to the Authority and give a copy to the Secretary to the Treasury.
- [subsection (2c) inserted by section 16(a) of [Act 11 of 2011](#)]*
- (2d) The head of the procurement and disposal unit shall attend the meetings of the Contracts Committee to offer clarification on any submissions to be considered by the Contracts Committee.
- [subsection (2d) inserted by section 16(a) of [Act 11 of 2011](#)]*
- (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.
- (7) Where the Secretary to the Treasury is satisfied that it is not practicable to apply subsection (6), the Secretary to the Treasury shall exempt the concerned procuring and disposing entity from the application of the subsection.
- [subsection (7) added by section 16(b) of [Act 11 of 2011](#)]*

## 28. Functions of a Contracts Committee

- (1) 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;
  - (ba) approving negotiation teams;
- [paragraph (ba) inserted by section 17(b) of [Act 11 of 2011](#)]*
- (bb) ensuring that before it is approved, a procurement is in accordance with the procurement plan;
- [paragraph (bb) inserted by section 17(b) of [Act 11 of 2011](#)]*
- (c) approving bidding and contract documents;
  - (ca) the following activities, for the purposes of disposal of the public assets of a procuring and disposing entity—
    - (i) assessing and verifying the public assets identified by a user department or by the Board of Survey for disposal;
    - (ii) causing the assets identified under subparagraph (i) to be valued in accordance with regulations made under this Act; and
    - (iii) approving the reserve price for the public assets to be disposed of;
- [paragraph (ca) inserted by section 17(c) of [Act 11 of 2011](#)]*
- (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.
- (2) The Contracts Committee shall make a report in respect of the activities under subsection(1) (ca) and submit the report to the Accounting Officer for approval.

*[subsection (2) added by section 17(d) of [Act 11 of 2011](#)]*

*[section 28 amended by section 17(a) of [Act 11 of 2011](#)]*

## 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 the evaluation and negotiation committees, for the approval of the Contracts Committee;

*[paragraph (a) substituted by section 18 of [Act 11 of 2011](#)]*

- (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 advice 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 procurement plan based on the approved budget, which shall be submitted to the Procurement and Disposal Unit for implementation when required.

*[subsection (2) substituted by section 19 of [Act 11 of 2011](#)]*

### **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—

- (a) delegate certain procurement and disposal functions of the accounting officer, contracts committee or procurement and disposal unit to—
  - (i) a sub-division of the procuring and disposing entity; or
  - (ii) a member of staff of the procuring and disposing entity; and
- (b) contract out certain procurement and disposal functions of the contracts committee, procurement and disposal unit or user department to—
  - (i) any other procuring and disposing entity; or
  - (ii) a third party procurement or disposal provider,

in accordance with the terms and conditions specified in regulations made under this Act.

*[section 39 substituted by section 20 of [Act 11 of 2011](#)]*

### **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.

### **40A. Accreditation for alternative systems**

- (1) A procuring and disposing entity which is not able to comply with a particular procurement or disposal procedure required under this Act, may apply to the Authority for accreditation of an alternative system.

- (2) The Authority shall permit accreditation of an alternative system—
  - (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with this Act;
  - (b) where market conditions or behaviour do not allow effective application of this Act; and
  - (c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices.
- (3) Notwithstanding subsection (2), the Authority may, on its own initiative, accredit an alternative system for a procuring and disposing entity which is not able to comply with a procurement or disposal procedure required under this Act.
- (4) The Authority shall accredit an alternative system where a procuring and disposing entity—
  - (a) operates in a specialised field or discipline which requires alternative or additional regulations;
  - (b) has a status that requires alternative or additional regulations;
  - (c) is required to use an alternative system to comply with the provisions of international or any other agreements; or
  - (d) has other valid reasons which necessitate the use of an alternative system.
- (5) An application for accreditation shall be made using the procedure provided in regulations made under this Act.
- (6) There shall be an alternative system for the procurement of medicines and other medical supplies.
- (7) The Minister shall in consultation with the Minister responsible for health and the Authority, make regulations for the procurement of medicines and other medical supplies.
- (8) Without prejudice to the general effect of subsection (7), the regulations made under this section shall—
  - (a) provide for the special nature of procurement of medicines and medical supplies;
  - (b) provide for the specific attributes of medical supplies;
  - (c) define the medical supplies which are subject to this section;
  - (d) take into consideration developments, if any, in the procurement, storage and distribution of medicines and medical supplies.

*[section 40A inserted by section 21 of [Act 11 of 2011](#)]*

#### **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.
- (1a) The records to be maintained by a procuring and disposing entity under subsection (1) shall include a summary report of the procurement procedure used in respect of each contract, which shall indicate—
  - (a) a description of the objectives of the respective procurement;
  - (b) a list of the participating bidders;
  - (c) the bid prices;

- (d) the bid evaluation criteria;
- (e) a summary of the evaluation and comparison of bids, including the grounds for rejecting any of the bids;
- (f) where applicable, a summary of the proceedings of the administrative reviews including the decisions taken;
- (g) a statement of the grounds for cancellation of procurement proceedings; and
- (h) any other information as may be prescribed by regulations.

*[subsection (1a) inserted by section 22(a) of [Act 11 of 2011](#)]*

- (2) The records of the procurement and disposal process shall be open to inspection by the Authority and a competent authority during working hours.

*[subsection (2) amended by section 22(b) of [Act 11 of 2011](#)]*

## **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.
- (5) The Defence and National Security Organs shall appoint Contracts Committees to handle the procurement and disposal of their classified items.

*[subsection (5) added by section 23 of [Act 11 of 2011](#)]*

- (6) The members of the Contracts Committees of the Defence and National Security Organs shall be nominated by the respective accounting officers and approved by the Secretary to the Treasury.

*[subsection (6) added by section 23 of [Act 11 of 2011](#)]*

## **Part IV – Basic public procurement and disposal principles**

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

All public procurement and disposal shall be conducted in accordance with the following principles—

- (a) non-discrimination;
- (b) transparency, accountability and fairness;
- (c) maximization of competition and ensuring value for money;
- (d) confidentiality;
- (e) economy and efficiency; and
- (f) promotion of ethics.

*[section 43 substituted by section 24 of [Act 11 of 2011](#)]*

**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**

- (1) A procuring and disposing entity shall, upon written request by any person, disclose information regarding any procurement or disposal process.
- (2) Notwithstanding subsection (1)—
  - (a) a procuring and disposing entity shall not disclose to a bidder or to any other person who is not involved in the preparation of the solicitation documents, the evaluation process or the award decision, any information relating to—
    - (i) solicitation documents, before the solicitation documents are officially issued;
    - (ii) the examination, clarification, evaluation and comparison of bids before the best evaluated bidder notice is displayed on the procurement and disposal notice board of the procuring and disposing entity; and
  - (b) information shall not be disclosed where—
    - (i) the disclosure is likely to prejudice the security or sovereignty of the State;
    - (ii) the disclosure interferes with the right to the privacy of any person;
    - (iii) the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest; or
    - (iv) the information contains—
      - (A) proprietary information including information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaty to which Uganda is a party;
      - (B) scientific or technical information, the disclosure of which is likely to cause harm to the interests of the proper functioning of any procuring and disposal entity; or
      - (C) information supplied in confidence by a bidder, the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.

*[section 47 substituted by section 25 of [Act 11 of 2011](#)]*

**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) Subject to the economic and social policies of Government and the international obligations of Government, preference shall be given to domestically manufactured goods and Ugandan contractors and Ugandan consultants, in order to promote their development, by giving them a competitive advantage when competing for public procurement contracts, with foreign manufactured goods, foreign contractors or foreign consultants.
- (2) To promote particular sectors within specified geographic areas, specified public procurement contracts or parts of a contract shall be subject to reservation schemes.

*[section 50 substituted by section 26 of [Act 11 of 2011](#)]*

**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. \*\*\***

*[section 54 repealed by section 27 of [Act 11 of 2011](#)]*

## **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) *[subsection (1) repealed by section 28 of [Act 11 of 2011](#)]*
- (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

- (1) In accordance with the budget preparation procedures issued by the Minister, a procuring and disposing entity shall in each financial year, by a date determined by the Secretary to the Treasury, prepare and submit to the Secretary to the Treasury and to the Authority, its annual procurement plan for the following financial year.
- (2) A procuring and disposing entity shall plan its procurement and disposal in a rational manner and in particular shall—
  - (a) aggregate its requirements where possible, both within the procuring and disposal entity and between procuring and disposal entities, to obtain value for money and to reduce procurement costs;
  - (b) 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;
  - (c) not split a procurement or a disposal to defeat the use of the appropriate procurement or disposal method;
  - (d) integrate its procurement budget with its expenditure programme; and
  - (e) integrate the disposal of assets, both listed and unlisted, in its assets register as well as in its income and expenditure budget.
- (3) The Authority shall issue guidelines in respect of the format of the procurement plan to be prepared under this section.
- (4) A procuring and disposing entity shall, on a quarterly basis and in any other case, wherever necessary, review and update its procurement plan.
- (5) A procuring and disposing entity shall notify the Secretary to the Treasury and the Authority of any changes made to its procurement plan and submit the updated and approved plan to the Authority.
- (6) A procuring and disposing entity shall display its procurement plan and the updated and approved plan on its procurement and disposal notice board or using any other method as may be prescribed, for not less than twenty working days.
- (7) Procurement shall not be carried out outside the procurement plan except in cases of emergency situations.

*[section 58 substituted by section 29 of [Act 11 of 2011](#)]*



**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.

**59A. Preference schemes**

- (1) Preference schemes shall be applied—
  - (a) in respect of goods, works and non-consultancy services, where the open domestic or open international bidding methods are used, with a specified margin of preference being added during the financial comparison stage of the evaluation process to the evaluated price of the bid which does not qualify for preference; and
  - (b) in respect of consultancy services, for the quality and cost based selection method and the least cost selection method, where proposals are invited from both national and foreign consultants, with a specified margin of preference being added to the evaluated price of the foreign proposal, during the financial comparison stage of the evaluation process.
- (2) The margin of preference specified in subsection (1) shall—
  - (a) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal;
  - (b) in respect of goods that qualify as domestically manufactured goods, be related to the percentage of the labour, raw material and components of the goods that originate from Uganda; and
  - (c) in respect of works and services—
    - (i) be proportional to the percentage of the share capital of the contractor or consultant, where the consultant is a firm owned by Government or by Ugandans; or
    - (ii) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal, if the consultant is a Ugandan citizen.
- (3) A procuring and disposing entity shall when procuring goods, works or services under this section, grant a margin of preference—
  - (a) of fifteen percent, in respect of goods; and
  - (b) of seven percent, in respect of works or services.
- (4) Goods qualify for preference, as domestically manufactured goods, under subsection (2) (b) where—
  - (a) where the labour or value addition to the good is more than thirty percent of the ex-works of the goods; and
  - (b) the production facility in which the goods are to be manufactured, assembled or processed is in Uganda and is engaged in the manufacturing, assembling or processing of the goods at the time of submission of the bid.

- (5) A contractor and a consultant qualify for preference as a Ugandan contractor or a Ugandan consultant under subsection (2) (c) where—
  - (a) the contractor or consultant is incorporated or registered in Uganda;
  - (b) the contractor or consultant if an individual, is a Ugandan citizen;
  - (c) the contractor or consultant if a company registered in Uganda, more than fifty percent of the capital of the contractor or consultant is owned by Ugandan citizens; and
  - (d) the contractor or consultant if a legal entity, more than fifty percent of the capital of the contractor or consultant is owned by the Government or by a procuring and disposing entity.
- (6) A contractor or consultant who qualifies as such under section (5) (d) shall be—
  - (a) legally and financially autonomous;
  - (b) established as a commercial venture; and
  - (c) authorised by a competent authority or a professional body to operate as a contractor or to perform services as a consultant.
- (7) A procuring and disposing entity shall, when procuring works or services under a joint venture or under an association between a Ugandan contractor and a foreign partner or between a Ugandan consultant and a foreign partner, grant a margin of preference of four percent for the works or services.
- (8) A joint venture or an association between a Ugandan contractor and a foreign partner or between a Ugandan consultant and a foreign partner shall be eligible for preference where—
  - (a) the joint venture is registered in Uganda;
  - (b) the Ugandan contractor or Ugandan consultant in the joint venture qualifies for preference under subsection (5); or
  - (c) the Ugandan contractor or Ugandan consultant demonstrates a beneficiary interest of more than fifty percent in the joint venture as demonstrated by the profit and loss sharing provisions of the joint venture agreement.

*[section 59A inserted by section 30 of [Act 11 of 2011](#)]*

## **59B. Reservation schemes**

- (1) In accordance with [section 50](#) (2), the Authority shall, in consultation with a competent authority, and the relevant stakeholders, specify the public procurement contracts to be subject to a reservation scheme and shall designate the particular sectors, within a specified geographical area, that are eligible to participate in the reservation scheme.
- (2) A public procurement contract shall be subject to a reservation scheme in order to—
  - (a) promote the use of local expertise and materials;
  - (b) promote the participation of local communities or local organisations; or
  - (c) apply specific technologies.
- (3) A procuring and disposing entity that intends to make a procurement under a reservation scheme shall—
  - (a) apply to the Authority for permission to use alternative procurement procedures and documents and shall in the application indicate the contract packages, specifications and contracting processes to be included in the bidding documents; and

- (b) deal with only the providers that are eligible to participate in a reservation scheme, in accordance with this section.
- (4) The procurement procedures and documents and the contract packages, specifications and contracting processes to be used under subsection (3) shall be in accordance with the basic procurement principles prescribed under Part IV of this Act.

*[section 59B inserted by section 31 of [Act 11 of 2011](#)]*

## **60. Statements of requirements**

- (1) A statement of requirements may be in the form of—
  - (a) specifications;
  - (b) terms of reference;
  - (c) scope of works;
  - (d) drawings;
  - (e) bills of quantities; or
  - (f) an equivalent of any of the items specified in this subsection, as may be appropriate.
- (2) A statement of requirements shall give a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.

*[section 60 substituted by section 32 of [Act 11 of 2011](#)]*

## **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. Modification and withdrawal of bids**

A bidder may modify or withdraw his or her bid at any time before the deadline for bid submission, using the method prescribed by regulations made under this Act.

*[section 68 substituted by section 33 of [Act 11 of 2011](#)]*

**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.
- (4) A procuring and disposing entity shall ensure that the evaluation of bids is done expeditiously in accordance with regulations made under this Act.

*[subsection (4) added by section 34 of [Act 11 of 2011](#)]*

## 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. Prohibition of negotiations

- (1) Negotiations shall not be carried out between a procuring and disposing entity and a contractor, in respect of the proposal of the contractor, except where—
  - (a) the competitive procurement method was used and only one bid was received in response to the call for bids;
  - (b) the direct procurement method was used; or
  - (c) the procurement is for consultancy services.
- (2) Negotiations under subsection (1) shall only be carried out where the best evaluated bid or proposal exceeds the budget of the procuring and disposing entity.
- (3) For the purposes of the negotiations under this section, the procuring and disposing entity shall investigate why the cost of the procurement exceeds the budget of the procuring and disposing entity and may—
  - (a) cancel the procurement process and request for new proposals; or
  - (b) negotiate with the best evaluated bidder in order to obtain a reduction of the scope or the quantities of the procurement.

*[section 74 substituted by section 35 of [Act 11 of 2011](#)]*

## 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 method

*[heading substituted by section 36(a) of [Act 11 of 2011](#)]*

- (1) A procuring and disposal entity shall in respect of—
  - (a) the procurement of goods, works and non consulting services, use any of the methods specified in sections [80](#), [81](#), [82](#), [83](#), [84](#), [85](#) and [86](#) and the conditions for their use specified in the Fourth Schedule to this Act; and
  - (b) the procurement of consulting services, use [section 88A](#) and the conditions for procuring consultancy services specified in the Fourth Schedule to this Act.

*[subsection (1) substituted by section 36(b) of [Act 11 of 2011](#)]*

- (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 method which is open to participation on equal terms by all providers through advertisement of the procurement 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.

*[section 80 amended by section 37 of [Act 11 of 2011](#)]*

**81. Open international bidding**

- (1) Open international bidding is the procurement method which is open to participation on equal terms by all providers, through advertisement of the procurement 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.

*[section 81 amended by section 37 of [Act 11 of 2011](#)]*

**82. Restricted domestic bidding**

- (1) Restricted domestic bidding is the procurement 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.

*[section 82 amended by section 37 of [Act 11 of 2011](#)]*

**83. Restricted international bidding**

- (1) Restricted international bidding is the procurement 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.

*[section 83 amended by section 37 of [Act 11 of 2011](#)]*

**84. Quotation method**

*[heading substituted by section 38(a) of [Act 11 of 2011](#)]*

- (1) The quotation method is a simplified procurement method which compares price quotations obtained from a number of providers.

*[subsection (1) substituted by section 38(b) of [Act 11 of 2011](#)]*

- (2) The Quotation 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.

*[subsection (2) amended by section 38(c) of [Act 11 of 2011](#)]*

- (3) The quotation method shall be used in works and supplies.

*[subsection (3) substituted by section 38(d) of [Act 11 of 2011](#)]*

## **85. Direct procurement**

*[heading amended by section 39 of [Act 11 of 2011](#)]*

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

*[section 85 amended by section 39 of [Act 11 of 2011](#)]*

## **86. Micro-procurement**

*[heading amended by section 40(a) of [Act 11 of 2011](#)]*

- (1) Micro procurement is a procurement method which shall be used for very low value procurement requirements.

*[subsection (1) substituted by section 40(b) of [Act 11 of 2011](#)]*

- (2) Micro procurement shall be used to achieve efficient and timely procurement where the value does not justify a competitive procedure.

*[subsection (2) amended by section 40(c) of [Act 11 of 2011](#)]*

## **87. Methods of disposal of public assets**

*[heading substituted by section 41(a) of [Act 11 of 2011](#)]*

- (1) Public assets may be disposed of using any of the following methods—
  - (a) public auction;
  - (b) public bidding;
  - (c) direct negotiations;
  - (d) sale to public officers;
  - (e) destruction of the assets;
  - (f) conversion or classification of assets into another form for disposal by sale;
  - (g) trade-in;
  - (h) transfer to another procuring and disposing entity; and
  - (i) donation.

*[subsection (1) substituted by section 41(b) of [Act 11 of 2011](#)]*

- (1a) Where a public asset is to be donated the procuring and disposing entity shall take into account the following factors—
  - (a) national security and public interest issues;
  - (b) health and safety issues;
  - (c) legal and human rights issues;
  - (d) environmental considerations; and



- (e) the asset is obsolete and of minimal value.

*[subsection (1a) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (1b) Donation shall only be used where the other methods of disposal cannot be used by the procuring and disposing entity.

*[subsection (1b) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (1c) Notwithstanding subsection (1), a procuring and disposing entity shall not dispose of any strategic asset, without the prior approval of the Minister.

*[subsection (1c) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (1d) Subsection (1c) shall not apply to the disposal of land by the Uganda Land Commission or by a district land board.

*[subsection (1d) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (1e) For the avoidance of doubt, subsection (1c) applies to the disposal of land held by the Uganda Land Commission on behalf of a procuring and disposing entity.

*[subsection (1e) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (1f) In this section “strategic asset” means land, a building, a ship, shares and any other asset as may be prescribed, belonging to the Government, situated within or outside Uganda.

*[subsection (1f) inserted by section 41(c) of [Act 11 of 2011](#)]*

- (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.

### **88A. Procurement of consultancy services**

- (1) A procuring and disposing entity shall procure a consultancy service by publishing a notice, as specified in the Fourth Schedule to this Act, inviting expression of interest for a required assignment.
- (2) The procuring and disposing entity shall, from the expressions received in respect of the notice under subsection (1), prepare a shortlist of consultants, who have the capacity to perform the required assignment.
- (3) Notwithstanding subsection (1), a procuring and disposing entity may procure consultancy services using a short list of consultants developed—
  - (a) from the register of providers of the Authority;
  - (b) on the recommendation of a competent authority;
  - (c) using the pre-qualified list of the procuring and disposing entity; or
  - (d) using the pre-qualified list of another procuring and disposing entity.
- (4) A procuring and disposing entity shall procure consultancy services using subsection (3) where—
  - (a) the required consultancy services can only be provided by a limited number of consultants;
  - (b) the time and cost required to examine and evaluate a large number of expressions of interest is not proportionate to the value of the assignment to be undertaken; or
  - (c) there is an emergency situation.

- (5) The selection methods to be used for the selection of consultants shall be prescribed by regulations made under this Act shall include—
- (a) quality and cost based selection method;
  - (b) quality based selection method;
  - (c) fixed budget selection method;
  - (d) least cost based selection method; and
  - (e) the consultants' qualifications and selection method.
- (6) The procuring and disposing entity may conduct negotiations with the selected consultants but negotiations shall not be held with several consultants simultaneously.
- (7) Notwithstanding this section, where exceptional circumstances prevent the use of competitive bidding and where any of the conditions for using the direct procurement method as specified in the Fourth Schedule to this Act are satisfied, a procuring and disposing entity may source a consultant who has the capacity to perform the required assignment.

*[section 88A added by section 42 of [Act 11 of 2011](#)]*

## **Part VIA – Types of contract**

*[Part VIA inserted by section 43 of [Act 11 of 2011](#)]*

### **88B. Choice of contract**

A procuring and disposing entity shall in respect of a procurement activity, use any of the contract types specified in this Part or a combination of any of them, using procedures prescribed by regulations made under this Act.

*[section 88B inserted by section 43 of [Act 11 of 2011](#)]*

### **88C. Lump sum contract**

A lump sum contract shall be used where the content, duration and outputs of the procurement are well defined.

*[section 88C inserted by section 43 of [Act 11 of 2011](#)]*

### **88D. Time-based contract**

A time-based contract shall be used where the scope and duration of the procurement requirement is difficult to define.

*[section 88D inserted by section 43 of [Act 11 of 2011](#)]*

### **88E. Admeasurement contract**

An admeasurement contract, including a re-measurement, unit rate and bill of quantities contract may be used for works—

- (a) which are not well defined;
- (b) which are likely to change in quantity or specifications; or
- (c) where difficult or unforeseen site conditions, such as hidden foundation problems, are likely.

*[section 88E inserted by section 43 of [Act 11 of 2011](#)]*

**88F. Framework contract**

A framework contract, is a schedule of rates or an indefinite delivery contract and shall be used—

- (a) where a requirement is needed “on call” but where the quantity and timing of the requirement cannot be defined in advance; or
- (b) to reduce procurement costs or lead times for a requirement which is needed repeatedly or continuously over a period of time by having them available on a “call off” basis.

*[section 88F inserted by section 43 of [Act 11 of 2011](#)]*

**88G. Percentage based contract**

A percentage based contract shall be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the subject of the contract.

*[section 88G inserted by section 43 of [Act 11 of 2011](#)]*

**88H. Cost reimbursable contract**

A cost reimbursable contract shall be used—

- (a) for emergency work where there is insufficient time to calculate fully the costs involved;
- (b) for high risk works, where it is more economical for the procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where the provider does not accept the risk.

*[section 88H inserted by section 43 of [Act 11 of 2011](#)]*

**88I. Target price contract**

A target price contract may be used instead of a cost reimbursable contract where a target price can be agreed and cost savings may be achieved by offering an incentive payment to the provider for any cost savings below the target price.

*[section 88I inserted by section 43 of [Act 11 of 2011](#)]*

**88J. Retainer contract**

A retainer contract shall be used to retain a provider to provide services over a prescribed period of time, without defining the level and actual amounts of services required.

*[section 88J inserted by section 43 of [Act 11 of 2011](#)]*

**88K. Success fee contract**

Success fee contract shall be used to link the fees of a provider to an achieved objective to provide an incentive to the successful completion of a particular task, event or action.

*[section 88K inserted by section 43 of [Act 11 of 2011](#)]*

**88L. Other types of contracts and contracting arrangements**

- (1) For any other type of contract or contracting arrangement, other than those specified in sections [88C](#) to [88K](#), including acquisition by rental, lease, hire purchase, licence, tenancy, franchise or by an arrangement that involves the mobilisation of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects or concessioning,

the procuring and disposing entity shall seek guidance from the Authority on the applicable procurement procedures and documents.

- (2) In this section “an arrangement that involves the mobilisation of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects or concessioning” includes financing by Build Own Operate (BOO), Build Own Transfer (BOT), Build Own Operate Transfer (BOOT) and Public Private Partnership (PPP).

*[section 88L inserted by section 43 of [Act 11 of 2011](#)]*

## Part VII – Administrative review

### 89. Administrative review

- (1) 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.
- (2) A procuring and disposing entity shall provide a bidder who seeks administrative review with—
- (a) a summary of the evaluation process;
  - (b) a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and
  - (c) the reasons for rejecting the concerned bids.

*[subsection (2) added by section 44(b) of [Act 11 of 2011](#)]*

- (3) The information provided to a bidder under subsection (2) shall be used only for administrative review purposes.

*[subsection (3) added by section 44(b) of [Act 11 of 2011](#)]*

*[section 89 amended by section 44(a) of [Act 11 of 2011](#)]*

### 90. Review by the Accounting Officer

- (1) A bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the accounting officer of the procuring and disposing entity.

*[subsection (1) substituted by section 45(a) of [Act 11 of 2011](#)]*

- (1a) A complaint by a bidder against a procuring and disposing entity shall—
- (a) be in writing and shall be submitted to the accounting officer of the procuring and disposing entity with the prescribed fee, and a copy shall be given to the Authority;
  - (b) be made within ten working days from the date the bidder, first becomes aware or ought to have become aware, of the circumstances giving rise to the complaint;

*[subsection (1a) inserted by section 45(b) of [Act 11 of 2011](#)]*

- (2) On receiving the complaint and the prescribed fee, the accounting officer shall—
- (a) immediately suspend the procurement proceedings; and
  - (b) make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her decisions and submit a copy of the decision to the Authority.

*[subsection (2) substituted by section 45(c) of [Act 11 of 2011](#)]*

## (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.

- (4) Upon receipt of a copy of the decision of the accounting officer specified in subsection (2) (b), the Authority shall within fifteen working days, review the decision and make a recommendation in writing to the procuring and disposing entity, indicating the corrective measures to be taken, if any, and giving reasons for the recommendation.

*[subsection (4) added by section 45(d) of [Act 11 of 2011](#)]*

- (5) Where the Authority fails to make a recommendation within the time prescribed under subsection (4), the accounting officer may implement the corrective measures indicated in the decision made under subsection (2) (b).

*[subsection (5) added by section 45(d) of [Act 11 of 2011](#)]*

- (6) The bidder who makes a complaint under this section has a right to proceed under Part VIIA of this Act, where the Authority fails to make a recommendation as required under subsection (4).

*[subsection (6) added by section 45(d) of [Act 11 of 2011](#)]*

- (7) Subject to Part VIIA of this Act, a contract shall not be entered into by an accounting officer with a provider—

- (a) during the period of administrative review;
- (b) before the Authority makes a final decision in respect of a complaint lodged with the Authority under subsection (3) or before a decision is made in accordance with Part VIIA of this Act.

*[subsection (7) added by section 45(d) of [Act 11 of 2011](#)]*

## 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.
- (5) A bidder who is not satisfied with the decision of the Authority given under subsection (4), may appeal against the decision, in accordance with Part VIIA of this Act.

*[subsection (5) added by section 46 of [Act 11 of 2011](#)]*

## Part VIIA – Review of decisions of the authority

*[Part VIIA inserted by section 47 of [Act 11 of 2011](#)]*

### 91A. Interpretation

In this Part, unless the context otherwise requires—

“proceedings” means review by the Tribunal of a decision made under Part VII of this Act and includes any application before the Tribunal;

“Tribunal” means the Public Procurement and Disposal of Public Assets Appeals Tribunal.

*[section 91A inserted by section 47 of [Act 11 of 2011](#)]*

## Establishment of the Public Procurement and Disposal of Public Assets Appeals Tribunal

### 91B. Public Procurement and Disposal of Public Assets Appeals Tribunal

- (1) There is established the Public Procurement and Disposal of Public Assets Appeals Tribunal which shall consist of a chairman and four other members appointed in accordance with this Part.
- (2) A person to be appointed chairperson of the Tribunal shall be a person qualified to be a judge of the High Court.
- (3) A person to be appointed a member of the Tribunal shall be a person with knowledge and experience in public procurement, finance, commerce, business, administration or law.
- (4) A person does not qualify for appointment as a member of the Tribunal unless the person—
  - (a) is of high moral character and proven integrity;
  - (b) has not been convicted of an offence of moral integrity;
  - (c) is of sound mind; and
  - (d) has not been declared bankrupt.
- (5) The chairperson shall be appointed by the Minister, in consultation with the chairperson of the Judicial Service Commission.
- (6) The members of the Tribunal shall be appointed by the Minister from the private sector.
- (7) The members of the Tribunal shall hold office on such terms and conditions as the Minister may prescribe, including terms and conditions relating to remuneration and allowances.

*[section 91B inserted by section 47 of [Act 11 of 2011](#)]*

### 91C. Tenure of office of members of Tribunal

- (1) The members of the Tribunal shall hold office for three years and are eligible for re-appointment for one further term.
- (2) Where necessary, the Minister may extend the tenure of a member for a period not exceeding six months from the date of expiry of the period of appointment.
- (3) A member of the Tribunal may be removed from office by the Minister for—
  - (a) inability to perform the functions of his or her office arising from infirmity of body or mind;

- (b) misbehaviour or misconduct;
  - (c) incompetence;
  - (d) failure to attend at least three consecutive meetings of the Tribunal without reasonable grounds;
  - (e) corruption;
  - (f) conviction of an offence involving moral turpitude; or
  - (g) being adjudged bankrupt by a court of law.
- (4) Any member of the Tribunal may resign his or her office upon giving a notice of one month, in writing to the Minister.

*[section 91C inserted by section 47 of [Act 11 of 2011](#)]*

## Management of the Tribunal

### 91D. Arrangement of business

- (1) Subject to this Part, the Chairperson is responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal and shall for that purpose, give directions as to—
- (a) the arrangement of the business of the tribunal;
  - (b) the place at which the Tribunal may sit;
  - (c) the procedure of the Tribunal generally; and
  - (d) the procedure of the Tribunal at a particular place.
- (2) The times and places of the hearings of the Tribunal shall be determined by the chairperson with a view to securing a reasonable opportunity for the parties to the proceedings to appear before the Tribunal with as little inconvenience and expense as possible.
- (3) In carrying out its lawful writs, processes, orders, rules, decrees or commands, the Tribunal shall have the assistance available to a court in Uganda.

*[section 91D inserted by section 47 of [Act 11 of 2011](#)]*

### 91E. Constitution of the Tribunal

- (1) The Tribunal shall be constituted for proceedings by three members.
- (2) At a hearing of proceedings before the Tribunal at which the Tribunal is constituted by three members—
- (a) if the chairperson is present, he or she shall preside; or
  - (b) in any other case, a member elected by the members present from among their number shall preside.
- (3) Where one of the members of the Tribunal ceases to be a member for the purpose of the proceedings, or ceases to be available for the purpose of the proceedings, before the matter to which the proceedings relates is determined—
- (a) if the parties to the proceedings agree, then the proceedings shall be completed by the Tribunal constituted by the remaining two members of the Tribunal; or

- (b) if the parties do not agree, the proceedings shall be adjourned and another member shall replace the member who ceased to be a member for the purpose of the proceedings and the proceedings shall then be reheard.
- (4) Where as a result of subsection (3) (a), the members do not agree on the decision to be made, the chairperson shall assign another member to the Tribunal for the purpose of the proceedings, and the proceedings shall then be reheard.
- (5) Where the proceedings is reheard by the Tribunal, the Tribunal may, for the purpose of the proceedings, have regard to the record of the proceedings before the Tribunal as previously constituted, including a record of any evidence taken in the proceedings.

*[section 91E inserted by section 47 of [Act 11 of 2011](#)]*

#### **91F. Disclosure of interest**

- (1) Where a member of the Tribunal has any pecuniary or other interest, that may conflict with the proper performance of the functions of the member, the member shall disclose the interest to the parties to the proceedings.
- (2) Where a member discloses an interest under subsection (1), the member shall not take part in the proceedings or exercise any powers in relation to the review by the Tribunal of the decision to which the proceedings relate, except where the parties to the proceedings give their consent.

*[section 91F inserted by section 47 of [Act 11 of 2011](#)]*

#### **91G. Registrar of the Tribunal**

- (1) The Tribunal shall have a registrar who shall be a person qualified to be a registrar of the High Court.
- (2) The registrar shall be in charge of the registry of the Tribunal and shall be responsible for keeping records and the seal, conducting correspondence and performing such other functions necessary for the purposes of assisting the chairperson under [section 91D](#).

*[section 91G inserted by section 47 of [Act 11 of 2011](#)]*

#### **91H. Official seal**

- (1) The Tribunal shall have a seal which shall be judicially noticed.
- (2) The seal of the Tribunal shall be affixed by or with the authority of the Tribunal, to such documents as are required by a direction of the chairperson to be sealed with the seal of the Tribunal.

*[section 91H inserted by section 47 of [Act 11 of 2011](#)]*

### **Review of decisions of the Authority by the Tribunal**

#### **91I. Tribunal to review decisions by the Authority**

- (1) A bidder who is aggrieved by a decision made by the Authority under [section 91](#) (4), may make an application to the Tribunal for a review of the decision of the Authority.
- (2) A bidder who alleges that the Authority has a conflict of interest in respect of a matter before the Authority and who believes that the matter cannot be handled impartially by the Authority, may apply to the Tribunal for a determination of the allegation and where necessary, of the matter that was before the Authority.



- (3) In addition to subsections (1) and (2), the Tribunal has power to review a decision of the Authority where an application is properly made to the Tribunal by a procuring and disposing entity or by any person whose rights are adversely affected by a decision made by the Authority.
- (4) For the avoidance of doubt, the following matters shall not be subject to review by the Tribunal—
  - (a) a decision by a procuring and disposing entity to reject any or all bids prior to award of a contract under [Section 75](#);
  - (b) a decision of a procuring and disposing entity to discontinue a procurement process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and
  - (c) a decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.
- (5) In reviewing a decision before it, the Tribunal may—
  - (a) suspend any action by the concerned procuring and disposing entity, until the Tribunal makes a decision on the matter;
  - (b) direct the concerned procuring and disposing entity, with respect to anything to be done or redone in the procurement or disposal process;
  - (c) order that the procurement or disposal process be terminated; and
  - (d) require the payment of compensation for any costs, reasonably incurred by the bidder who is a party to the proceedings, as a result of an unlawful act or decision of the concerned procuring and disposing entity or of the Authority.
- (6) For the purposes of reviewing a decision of the Authority, the Tribunal shall make a decision in writing and give reasons for the decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based and may—
  - (a) affirm the decision of the Authority;
  - (b) vary the decision of the Authority; or
  - (c) set aside the decision of the Authority, and
    - (i) make a decision in substitution for the decision so set aside; or
    - (ii) refer the matter to the Authority for reconsideration in accordance with any directions or recommendations of the Tribunal.
- (7) The Tribunal shall issue a decision within a period of not more than ten working days after receiving an application for review.

*[section 91I inserted by section 47 of [Act 11 of 2011](#)]*

#### **91J. Matters referred to Tribunal by Authority**

- (1) Where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, the Authority may in addition to the actions provided under [section 9](#) of the principal Act, refer the matter to the Tribunal.
- (2) Where the Tribunal establishes that a bidder is involved in a fraudulent practice, the Tribunal shall direct the procuring and disposing entity to cancel the contract of the bidder.
- (3) The Authority may also refer a matter to the Tribunal, where as a result of an investigation or a procurement or disposal contract audit or a performance audit carried out in accordance with [section 8](#) (c) of the principal Act, the Authority establishes that the continuation of a procurement or disposal proceeding may result in an incorrect contract award decision or a worsening of any damage already done to the procurement or disposal proceeding.

- (4) Where the Tribunal determines that that the continuation of a procurement or disposal proceeding may result in an incorrect contract award decision or a worsening of any damage already done to the procurement or disposal proceeding, the Tribunal shall suspend the procurement or disposal proceeding.

*[section 91J inserted by section 47 of [Act 11 of 2011](#)]*

#### **91K. Powers of the Tribunal**

- (1) In performing its functions, the Tribunal shall have power to—
- (a) take evidence on oath;
  - (b) proceed in the absence of a party who has had reasonable notice of the proceedings;
  - (c) adjourn the hearing of the proceedings;
  - (d) make an order as to costs against any party, which shall be enforceable like an order of the High Court; and
  - (e) request to examine a witness who is outside Uganda.
- (2) For the purpose of the hearing of proceedings before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it—
- (a) to give evidence; or
  - (b) to produce books, documents or things mentioned in the summons, that are in the possession, custody or control of the person named in the summons.
- (3) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered to make a full and true reply to the interrogations.

*[section 91K inserted by section 47 of [Act 11 of 2011](#)]*

#### **91L. Application for review by the Tribunal**

- (1) An application to the Tribunal for review of a decision of the Authority made under [section 91I](#) shall—
- (a) be in writing in the prescribed form;
  - (b) include a statement of the reasons for the application;
  - (c) be lodged with the Tribunal within ten working days of being served by the Authority with its decision.
- (2) Where the Authority refers a matter to the Tribunal under [section 91I](#), the Authority shall—
- (a) do so within 10 working days of determining the fact in [section 91I](#) (1) and (3); and
  - (b) submit to the Tribunal a statement of the justification for the cancellation of the contract or suspension of the proceedings.

*[section 91L inserted by section 47 of [Act 11 of 2011](#)]*

#### **91M. Appeals to the High Court from decisions of the Tribunal**

- (1) A party to proceedings before the Tribunal who is aggrieved by the decisions of the Tribunal, may, within thirty days after being notified of the decision of the Tribunal or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court.

- (2) The party who intends to appeal against a decision of the Tribunal shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.

*[section 91M inserted by section 47 of [Act 11 of 2011](#)]*

#### **91N. Operation and implementation of a decision subject to review or appeal**

Where an application for review of a decision is lodged with the Tribunal or the Authority refers a matter to the Tribunal under [section 91J](#) or an appeal against a decision of the Tribunal is lodged with the High Court, the Tribunal or the High Court, as the case may be, may make an order staying or otherwise affecting the operation or implementation of the decision under review or appeal, or a part of the decision, as the Tribunal or the High Court, considers appropriate for the purposes of securing the effectiveness of the proceedings and for determining the application or appeal.

*[section 91N inserted by section 47 of [Act 11 of 2011](#)]*

### **Finances of the Tribunal**

#### **91O. Funds of the Tribunal**

- (1) The funds of the Tribunal shall consist of—
- (a) monies appropriated by Parliament for the functions of the Tribunal;
  - (b) fees and fines levied by the Tribunal to be retained as appropriation in aid;
  - (c) grants received by the Tribunal with the approval of the Minister; and
  - (d) any other money as may with the approval of the Minister, be received by or made available to the Tribunal for the purpose of performing its functions.
- (2) The funds of the Tribunal shall be administered and controlled by the registrar.

*[section 91O inserted by section 47 of [Act 11 of 2011](#)]*

#### **91P. Financial year**

The financial year of the Tribunal shall be the same as the financial year of Government.

*[section 91P inserted by section 47 of [Act 11 of 2011](#)]*

#### **91Q. Accounts and audit**

The Tribunal shall keep proper books of accounts which shall be subject to audit by the Auditor General.

*[section 91Q inserted by section 47 of [Act 11 of 2011](#)]*

#### **91R. Annual report**

The Tribunal shall within three months after the end of each financial year, submit to the Minister a report on the activities of the Tribunal in respect of the financial year, containing such information as the Minister may require.

*[section 91R inserted by section 47 of [Act 11 of 2011](#)]*

#### **91S. Compliance with the Public Finance and Accountability Act, 2003**

The Tribunal shall at all times comply with the Public Finance and Accountability Act, 2003.

*[section 91S inserted by section 47 of [Act 11 of 2011](#)]*

**91T. Regulations under this Part**

The Minister may, on the recommendation of the Tribunal, issue regulations for the better carrying out of the provisions of this Part.

*[section 91T inserted by section 47 of [Act 11 of 2011](#)]*

**Part VIII – Miscellaneous****91U. Limitation on contracts with members of procuring and disposing entities**

- (1) Except where expressly allowed by regulations, a procuring and disposing entity shall not enter into contract with—
  - (a) a member of the Contracts Committee or of the evaluation committee, an employee of the procuring and disposal entity or a member of the Board of Survey;
  - (b) a person appointed to politically or administratively control the procuring and disposing entity, including a Minister, the accounting officer or a member of the governing body of the procuring and disposing entity; and
  - (c) a company, where a person specified in paragraph (a) or (b) has a controlling interest.
- (2) A member of a Contracts Committee, a member of a procurement and disposal unit; a member of the governing body of a procuring and disposing entity, or a member of the Board of Survey, who has a conflict of interest with respect to a procurement or disposal shall not—
  - (a) take part in any procurement or disposal proceedings; and
  - (b) after a procurement or disposal contract is entered into, take part in any decision relating to the procurement or disposal contract.
- (3) “Conflict of interest” in subsection (2), in relation to a person to whom that subsection applies, includes the personal interest of a relation or business associate which that person has knowledge or would have had knowledge if he or she exercised due diligence having regard to all the circumstances.
- (4) “Relation” in subsection (3) means a biological or adopted child, a spouse and a parent.
- (5) A person to whom this section applies shall reveal any personal interest that may impinge or which may be deemed to impinge on the business dealings of that person, with the procuring and disposing entity.
- (6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or to imprisonment for a term not exceeding five years, or both.

*[section 91U inserted by section 48 of [Act 11 of 2011](#)]*

**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

The Authority may on the recommendation of a procuring and disposing entity or after investigations on its own initiative, suspend a provider from engaging in any public procurement or disposal process for a period determined by the Authority, where—

- (a) the provider breaches the Code of Ethics of providers;
- (b) the provider is debarred from the procurement processes of an international agency of which Uganda is a member;
- (c) after investigations by the Auditor General or an independent body appointed by the Auditor General, the provider is found to have a record of unsatisfactory performance;
- (d) the provider is convicted of a corrupt practice or a fraudulent practice under this Act;
- (e) the provider fails to substantially perform the obligations specified in the contract;
- (f) the provider is suspended by the professional body of the provider, for professional misconduct; or
- (g) the provider is found to have faulted on the obligations specified under the law.

*[section 94 substituted by section 49 of [Act 11 of 2011](#)]*

#### 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 corrupt practice or a fraudulent practice,

*[paragraph (d) substituted by section 50(a) of [Act 11 of 2011](#)]*

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.

- (1a) An accounting officer, a member of the Contracts Committee, a member of the evaluation committee, an employee of the Authority or of a procuring and disposing entity, who—

- (a) connives or colludes to commit a corrupt practice or a fraudulent practice during a procurement or disposal process;
- (b) engages in a corrupt practice or a fraudulent practice during a procurement or disposal process,

commits an offence and is liable on conviction to a fine not less than two hundred and fifty currency points but not exceeding one thousand currency points or to imprisonment not exceeding five years, or both.

*[subsection (1a) inserted by section 50(b) of [Act 11 of 2011](#)]*

- (1b) An accounting officer who signs a contract contrary to—
- (a) [section 26](#) (2), commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or to imprisonment not exceeding five years, or both; and
  - (b) [section 26](#) (5), commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or to imprisonment not exceeding five years, or both and in addition to the fine, may be ordered by court to make a refund of an amount equivalent to the difference in price between the price paid for the supplies, services or works and the market price.
- [subsection (1b) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (1c) Where it is proved that a provider is involved in a fraudulent practice in any procurement proceeding—
- (a) the provider shall be disqualified by the Contracts Committee from the procurement proceeding; and
  - (b) the Contracts Committee shall recommend to the Authority to suspend the provider.
- [subsection (1c) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (1d) Where a provider is suspended under [section 94](#), and there is an existing contract between the provider and the procuring and disposing entity, the contract shall be voidable at the option of the procuring and disposing entity.
- [subsection (1d) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (1e) Notwithstanding subsections (1c) and (1d), a procuring and disposing entity may seek any other legal remedy available, against the provider.
- [subsection (1e) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (1f) Where a procuring and disposing entity, after appropriate investigations, is satisfied that any bidder to whom a proposal to award a contract is to be made, is engaged in a corrupt practice or a fraudulent practice in competing for the contract in question, the procuring and disposing entity may—
- (a) reject the proposal for award of the contract; or
  - (b) recommend to the Authority that the bidder be suspended from participating in any procurement or disposal process.
- [subsection (1f) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (1g) Where it is determined after a special audit or by a court that a bidder is engaged in a corrupt practice or a fraudulent practice during the procurement process, the award of a contract or execution of a contract, the Authority shall suspend the bidder from participating in any procurement or disposal process.
- [subsection (1g) inserted by section 50(b) of [Act 11 of 2011](#)]*
- (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.

## 95A. Force account mechanism

- (1) A procuring and disposing entity may, in accordance with regulations made under this Act, undertake works using the force account mechanism.

- (2) In this section “force account mechanism” means undertaking the works of a procuring and disposing entity using the personnel and equipment of the procuring and disposing entity or of another procuring and disposing entity.
- (3) Where a procuring and disposing entity uses the force account mechanism—
  - (a) the supplies to be used for the assignment shall be procured in accordance with the requirements of this Act; and
  - (b) the procuring and disposing entity shall determine that the direct, indirect and overhead costs to be incurred are less than would be incurred if the assignment was executed by a contractor.
- (4) Where there is an emergency situation or where no contractor is willing to execute the assignment, the force account mechanism may be used, without fulfilling the requirements of subsection (3)(b).
- (5) For the purpose of ensuring value for money in the application of the force account mechanism, the accounting officer of a procuring and disposing entity shall—
  - (a) make available, materials, employees tools and equipment, adequate for the works;
  - (b) ensure that the works are executed in accordance with the applicable technical standards;
  - (c) ensure that the works are supervised by a qualified supervisor;
  - (d) ensure that the employees and supplies used for the works are commensurate to the works; and
  - (e) maintain and manage the records, equipment and supplies of the works in accordance with the Public Finance and Accountability Act, 2003.

*[section 95A inserted by section 51 of [Act 11 of 2011](#)]*

## 96. Regulations

- (1) The Minister shall, on the recommendation of the Authority and approval of Parliament, issue regulations for the better carrying out of the objectives and functions of this Act.
- (2) Without prejudice to the general effect of subsection (1), the Minister shall, on the recommendation of the Authority, and approval of Parliament, issue regulations for procurement and disposal by a procuring and disposing entity outside Uganda.
- (3) 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.

*[section 96 substituted by section 52 of [Act 11 of 2011](#)]*

## 97. Guidelines

For the better carrying out of the objectives of and functions under this Act, the Authority shall issue and Gazette guidelines.

*[section 97 substituted by section 53 of [Act 11 of 2011](#)]*

## 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.

## Schedule 1A (Section 11)

### Organisation to nominate members of the Board of Directors

1. The Architects Registration Board.
2. The Council of the Institute of Certified Public Accountants of Uganda.
3. The Council of the Uganda Law Society.
4. The Engineers Registration Board.
5. The Surveyors Registration Board
6. The Private Sector Foundation of Uganda.

*[Schedule 1A inserted by section 54 of [Act 11 of 2011](#)]*

## 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 methods**

*[Fourth Schedule amended by section 55(h) of [Act 11 of 2011](#)]*

##### **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 process under open international bidding shall follow the procurement 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 does not exceed the threshold stated in the procurement guidelines issued under this Act.

- (2) The procurement process under restricted domestic bidding shall follow the procurement 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 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 does not exceed the threshold stated in the procurement guidelines.
- (2) The process under quotations procurement 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 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 specified in subparagraph (1)(a)(iii), (iv) and (v), where the value of the new works, services or supplies does not exceed fifteen percent of the value of the original or existing contract and the original or existing contract is awarded through a competitive process.

*[paragraph (b) substituted by section 55(a) of [Act 11 of 2011](#)]*

(c) Where direct procurement is used more than once in the circumstances specified in subparagraph (1) (b), the cumulative value of all new works, services or supplies shall not exceed twenty five percent of the value of the original or existing contract.

*[paragraph (c) added by section 55(b) of [Act 11 of 2011](#)]*

(2) *[subsection (2) deleted by section 55(c) of [Act 11 of 2011](#)]*

## 7. Micro procurement

*[heading inserted by section 55(c) of [Act 11 of 2011](#)]*

(1) A procuring and disposing entity shall use the micro procurement method for unforeseen requirements whose estimated value is below the prescribed threshold.

*[subsection (1) inserted by section 55(c) of [Act 11 of 2011](#)]*

(2) 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.
- (c) a comparison of at least three quotations shall be made.

*[paragraph (c) inserted by section 55(e) of [Act 11 of 2011](#)]*

*[subsection (2), previously subsection 6(3), renumbered by section 55(d) of [Act 11 of 2011](#)]*

- (3) A procuring and disposing entity shall not use micro procurement—
- (a) to split procurements in order to avoid using the appropriate procurement method; or
  - (b) for the procurement of works, services or supplies where they are required continuously or repeatedly over a set period of time or for which a framework contract is required.

*[subsection (3) inserted by section 55(f) of [Act 11 of 2011](#)]*

## **8. Notice inviting expression of interests for provision of consultancy services**

A notice inviting expression of interests for provision of consultancy services shall—

- (a) contain the name and address of the procuring and disposing entity and a brief description of the required services; and
- (b) be published in a newspaper of wide circulation and where applicable, in the relevant trade or professional publication;

*[section 8 inserted by section 55(g) of [Act 11 of 2011](#)]*

## **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.

**8.**

In this Schedule, “employee” means a public officer and an expert.

*[section 8 added by section 56 of [Act 11 of 2011](#)]*