

## CHAPTER 205

# THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT

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## CHAPTER 205

### THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT

*Commencement:* 21 February, 2003

**An Act to provide for the establishment of the Public Procurement and Disposal of Public Assets Authority; to provide for the regulation of practices in respect of public procurement and disposal activities; to provide for the establishment of the Public Procurement and Disposal of Public Assets Tribunal and for related matters.**

#### PART I—PRELIMINARY

##### 1. Application of 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 pre-contract financing by providers or any finances of a similar nature within the context of development cooperation agreements for the implementation of national programmes;
  - (c) procurement and disposal by a procuring and disposing entity, within or outside Uganda;
  - (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; and

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

(2) For the avoidance of doubt, the following activities by a procuring and disposing entity are not procurements 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 95;
- (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.

(3) Subject to subsection (4), 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.

(4) The Auditor General shall, in exercise of his or her mandate in subsection (3), apply the principles of transparency and competition in order to ensure value for money.

## **2. 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 1(1)(d) applies;

“authorised officer” means a person appointed as an authorised officer under section 9;

- “Authority” means the Public Procurement and Disposal of Public Assets Authority established by section 6;
- “award decision” means a decision made by a contracts committee in accordance with section 30(a);
- “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 of these, 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 the works, services and supplies in case of procurement and disposal respectively;
- “Board” means the Board of Directors of the Authority established under section 11;
- “competent authority” means a Government office which has the mandate to perform a specified function;
- “consultancy service” means a service of an intellectual or advisory nature provided by consultant or consulting firm 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;
- “consultant” means an individual who provides consultancy services to a procuring and disposing entity;
- “consulting firm” means a company, corporation, organisation or partnership that provides consultancy services to a procuring and disposing entity;
- “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;
- “contractor” means a provider as defined in this Act;
- “contracts committee” means the contracts committee of a procuring and disposing entity;

“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 Schedule 1 to this Act;

“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 Act;

“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 timeframe;

“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 134

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

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

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

“Minister” means the Minister responsible for finance;

“Ministry” means the Ministry 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;

“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;

“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;

“procuring and disposing entity” means—

- (a) a Ministry of Government;
- (b) a district council or a municipal council;
- (c) a body established by an Act of Parliament, which receives public finances from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever form these may take;
- (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;
- (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;
- (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;

“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;

“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;

“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;

“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 Uganda National Bureau of Standards, or other appropriate trade associations and professions, the use of which shall be mandatory in all 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;

“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;

“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;

“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.

### **3. 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 organisation, 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.

### **4. Procurement procedures under bilateral 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.

## **5. Role of Ministry**

(1) The Ministry shall advise Government on all public procurement and disposal policies, principles and practices.

(2) The Minister may, in writing, give directions to the Authority on policy related matters and the Authority shall give effect to those directions.

## **PART II—PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY**

### *Authority*

## **6. Establishment of Public Procurement and Disposal of Public Assets Authority**

(1) There is established an autonomous body to be known as the Public Procurement and Disposal of Public Assets 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.

## **7. Object of Authority**

The object of the Authority is—

- (a) to ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and disposal standards and practices;
- (b) to advise Government, local governments and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary, on their harmonisation;
- (c) to set standards for the public procurement and disposal systems in Uganda;
- (d) to monitor compliance of procuring and disposing entities; and
- (e) to build procurement and disposal capacity in Uganda.

## **8. Functions of Authority**

- (1) The functions of the Authority are—
  - (a) to advise procuring and disposing entities on the application of this Act and regulations and guidelines made under the Act;
  - (b) to monitor and report on the performance of the public procurement and disposal systems in Uganda and advise on desirable changes;
  - (c) to advise competent authorities on standards for procurement education and training, competence levels and certification requirements;
  - (d) to prepare, update and issue authorised versions of the standardised bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
  - (e) to ensure that any deviation from the use of the standardised bidding documents, procedural forms and any other attendant documents is effected only after the prior, written approval of the Authority;
  - (f) to issue guidelines under section 134;
  - (g) to organise 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) to maintain a register of providers of works, services and supplies;

- (i) to conduct periodic inspections of the records and proceedings of the procuring and disposing entities to ensure full and correct application of this Act;
- (j) to 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) to adopt, adapt and update common specifications standards, the use of which shall be mandatory for all procuring and disposing entities;
- (l) to determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (m) to develop a procurement and disposal capacity building strategy for institutional and human resource development;
- (n) where applicable, to 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 as may be necessary;
- (o) to establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal;
- (p) to undertake procurement and disposal research and surveys nationally and internationally;
- (q) to undertake any activity that may be necessary for the execution of its functions; and
- (r) to administer and enforce compliance with this Act and regulations made, and guidelines issued, under this Act.

(2) The Authority may contract a third party to carry out procurement audits, investigations and inspections.

## **9. Powers of Authority**

(1) In the exercise of its regulatory function under section 8(j), the Authority shall have power—

- (a) to require any information, documents, records and reports in the respect of a procurement or disposal process;

- (b) to call for the production of books of accounts, plans or documents;
- (c) to institute procurement and disposal contract and performance audits;
- (d) to cause to be inspected any procurement or disposal transaction to ensure compliance with a bid award by a procuring and disposing entity;
- (e) to investigate and act on complaints received on a procurement or disposal process from members of the public, that are not subject to administrative review or review by the Tribunal; and
- (f) to suspend a provider from engaging in any public procurement or disposal process, in accordance with section 128.

(2) For the purposes 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.

(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.

## **10. Action on recommendations of Authority**

(1) Where there is persistent breach of this Act or regulations made, or guidelines issued, 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; or
  - (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;

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

(3) Where the competent authority rejects the recommendations of the Authority 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.

(4) The competent authority shall respond in writing to the recommendations of the Authority within a period to be specified in regulations made under this Act, on the precise action taken on the recommendations, 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; and
  - (ii) relevant law enforcement and oversight agencies; and
- (d) any remedial measures taken.

### *Board of Directors*

## **11. Board of Directors**

(1) There is established a Board of Directors of the Authority, which shall be the governing body of the Authority and shall be responsible for the general direction and supervision of the Authority.

- (2) In addition to 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.

## **12. Composition of 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 2 to this Act, with each organisation nominating two persons; and
  - (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.

## **13. Conditions of service of members of Board**

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

#### **14. Tenure of members of Board**

The tenure of the members of the Board, save for the Executive Director, shall be four years and members of the Board may be re-appointed for one further term.

#### **15. Meetings of 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 Schedule 3 to this Act, 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.

## **16. Committees of Board**

- (1) The Board may establish—
  - (a) an Advisory Committee which shall review the performance of the Authority, the procuring and disposing entities; and
  - (b) 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 of the Board, their composition and, in consultation with the Minister, their terms and conditions of service.

## **17. Termination of office of member of Board**

(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 Director, may resign from the Board by giving not less than one month's prior notice in writing.

### *Staff of Authority*

## **18. Appointment and functions of Executive Director of Authority**

(1) The Board shall appoint an Executive Director on contract for five years, renewable for one further term only, and on terms and conditions to be specified in the 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—

- (a) the management and operations of the Authority;
- (b) the management of the funds, property and business of the Authority;
- (c) the administration, organisation 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 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.

## **19. Other staff of 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 shall, on the directive by the Board, 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.

### *Finances of Authority*

## **20. Funds of 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.

## **21. Financial year of Authority**

The financial year of the Authority shall be the period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

## **22. 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 financial year in which the expenditure is to be incurred, or in the supplementary budget for that year.

## **23. Accounts and audit**

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

(2) The Authority shall cause to be prepared and submitted to the Auditor General and the Accountant General, for each financial year, within two months after the end of the financial year, the statement of accounts of the Authority.

(3) The annual accounts of the Authority and the procurement and disposal activities of the Authority shall be audited by the Auditor General.

#### **24. Annual report**

(1) The Authority shall, as soon as is practicable and not later than nine months after the end of each financial year, submit to the Minister, an annual report of

- (a) the activities and operations of the Authority conducted during the financial year to which the report relates including the audited accounts of the Authority; and
- (b) the performance of procuring and disposing entities in the procurement and disposal processes during the financial year to which the report relates.

(2) The Minister shall, within two months of receipt of the annual report, submit the report to Parliament, with a statement the Minister may consider necessary.

#### **25. Compliance with Public Finance Management Act**

The Authority shall, at all times, comply with the Public Finance Management Act.

### **PART III—PROCURING AND DISPOSING ENTITIES**

#### **26. Composition of procuring and disposing entity**

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

- (a) an accounting officer defined in section 2;
- (b) a contracts committee;
- (c) a procurement and disposal unit;
- (d) a user department as defined in section 2; and
- (e) an evaluation committee.

## **27. Powers of 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 92 which shall be carried out by the Authority.

## **28. 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 Schedule 4 to this Act;
- (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) certifying that the price of the works, services or supplies to be procured conform to the prices in the guidelines issued by the Authority;
- (h) 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 Surveys, for disposal;
  - (ii) causing the assets verified under subparagraph (i) to be valued in accordance with regulations made under this Act; and
  - (iii) approving the reserve price of the public assets to be disposed of;
- (i) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;

- (j) investigating complaints by providers;
- (k) submitting a copy of any complaints and reports of the findings to the Authority; and
- (1) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award.

(2) Notwithstanding subsection (1)(i), 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.

(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

(4) An accounting officer shall not sign a contract for a procurement where the price quoted by the best evaluated bidder is higher than the price in the guidelines issued by the Authority.

## **29. Composition of contracts committee**

(1) Subject to subsection (2), a contracts committee shall be composed of the members specified in Schedule 4 to this Act.

(2) The members of the contracts committee shall be nominated by the accounting officer and approved by the Secretary to the Treasury.

(3) 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.

(4) 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.

(5) Where an accounting officer performs the role of the contracts committee in accordance with subsection (4), 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.

(6) 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.

(7) A contracts committee may co-opt advisers to assist it in the discharge of its functions.

(8) 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.

(9) A member of the contracts committee shall be appointed with regard to his or her technical competence and skills required for the discharge of the functions of the contracts committee.

(10) 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.

(11) Where the Secretary to the Treasury is satisfied that it is not practicable to apply subsection (10), the Secretary to the Treasury shall exempt the concerned procuring and disposing entity from the application of the subsection.

### **30. Functions of contracts committee**

A contracts committee shall be responsible for

- (a) adjudication of recommendations from the procurement and disposal unit and making award decisions;
- (b) approving the evaluation committee;

- (c) approving negotiation teams;
- (d) ensuring that before a procurement is approved, the procurement is in accordance with the procurement plan;
- (e) approving bidding and contract documents;
- (f) approving procurement and disposal procedures;
- (g) ensuring that best practices in relation to procurement and disposal are strictly adhered to by procuring and disposing entities;
- (h) ensuring compliance with this Act; and
- (i) liaising directly with the Authority on matters within its jurisdiction.

### **31. Powers of contracts committee**

- (1) A contracts committee shall—
  - (a) authorise
    - (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) make award decisions contracts in accordance with applicable procurement or disposal procedures, as the case may be.
  
- (2) A decision under this section shall be made within ten working days upon receipt of a submission from the procuring and disposal unit.

### **32. Establishment of procurement and disposal unit**

A procuring and disposing entity shall cause to be established a procurement and disposal unit staffed at an appropriate level.

### **33. Functions of 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) coordinate the procurement and disposal activities of all the departments of the procuring and disposing entity;
- (r) prepare any other reports as may be required.

#### **34. Powers of 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;
- (b) contract independent advice as may be necessary in the discharge of its functions;
- (c) ensure compliance with this Act, regulations made under this Act, guidelines issued 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.

#### **35. Disagreement between contracts committee and procurement and disposal unit**

(1) Where a contracts committee disagrees with the recommendations of a procurement and disposal unit, the contracts committee 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), the procurement and disposal unit 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.

### **36. Functions of 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.

### **37. Power of user department**

In the exercise of its functions, a user department shall—

- (a) initiate procurement and disposal requirements;
- (b) recommend statement 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.

### **38. Disagreement between procurement and disposal unit and 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.

### **39. 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) A member 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 a member is indisposed or has a conflict of interest.

(6) All members of the evaluation committee shall sign the Code of Ethical Conduct provided under regulations 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 regulations made under this Act.

#### **40. Independence in performance of functions**

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.

#### **41. Delegation of powers by 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 subdivision 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.

#### **42. 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 pre-qualified by the Authority; and
- (c) follow the procedure laid down by the Authority in the guidelines issued under section 134.

#### **43. 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; and
- (d) take into consideration developments, if any, in the procurement, storage and distribution of medicines and medical supplies.

#### **44. Records of procuring and disposing entity**

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

(2) The records 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.

(3) The records of a procuring and disposing entity may be maintained in a manual form or an electronic form.

(4) Where the records are maintained in an electronic form, the procuring and disposing entity shall provide or enable access, reading and printing of the records, as may be necessary.

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

#### **45. 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 of this Act, 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.

(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.

PART IV—BASIC PUBLIC PROCUREMENT AND DISPOSAL  
PRINCIPLES

**46. 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) maximisation of competition and ensuring value for money;
- (d) confidentiality;
- (e) economy and efficiency; and
- (f) promotion of ethics.

**47. 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.

**48. Transparency, accountability and fairness**

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

**49. Competition**

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

**50. 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.

## **51. Economy and efficiency**

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

**52. Ethics**

All procurement and disposal shall be carried out in accordance with the code of ethics that may be specified by the Authority.

**53. 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.

**54. Open competitive bidding**

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

**55. Best evaluated bidder**

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.

**56. 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.

PART V—PUBLIC PROCUREMENT AND DISPOSAL RULES

**57. Application of public procurement and disposal rules**

All public procurement and disposal shall be carried out in accordance with this Part and regulations made and guidelines issued under this Act.

**58. Standard forms**

(1) 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 the procuring and disposing entity obtains the consent of the Authority to use forms other than the forms issued by the Authority.

(2) 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.

(3) The application referred to in subsection (2) shall state the circumstances giving rise to the need for the Authority to issue a particular standard form or document.

(4) The standard forms and documents may be in a manual form or an electronic form.

(5) Where the standard forms and documents are in an electronic form, the procuring and disposing entity shall provide or enable access, reading and printing of the standard forms and documents, as may be necessary.

**59. Communication**

(1) All communication between a procuring and disposing entity, bidder, or provider, shall be in writing and may be transmitted electronically 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.

(4) The requirement in subsection (1) that communication may be transmitted electronically includes a requirement to provide or enable access, reading and printing of the communication.

## **60. 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) For the purposes of aggregation of procurement requirements as provided for under subsection (2), the Secretary to the Treasury shall for each financial year, using the procurement plans submitted by the procuring and disposing entities, determine the procuring and disposing entities with procurement requirements that qualify to be aggregated.

(4) The Secretary to the Treasury shall communicate to the concerned procuring and disposing entities giving instructions on how the requirements

that are aggregated are to be reflected in the procurement plan of the procuring and disposing entity.

(5) The procurement of aggregated requirements shall be in accordance with guidelines issued for that purpose.

(6) A procuring and disposing entity that is to undertake a procurement over a period of more than one financial year shall prepare a multi-year procurement plan for that procurement, using guidelines issued for that purpose.

(7) A procuring and disposing entity shall, on a quarterly basis and in any other case, wherever necessary, review and update its procurement plan.

(8) 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 procurement plan to the Authority.

(9) A procuring and disposing entity shall display its procurement plan and the updated and approved procurement plan on its procurement and disposal notice board or using any other method, as may be prescribed by regulations made under this Act, for not less than twenty working days.

(10) A procurement shall not be carried out outside the procurement plan except in emergency situations.

#### **61. 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) A 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.

**62. 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.
  
- (d) 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) 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 subsection (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.

### **63. Reservation schemes**

(1) In accordance with section 53(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—

- (a) to promote the use of local expertise and materials;
- (b) to promote the participation of local communities or local organisations including registered small and medium enterprises and business ventures;
- (c) to apply specific technologies; or
- (d) to promote the participation of registered associations of women, youth and persons with disabilities, respectively.

(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.

### **64. Statement 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.

### **65. 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.

### **66. Sustainable procurement**

A procuring and disposing entity shall for each procurement take into account environmental protection, social inclusion and stimulating innovation, as may be prescribed by regulations made under this Act.

### **67. 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.

**68. 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.

**69. 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.

**70. 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.

**71. 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.

**72. 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.

### **73. 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.

### **74. Bid receipt and bid opening**

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

### **75. Basic qualifications 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;
  - (ii) in receivership;
  - (iii) bankrupt; or
  - (iv) being wound up;
- (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.

### **76. 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.

#### **77. Time period for completion of procurement process**

A procurement process and each stage of the procurement process shall be completed within the period prescribed by the regulations made under this Act.

#### **78. 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.

#### **79. 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.

#### **80. Negotiations**

(1) Negotiations may be carried out between a procuring and disposing entity and the bidder with the best evaluated bid as may be prescribed by regulations made under this Act.

(2) For purposes of subsection (1), negotiations 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;
- (b) or negotiate with the best evaluated bidder in order to obtain a reduction of the scope of the quantities of the procurement.

**81. Cancellation of procurement and disposal processes and rejection of bids**

(1) A procuring and disposing entity may, on the approval of the contracts committee, cancel a procurement process or a disposal process at any time, before a contract is awarded to the best evaluated bidder, as may be prescribed by regulations made under this Act.

- (2) A procurement process may be cancelled where
- (a) the money available for the procurement is not adequate;
  - (b) there is a significant change in the technical details or circumstances of the procurement requirement; or
  - (c) the circumstances that gave rise to the request for procurement change significantly.

(3) A procuring and disposing entity may reject a bid during the evaluation stage, as may be prescribed by regulations made under this Act.

**82. 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 made under this Act, during the period specified in subsection (2)(a).

### **83. Change in circumstances of bidder**

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

### **84. 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 authorised valuation of the items to be offered;
- (c) the concurrence of the head of the procurement and disposal 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**

### **85. Choice of procurement method**

(1) A procuring and disposing entity shall, in respect of the procurement of goods, works, consulting services and non-consulting services, use any of the methods specified in sections 86, 87, 88, 89, 90, 91, 92, 93 and 95 and the conditions for their use specified in regulations made under this Act.

(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 other than the methods set out in this Part.

## **86. 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.

## **87. 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.

## **88. 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.

### **89. 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.

### **90. Quotation method**

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

(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.

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

### **91. Direct procurement**

(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.

### **92. Micro procurement**

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

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

**93. Electronic reverse auction method**

Electronic reverse auction is a procurement method where bidders competitively make offers for a procurement using electronic means within a specified time period and the bidder with the lowest price is evaluated within the time period, as the best evaluated bidder.

**94. Procurement of complex, specialised and strategic goods, works or services**

(1) A procuring and disposing entity shall in respect of the procurement of complex, specialised or strategic goods, works or services use the competitive dialogue method or the competitive negotiation method.

(2) The competitive dialogue method or competitive negotiation method shall be used where a procuring and disposing entity is not able to define the technical specifications and methods appropriate for a procurement or the legal and financial implications of the procurement at the beginning of the procurement.

(3) The use of the competitive dialogue method or the competitive negotiation method shall be approved by the Attorney General and the Minister prior to the commencement of the procurement process.

(4) “Complex, specialised and strategic goods, works or services” means goods, works or services that are innovative and high risk and to which the other methods of procurement specified in this Part cannot be applied.

**95. Methods of disposal of public assets**

(1) Public assets may be disposed of using any of the following methods— public auction;

- (a) public bidding;
- (b) direct negotiations;
- (c) sale to public officers;
- (d) destruction of the assets;
- (e) conversion or classification of assets into another form for disposal by sale;
- (f) trade-in;
- (g) trade-in;

- (h) electronic auctioning;
- (i) transfer to another procuring and disposing entity; and
- (j) donation.

(2) Where a public asset is to be donated, the procuring and disposing entity shall take into account the following—

- (a) national security and public interest issues;
- (b) health and safety issues;
- (c) legal and human rights issues;
- (d) environmental considerations; and
- (e) that the asset is obsolete and of minimal value.

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

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

(5) Subsection (4) shall not apply to the disposal of land by the Uganda Land Commission or by a district land board.

(6) For the avoidance of doubt, subsection (4) applies to the disposal of land held by the Uganda Land Commission on behalf of a procuring and disposing entity.

(7) In this section “strategic asset” means land, a building, a ship, shares and any other asset as may be prescribed by regulations made under this Act, belonging to the Government, situated within or outside Uganda.

(8) The procedures for the methods in subsection (1) shall be prescribed by regulations made under this Act.

## PART VII—TYPES OF CONTRACT

### **96. Choice of contract type**

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

the contract types, using procedures prescribed by regulations made under this Act.

**97. Lump sum contract**

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

**98. Time-based contract**

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

**99. 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.

**100. 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.

**101. 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.

**102. 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.

### **103. 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.

### **104. 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.

### **105. 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.

## **PART VIII—ADMINISTRATIVE REVIEW**

### **106. Administrative review by 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.

(2) A bidder may also seek administrative review for any omission or breach of this Act, regulations made, or guidelines issued, under this Act or any provision of the bidding documents, by a procuring and disposing entity.

(3) A complaint against a procuring and disposing entity shall—

- (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.

### **103. 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.

### **104. 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.

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## **PART VIII—ADMINISTRATIVE REVIEW**

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(2) A bidder may also seek administrative review for any omission or breach of this Act, regulations made, or guidelines issued, under this Act or any provision of the bidding documents, by a procuring and disposing entity.

(3) A complaint 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 on payment of the fees prescribed by regulations made under this Act;
- (b) be made within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.

(4) The procuring and disposing entity against which a complaint is made shall on request provide the bidder with a report indicating the reasons for the rejection of the bidder and the stage at which the bidder was rejected and the report shall be used only for the administrative review process.

(5) On receiving the complaint, the accounting officer shall immediately suspend the procurement or disposal process, as the case may be.

(6) The accounting officer shall request the bidders to extend the period of the bid validity and bid security for the duration of the suspension.

(7) The accounting officer shall, within ten days of receipt of a complaint, make and communicate a decision, in writing, addressed to the bidder who makes the complaint and which shall indicate the reasons for the decision taken and the corrective measure to be taken, if any.

(8) Where an accounting officer does not make a decision or communicate a decision within the period specified in subsection (7) or where a bidder is not satisfied with the decision made by the accounting officer under this section, the bidder may make an application to the Tribunal, in accordance with Part IX of this Act.

(9) Where a bidder believes that the accounting officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section or that the matter cannot be handled impartially by the procuring and disposing entity, the bidder shall make an application to the Tribunal for determination of the complaint, omission or breach.

(10) Where a bidder intends to make an application to the Tribunal under subsection (8) or (9), the bidder shall give the accounting officer notice within five working days after the expiry of the period specified in subsection (3)(b) or (7), as the case may be.

- (11) For the avoidance of doubt
  - (a) a procurement or disposal process that is suspended under subsection (5) shall remain suspended until the Tribunal makes a decision, where a bidder makes an application to the Tribunal; and
  - (b) an accounting officer shall not enter into a contract with a provider—
    - (i) during the administrative review period;
    - (ii) before the expiry of time period required for giving notice under subsection (10); or
    - (iii) where the matter is referred to the Tribunal, before the Tribunal makes a decision.

#### PART IX—REVIEW OF DECISIONS OF ACCOUNTING OFFICER

### **107. Interpretation**

In this Part, unless the context otherwise requires—

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

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

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

### **108. Public Procurement and Disposal of Public Assets Appeals Tribunal**

(1) There is established a Tribunal to be known as the Public Procurement and Disposal of Public Assets Appeals Tribunal which shall consist of a Chairperson and six 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 or any other profession.

(4) Two of the members of the Tribunal shall be women.

(5) 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.

(6) The Chairperson shall be appointed by the Minister, in consultation with the chairperson of the Judicial Service Commission.

(7) The members of the Tribunal shall be appointed by the Minister from the private sector.

(8) 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.

### **109. Tenure of office of members of Tribunal**

(1) The members of the Tribunal shall hold office for four 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.

### *Management of Tribunal*

#### **110. 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.

#### **111. Constitution of 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.

## **112. 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.

## **113. Registrar of 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 110.

(3) The registrar shall be appointed by the Tribunal in consultation with the Judicial Service Commission and the Tribunal may appoint other officers and employees as may be necessary for the effective discharge of the functions of the Tribunal.

#### **114. Seal of Tribunal**

(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.

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

#### **115. Administrative review by Tribunal**

(1) The following may apply to the Tribunal for review of a decision of a procuring and disposing entity

- (a) a bidder who is aggrieved, as specified in section 106(7) or (8);
- (b) a person whose rights are adversely affected by a decision made by the accounting officer; and
- (c) a bidder who believes that the accounting officer has a conflict of interest as specified in section 106(9).

(2) The application shall—

- (a) for section 106(7), be made within ten working days from the date of receipt of the decision of the accounting officer;
- (b) for section 106(8), be made within ten days from the date of expiry of the period specified in the section; and
- (c) for section 106(9), be made within ten days from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place.

(3) 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 or cancel any or all bids prior to award of a contract under section 81;
- (b) a decision of a procuring and disposing entity to discontinue a procurement or disposal process after receiving submissions from

bidders following an expression of interest or a pre-qualification; and

- (c) decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.

(4) The Tribunal shall issue a decision within a period of not more than fifteen working days upon receipt of an application for review.

#### **116. Powers of Tribunal**

- (1) In performing its functions, the Tribunal shall have power
  - (a) to take evidence on oath;
  - (b) to proceed in the absence of a party who has had reasonable notice of the proceedings;
  - (c) to adjourn the hearing of the proceedings;
  - (d) to make an order as to costs against any party, which shall be enforceable like an order of the High Court; and
  - (e) to 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.

#### **117. Application for review by Tribunal**

(1) An application to the Tribunal for review of a decision of the accounting officer made under this section shall—

- (a) be in writing in the form prescribed by regulations made under this Act; and

(b) include a statement of the reasons for the application.

(2) For the avoidance of doubt, a procurement or disposal process shall remain suspended where a bidder appeals to the Tribunal against a decision of a procuring and disposing entity.

### **118. Appeals to High Court from decisions of Tribunal**

(1) A party to proceedings before the Tribunal who is aggrieved by the decision 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.

(3) An appeal to the High Court may be made on questions of law only and the notice of appeal shall state the question of law that forms the appeal.

(4) A procurement or disposal process that is suspended under section 117(2) shall be resumed and shall continue during an appeal to the High Court.

(5) The High Court shall hear and determine the appeal and shall make such decisions or orders as it deems appropriate by reason of its decision, including an order affirming or setting aside the decision of the Tribunal and may hold the accounting officer or any other person, as may be determined, personally liable and award damages to the aggrieved bidder.

(6) A decision or order of the High Court made under this section shall be final and conclusive and shall not be subject to appeal to any other court.

#### Finances of Tribunal

### **119. Funds of Tribunal**

(1) The funds of the Tribunal shall consist of—

- (a) money 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.

### **120. Financial year of Tribunal**

The financial year of the Tribunal shall be the period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

### **121. Accounts and audit**

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

### **122. 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.

### **123. Compliance with Public Finance Management Act**

The Tribunal shall, at all times, comply with the Public Finance Management Act.

### **124. Regulations under Part**

(1) The Minister may, on the recommendation of the Tribunal, make regulations for the better carrying out of the provisions of this Part.

(2) The regulations made under subsection (1) shall create offences and penalties for

- (a) failure to comply with summons;
- (b) failure to answer questions;
- (c) giving false or misleading evidence;
- (d) contempt of the Tribunal; and
- (e) any other action for which an offence and penalty may be created.

#### PART X—MISCELLANEOUS

### **125. 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, or 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) In subsection (2), “conflict of interest” 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) In subsection (3), “relation” 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) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or to imprisonment for a term not exceeding five years, or both.

### **126. 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.

### **127. Code of Ethical Conduct**

(1) Public officers and experts engaged to deliver specific services under this Act shall sign the Code of Ethical Conduct specified in Schedule 5 to this Act.

(2) All providers of works, services or supplies shall be required to sign a declaration of compliance with codes of conduct as may be determined by the Authority.

### **128. 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 a professional body of the provider, for professional misconduct; or
- (g) the provider is found to have faulted on the obligations specified under the law.

## **129. 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 section 9(1)(a);
  - (b) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required under section 9(1)(b);
  - (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;
  - (e) obstructs or hinders a person carrying out a duty or function or exercising a power under this Act;
  - (f) delays, contrary to the requirements of this Act, the opening of bids, the evaluation of bids or making an award decision;
  - (g) cancels the procurement process after the award decision by the contracts committee contrary to the requirements of the Act;
  - (h) causes loss of public funds or public assets as a result of negligence, in the implementation of this Act; or
  - (i) fails to comply with the decision of the Tribunal,and, is liable, on conviction, to a fine of not less than two hundred fifty currency points but not exceeding one thousand currency points or to imprisonment for a term not exceeding three years, or both.

(2) 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; or

(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 fifty currency points but not exceeding one thousand currency points or to imprisonment for a term not exceeding five years, or both.

(3) An accounting officer who signs a contract contrary to—

(a) section 28(2) commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or to imprisonment for a term not exceeding five years, or both; and

(b) section 28(4) commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or to imprisonment for a term 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.

(4) 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.

(5) Where a provider is suspended under section 128 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.

(6) Notwithstanding subsections (4) and (5), a procuring and disposing entity may seek any other legal remedy available, against the provider.

(7) 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.

(8) 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 the execution of a contract, the Authority shall suspend the bidder from participating in any procurement or disposal process.

(9) 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.

### **130. 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 employees, materials, 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 Management Act.

### **131. Communication using electronic means**

Any information or document that is to be issued by the Authority or a procuring and disposing entity and any information or document that may be submitted by a bidder, in a procurement or disposal process, may be communicated or submitted, as the case may be, using electronic means, as may be prescribed by regulations made under this Act.

### **132. Regulations**

(1) The Minister shall, on the recommendation of the Authority, make regulations for the better carrying out of the object and functions of this Act.

(2) Without prejudice to the general effect of subsection (1), the Minister shall, on the recommendation of the Authority, make 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 fifty currency points or imprisonment for a term not exceeding two years, or both.

(4) Regulations made under this section shall be laid before Parliament.

**133. Regulations for Kampala Capital City Authority and local governments**

The Minister may, in consultation with the Minister responsible for the Kampala Capital City Authority and the Minister responsible for local governments, make regulations under this Act, for the Kampala Capital City Authority and the local governments, respectively.

**134. Guidelines**

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

**135. Power to amend Schedules**

The Minister may, by statutory instrument, with the approval of Cabinet, amend the Schedules to this Act.

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**SCHEDULES**

*Schedule 1*

Sections 2, 135

**Currency Point**

A currency point is equivalent to twenty thousand shillings.

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*Schedule 2*

Sections 12, 135

**Organisation to Nominate Members of 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.
7. The Institute of Procurement Professionals of Uganda.

Schedule 3

Sections 15(4)(a), 135

**Standard Declaration Form**

I, \_\_\_\_\_ do solemnly swear to abide by the rules of the Public Procurement and Disposal of 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 interest of whatsoever nature in any item on the agenda that may give rise to 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 \_\_\_\_\_ 20

Signed by \_\_\_\_\_  
Board Member

*Schedule 4*

Sections 28(1), 29(1), 135

**Composition of Contracts Committee**

A Contracts Committee of a procuring and disposing entity shall be composed of the following members—

- (a) a chairperson;
- (b) a maximum of three other members, one of whom shall be a lawyer, except for a Contracts Committee of a local government, where the members may not include a lawyer; and
- (c) the secretary to the Contracts Committee.

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Schedule 5

Sections 127(1), 135

**Code of Ethical Conduct**

**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 the business dealings of an employee 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. Restriction on use of information**

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 organisational 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.

7520 **Cap. 205.]** *Public Procurement and Disposal of Public Assets Act*

**History:** Act 1/2003; S.I. 10/2003; Act 2/2006; Act 11/2011; Act 13/2015; Act 15/2021; S.I. 96/2023

### ***Cross References***

*Constitution*

*Bank of Uganda Act, Cap. 54*

*Companies Act, Cap. 106*

*Public Enterprises Reform and Divestiture Act, Cap. 78*

*Public Finance Management Act, Cap. 171*

*Universities and Other Tertiary Institutions Act, Cap. 262*

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