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Public Assets (Amendment) Act*

**2011**

**Act 11**

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**THE PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC ASSETS (AMENDMENT) ACT, 2011**

**An Act to amend the Public Procurement and Disposal of Public Assets Act; to provide for the entities and activities to which the Act applies; to broaden the definition of the term “accounting officer”; to provide for further functions and powers of the Authority; to provide for the composition of the Board; to provide for further functions of the Contracts Committees; to provide for accreditation for alternative procurement systems; to provide for procurement planning; to provide the different types of contracts to be used for procurement; to provide for the procedure for administrative review; to provide for the limitation of contracts with members of procuring and disposing entities; to provide for the suspension of providers; to establish the Public Procurement and Disposal of Public Assets Tribunal; to create new offences; to provide for the making of regulations for procuring and disposing entities outside Uganda and for related matters.**

DATE OF ASSENT: 21st June, 2011

*Date of Commencement:* See section 1.

BE IT ENACTED by Parliament as follows:

## PART I—PRELIMINARY

**1. Commencement**

This Act shall come into force on a date appointed by the Minister by statutory instrument.

## PART II—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

**2. Amendment of section 2 of principal Act**

Section 2 of the Public Procurement and Disposal of Public Assets Act, in this Act referred to as the principal Act, is amended—

(a) by substituting for subsection (1) (c) the following—

“(c) procurement and disposal by a procuring and disposing entity, within or outside Uganda;”

(b) by inserting immediately after subsection (1) (c), the following—

“(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;

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

(c) by inserting immediately after subsection (1), the following—

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

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

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

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

### **3. Amendment of section 3 of principal Act**

Section 3 of the principal Act is amended—

- (a) by substituting for the definition of “Accounting Officer” the following—

““accounting officer” means—

- (a) an accounting officer appointed as such by the Secretary to the Treasury;
- (b) a person appointed under an Act of Parliament or under an instrument of appointment made under an Act of Parliament, including the Companies Act, to perform the functions of accounting officer of a procuring and disposing entity; or

- (c) a person appointed to perform the functions of accounting officer of an entity not being of Government, to which section 2 (1) (d) applies;”;
- (b) by substituting for the definition of “procuring and disposing entity” the following—

““procuring and disposing entity” means—

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

and includes—

- (f) a commission established under the Constitution or under an Act of Parliament;
  - (g) a public university and a public tertiary institution established under the Universities and other Tertiary Institutions Act, 2001;
  - (h) Bank of Uganda except in exercise of the functions specified in section 4 of the Bank of Uganda Act; and
  - (i) any other procuring and disposing entity as may be prescribed by the Minister;”
- (c) in the interpretation of “supplies” by inserting immediately after “equipment” the words “livestock, assets, land”;
- (d) by inserting the following definitions in the appropriate alphabetical order—
- ““authorised officer” means a person appointed as an authorised officer under section 8;
- “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 a practitioner who is skilled and qualified in a particular field or profession; and includes, but is not limited to, engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform;
- “consultant” means an individual who, or a firm, company, corporation, organisation or partnership which provides consultancy services to a procuring and disposing entity;



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

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

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

“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;

“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;

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“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;

“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;

“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;.”

**4. Insertion of new section 4A in principal Act**

The principal Act is amended by inserting immediately after section 4 the following—

**“4A. Procurement procedures under bi-lateral tied loans**

(1) Where a bilateral loan or negotiated grant contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with this Act.

(2) Notwithstanding subsection(1), where there is a conflict between this Act, regulations made under this Act or guidelines issued by the Authority and a condition imposed by the donor of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds.”

PART III—AMENDMENTS TO PART II OF THE PRINCIPAL ACT

**5. Amendment of section 6 of principal Act**

Section 6 of the principal Act is amended by substituting for paragraph (b) the following—

“(b) advise Government, local governments and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary, on their harmonisation;”.

**6. Amendment of section 7 of principal Act**

Section 7 of the principal Act is amended—

(a) by renumbering the existing provision as (1);

(b) by substituting for “statutory bodies” appearing in paragraph (a), the words “other procuring and disposing entities”;

(c) by substituting for paragraph (c) the following—

“(c) advise competent authorities on standards for procurement education and training, competence levels and certification requirements;”;

(d) by substituting for paragraph (m) the following—

“(m) develop a procurement and disposal capacity building strategy for institutional and human resource development;”;

(e) by substituting for paragraph (n) the following—

“(n) where applicable, determine the prices of works, services and supplies which are used in common by two or more procuring and disposing entities and which may be subject to common procurement; and review the prices from time to time;”

(f) by inserting immediately after subsection (1), the following—

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

## **7. Amendment of section 8 of principal Act**

Section 8 of the principal Act is amended—

(a) by renumbering the existing provision as (1);

(b) by substituting for paragraph (e) the following—

“(e) act upon complaints by procuring and disposing entities, providers or any other entity or person, in respect of any procurement or disposal activity, following the procedure in section 91;”;

(c) by inserting immediately after paragraph (e), the following—

“(f) suspend a provider from engaging in any public procurement or disposal process, in accordance with section 94.”;

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- (d) by inserting immediately after subsection (1) the following—

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

(a) authorise an officer of the Authority; or

(b) appoint any person to be an authorised officer, to enter any premises of a procuring and disposing entity, at a reasonable time and inspect the premises and to make any inquiries that may be necessary for the collection of information.

(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.”

**8. Amendment of section 9 of principal Act**

Section 9 of the principal Act is amended—

- (a) by substituting for subsection (1) the following—

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

- (a) direct the concerned procuring and disposing entity to take such corrective action as may be necessary in the circumstances, to rectify the breach; or

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- (b) recommend to a competent authority—
  - (i) to suspend the officer responsible for the breach;
  - (ii) to replace the head of the procurement and disposal unit or the Chairperson of the Contracts Committee, as the case may be;
  - (iii) to discipline the accounting officer;
  - (iv) to transfer temporarily, the procuring and disposing function of a procuring and disposing entity to a third party procurement agency”;
- (b) in subsections (2) and (3), by substituting for “subsection (1)” the words “subsection (1) (b)”.

**9. Replacement of section 11 of principal Act**

For section 11 of the principal Act there is substituted, the following—

**“11. Composition of the Board**

- (1) The Board shall be composed of—
  - (a) a non-executive chairperson, appointed by the Minister in consultation with Cabinet;
  - (b) the following non-executive members—
    - (i) the Secretary to the Treasury or a person nominated by him or her in writing;
    - (ii) not less than three and not more than five other members appointed by the Minister in consultation with Cabinet; and
  - (c) the Executive Director of the Authority who shall be an *ex officio* member and who shall not vote.

(2) The chairperson and the non-executive members to be appointed under subsection (1) (b) (ii) shall—

(a) be from among persons nominated by—

(i) the organisations specified in Schedule 1A, with each organisation nominating two persons;

(ii) any other two professional organisations as the Minister may determine, with each organisation nominating two persons; and

(b) include one person nominated by the Minister, who shall be a procurement specialist.

(3) The chairperson and the non-executive members shall be persons of good standing in society and recognised for their high level of professional competence and integrity.

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

## **10. Insertion of new section 15A in principal Act**

The principal Act is amended by inserting immediately after section 15 the following—

### **“15A. Delegation of functions and powers**

(1) The Board may, by instrument of delegation, delegate to the Chairperson, a member of the Board and the Executive Director, any of the functions or powers of the Board, except—

(a) the function of monitoring and reporting on the performance of the public procurement and disposal systems in Uganda and advising on desirable changes;

- (b) the function of advising competent authorities on the development of training standards, competence levels and certification requirements;
- (c) the function of preparing, updating and issuing authorised versions of the standardised bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;
- (d) the function of issuing guidelines;
- (e) the function of instituting—
  - (i) procurement or disposal audits during the preparatory process;
  - (ii) contract audits in the course of the execution of an awarded bid; and
  - (iii) performance audits after the completion of the contract in respect of any procurement or disposal, as may be required;
- (f) the power to act upon complaints by procuring and disposing entities, providers and any other entity or person in respect of any party to a procurement or disposal activity; and
- (g) the power to suspend a provider from engaging in a public procurement or disposal process.

(2) The terms and conditions of delegation of functions and powers under this section shall be in the instrument of delegation.

(3) A person who exercises a delegated function or powers shall comply with the terms and conditions of delegation and with any directives or guidelines the Board may in writing communicate.



(4) A person aggrieved by a decision made under this section may appeal to the Board.”

**11. Insertion of new section 19A in principal Act**

The principal Act is amended by inserting immediately after section 19 the following—

**“19A. Financial year**

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

**12. Amendment of section 21 of principal Act**

Section 21 of the principal Act is amended by substituting for subsection (2) the following—

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

**13. Insertion of new section 23A in principal Act**

The principal Act is amended by inserting immediately after section 23 the following—

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

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

PART IV—AMENDMENTS TO PART III OF THE PRINCIPAL ACT

**14. Amendment of section 25 of principal Act**

Section 25 of the principal Act is amended by substituting for subsection (2) the following—

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

**15. Amendment of section 26 of principal Act**

Section 26 of the principal Act is amended—

- (a) by renumbering the existing provision as (1);
- (b) by inserting the following new subsections after subsection (1)—

“(2) Notwithstanding subsection (1) (g), an accounting officer shall not sign a contract before a procurement is approved by the Contracts Committee except where due to an emergency situation, the Contracts Committee cannot meet to approve the procurement.

(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) Prior to the commencement of a procurement process, an accounting officer shall undertake an assessment of the market price of the supplies, services or of the unit costs of the works in respect of which the procurement is to be made by a procuring and disposing entity.

(5) Subject to section 74, an accounting officer shall not sign a contract, where the price quoted by the bidder who is evaluated by a Contracts Committee as the best evaluated bidder is higher than the market price established by the accounting officer in accordance with subsection (4).”

## **16. Amendment of section 27 of principal Act**

Section 27 of the principal Act is amended—

- (a) by inserting immediately after subsection (2) the following—

“(2a) The following officers of a procuring and disposal entity are not eligible for nomination to the Contracts Committee of that procuring and disposal entity—

- (a) the head of the procurement and disposal unit;
- (b) the head of the finance department, but not the head of the accounts department, where the positions are held by different officers; and
- (c) the staff of the department of internal audit.

(2b) Where the Accounting Officer nominates Members of the Contracts Committee, but before the nomination is approved by the Secretary to the Treasury in accordance with subsection (2), there is an emergency situation in respect of which a procurement activity has to be performed, the Accounting Officer shall perform the role of the Contracts Committee.

(2c) Where an Accounting Officer performs the role of the Contracts Committee following subsection (2b), the Accounting Officer shall submit a report of the procurement activity carried out, to the Authority and give a copy to the Secretary to the Treasury.

(2d) The head of the procurement and disposal unit shall attend the meetings of the Contracts Committee to offer clarification on any submissions to be considered by the Contracts Committee.”

- (b) by inserting immediately after subsection (6) the following—

“(7) Where the Secretary to the Treasury is satisfied that it is not practicable to apply subsection (6), the Secretary to the Treasury shall exempt the concerned procuring and disposing entity from the application of the subsection.”

### **17. Amendment of section 28 of principal Act**

Section 28 of the principal Act is amended—

- (a) by renumbering the existing provision as (1);
- (b) by inserting immediately after paragraph (b) the following—

“(ba) approving negotiation teams;

(bb) ensuring that before it is approved, a procurement is in accordance with the procurement plan;”;

- (c) by inserting immediately after paragraph (c) the following—

“(ca) the following activities, for the purposes of disposal of the public assets of a procuring and disposing entity—

- (i) assessing and verifying the public assets identified by a user department or by the Board of Survey for disposal;
- (ii) causing the assets identified under subparagraph (i) to be valued in accordance with regulations made under this Act; and
- (iii) approving the reserve price for the public assets to be disposed of;”;

(d) by inserting immediately after paragraph (g) the following—

“(2) The Contracts Committee shall make a report in respect of the activities under subsection(1) (ca) and submit the report to the Accounting Officer for approval.”

### **18. Amendment of section 32 of principal Act**

Section 32 of the principal Act is amended by substituting for paragraph (a) following—

“(a) recommend the composition of the evaluation and negotiation committees, for the approval of the Contracts Committee;”

### **19. Amendment of section 34 of principal Act**

Section 34 of the principal Act is amended in subsection (2) by substituting for the subsection (2) the following—

“(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.”

**20. Replacement of section 39 of principal Act**

For section 39 of the principal Act there is substituted the following—

**“39. Delegation of powers by the accounting officer**

An accounting officer may—

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

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

**21. Insertion of new section 40A in principal Act**

The principal Act is amended by inserting immediately after section 40 the following—

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

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

accreditation of an alternative system.

(2) The Authority shall permit accreditation of an alternative system—

- (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with this Act;
- (b) where market conditions or behaviour do not allow effective application of this Act; and
- (c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices.

(3) Notwithstanding subsection (2), the Authority may, on its own initiative, accredit an alternative system for a procuring and disposing entity which is not able to comply with a procurement or disposal procedure required under this Act.

(4) The Authority shall accredit an alternative system where a procuring and disposing entity—

- (a) operates in a specialised field or discipline which requires alternative or additional regulations;
- (b) has a status that requires alternative or additional regulations;
- (c) is required to use an alternative system to comply with the provisions of international or any other agreements; or
- (d) has other valid reasons which necessitate the use of an alternative system.

(5) An application for accreditation shall be made using the procedure provided in regulations made under this Act.

(6) There shall be an alternative system for the procurement

of medicines and other medical supplies.

(7) The Minister shall in consultation with the Minister responsible for health and the Authority, make regulations for the procurement of medicines and other medical supplies.

(8) Without prejudice to the general effect of subsection (7), the regulations made under this section shall—

- (a) provide for the special nature of procurement of medicines and medical supplies;
- (b) provide for the specific attributes of medical supplies;
- (c) define the medical supplies which are subject to this section;
- (d) take into consideration developments, if any, in the procurement, storage and distribution of medicines and medical supplies.”

**22. Amendment of section 41 of principal Act**

Section 41 of the principal Act is amended—

- (a) by inserting immediately after subsection (1) the following—

“(1a) The records to be maintained by a procuring and disposing entity under subsection (1) shall include a summary report of the procurement procedure used in respect of each contract, which shall indicate—

- (a) a description of the objectives of the respective procurement;
- (b) a list of the participating bidders;
- (c) the bid prices;



- (d) the bid evaluation criteria;
  - (e) a summary of the evaluation and comparison of bids, including the grounds for rejecting any of the bids;
  - (f) where applicable, a summary of the proceedings of the administrative reviews including the decisions taken;
  - (g) a statement of the grounds for cancellation of procurement proceedings; and
  - (h) any other information as may be prescribed by regulations.”;
- (b) by inserting immediately after “Authority” appearing in subsection (2), the words “and a competent authority”.

**23. Amendment of section 42 of principal Act**

Section 42 of the principal Act is amended by inserting immediately after subsection (4) the following—

“(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 V—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

**24. Replacement of section 43 of principal Act**

For section 43 of the principal Act there is substituted the following—

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

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

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

**25. Replacement of section 47 of principal Act**

For section 47 of the principal Act there is substituted the following—

**“47. Confidentiality**

(1) A procuring and disposing entity shall, upon written request by any person, disclose information regarding any procurement or disposal process.

(2) Notwithstanding subsection (1)—

- (a) a procuring and disposing entity shall not disclose to a bidder or to any other person who is not involved in the preparation of the solicitation documents, the evaluation process or the award decision, any information relating to—
  - (i) solicitation documents, before the solicitation documents are officially issued;
  - (ii) the examination, clarification, evaluation and comparison of bids before the best evaluated

- bidder notice is displayed on the procurement and disposal notice board of the procuring and disposing entity; and
- (b) information shall not be disclosed where—
- (i) the disclosure is likely to prejudice the security or sovereignty of the State;
  - (ii) the disclosure interferes with the right to the privacy of any person;
  - (iii) the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest; or
  - (iv) the information contains—
    - (A) proprietary information including information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaty to which Uganda is a party;
    - (B) scientific or technical information, the disclosure of which is likely to cause harm to the interests of the proper functioning of any procuring and disposal entity; or
    - (C) information supplied in confidence by a bidder, the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.”

**26. Replacement of section 50 of principal Act**

For section 50 of the principal Act there is substituted, the following—

**“50. Preference and reservation**

(1) Subject to the economic and social policies of Government and the international obligations of Government, preference shall be given to domestically manufactured goods and Ugandan contractors and Ugandan consultants, in order to promote their development, by giving them a competitive advantage when competing for public procurement contracts, with foreign manufactured goods, foreign contractors or foreign consultants.

(2) To promote particular sectors within specified geographic areas, specified public procurement contracts or parts of a contract shall be subject to reservation schemes.”

**27. Repeal of section 54 of the principal Act**

Section 54 of the principal Act is repealed.

PART VI—AMENDMENTS TO PART V OF THE PRINCIPAL ACT

**28. Amendment of section 56 of the principal Act**

Section 56 of the principal Act is amended by repealing subsection(1).

**29. Replacement of section 58 of principal Act**

For section 58 of the principal Act there is substituted the following—

**“58. Procurement and disposal planning**

(1) In accordance with the budget preparation procedures issued by the Minister, a procuring and disposing entity shall in each financial year, by a date determined by the Secretary to the Treasury, prepare and submit to the Secretary to the Treasury

and to the Authority, its annual procurement plan for the following financial year.

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

- (a) aggregate its requirements where possible, both within the procuring and disposal entity and between procuring and disposal entities, to obtain value for money and to reduce procurement costs;
- (b) make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure works, services or supplies that are required continuously or repeatedly over a set period of time;
- (c) not split a procurement or a disposal to defeat the use of the appropriate procurement or disposal method;
- (d) integrate its procurement budget with its expenditure programme; and
- (e) integrate the disposal of assets, both listed and unlisted, in its assets register as well as in its income and expenditure budget.

(3) The Authority shall issue guidelines in respect of the format of the procurement plan to be prepared under this section.

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

(5) A procuring and disposing entity shall notify the Secretary to the Treasury and the Authority of any changes made to its procurement plan and submit the updated and approved plan to the Authority.

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

(7) Procurement shall not be carried out outside the procurement plan except in cases of emergency situations.”

**30. Insertion of new section 59A in principal Act**

The principal Act is amended by inserting immediately after section 59 the following—

**“59 A. Preference schemes**

(1) Preference schemes shall be applied—

- (a) in respect of goods, works and non-consultancy services, where the open domestic or open international bidding methods are used, with a specified margin of preference being added during the financial comparison stage of the evaluation process to the evaluated price of the bid which does not qualify for preference; and
- (b) in respect of consultancy services, for the quality and cost based selection method and the least cost selection method, where proposals are invited from both national and foreign consultants, with a specified margin of preference being added to the evaluated price of the foreign proposal, during the financial comparison stage of the evaluation process.

(2) The margin of preference specified in subsection (1) shall—

- (a) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal;
- (b) in respect of goods that qualify as domestically manufactured goods, be related to the percentage of the labour, raw material and components of the goods that originate from Uganda; and
- (c) in respect of works and services—
  - (i) be proportional to the percentage of the share capital of the contractor or consultant, where the consultant is a firm owned by Government or by Ugandans; or
  - (ii) be based on only the price and shall be added to the evaluated price of a bid which does not qualify for preference or to the evaluated price of a bid of a foreign proposal, if the consultant is a Ugandan citizen.

(3) A procuring and disposing entity shall when procuring goods, works or services under this section, grant a margin of preference—

- (a) of fifteen percent, in respect of goods; and
- (b) of seven percent, in respect of works or services.

(4) Goods qualify for preference, as domestically manufactured goods, under subsection (2) (b) where—

- (a) where the labour or value addition to the good is more than thirty percent of the ex-works of the goods; and

- (b) the production facility in which the goods are to be manufactured, assembled or processed is in Uganda and is engaged in the manufacturing, assembling or processing of the goods at the time of submission of the bid.

(5) A contractor and a consultant qualify for preference as a Ugandan contractor or a Ugandan consultant under subsection (2) (c) where—

- (a) the contractor or consultant is incorporated or registered in Uganda;
- (b) the contractor or consultant if an individual, is a Ugandan citizen;
- (c) the contractor or consultant if a company registered in Uganda, more than fifty percent of the capital of the contractor or consultant is owned by Ugandan citizens; and
- (d) the contractor or consultant if a legal entity, more than fifty percent of the capital of the contractor or consultant is owned by the Government or by a procuring and disposing entity.

(6) A contractor or consultant who qualifies as such under section (5) (d) shall be—

- (a) legally and financially autonomous;
- (b) established as a commercial venture; and
- (c) authorised by a competent authority or a professional body to operate as a contractor or to perform services as a consultant.



(7) A procuring and disposing entity shall, when procuring works or services under a joint venture or under an association between a Ugandan contractor and a foreign partner or between a Ugandan consultant and a foreign partner, grant a margin of preference of four percent for the works or services.

(8) A joint venture or an association between a Ugandan contractor and a foreign partner or between a Ugandan consultant and a foreign partner shall be eligible for preference where—

- (a) the joint venture is registered in Uganda;
- (b) the Ugandan contractor or Ugandan consultant in the joint venture qualifies for preference under subsection (5); or
- (c) the Ugandan contractor or Ugandan consultant demonstrates a beneficiary interest of more than fifty percent in the joint venture as demonstrated by the profit and loss sharing provisions of the joint venture agreement.”

### **31. Insertion of new section 59 B in principal Act**

The principal Act is amended by inserting immediately after section 59 A the following—

#### **“59B. Reservation schemes**

(1) In accordance with section 50 (2), the Authority shall, in consultation with a competent authority, and the relevant stakeholders, specify the public procurement contracts to be subject to a reservation scheme and shall designate the particular sectors, within a specified geographical area, that are eligible to participate in the reservation scheme.

(2) A public procurement contract shall be subject to a

reservation scheme in order to—

- (a) promote the use of local expertise and materials;
- (b) promote the participation of local communities or local organisations; or
- (c) apply specific technologies.

(3) A procuring and disposing entity that intends to make a procurement under a reservation scheme shall—

- (a) apply to the Authority for permission to use alternative procurement procedures and documents and shall in the application indicate the contract packages, specifications and contracting processes to be included in the bidding documents; and
- (b) deal with only the providers that are eligible to participate in a reservation scheme, in accordance with this section.

(4) The procurement procedures and documents and the contract packages, specifications and contracting processes to be used under subsection (3) shall be in accordance with the basic procurement principles prescribed under Part IV of this Act.”

### **32. Replacement of section 60 of principal Act**

For section 60 of the principal Act there is substituted the following—

#### **“60. Statements of requirements**

- (1) A statement of requirements may be in the form of—
  - (a) specifications;
  - (b) terms of reference;

- (c) scope of works;
- (d) drawings;
- (e) bills of quantities; or
- (f) an equivalent of any of the items specified in this subsection, as may be appropriate.

(2) A statement of requirements shall give a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.”

**33. Replacement of section 68 of principal Act**

For section 68 of the principal Act there is substituted the following—

**“68. Modification and withdrawal of bids**

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

**34. Amendment of section 71 of the principal Act**

Section 71 of the principal Act is amended by inserting immediately after subsection (3) the following—

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

**35. Replacement of section 74 of principal Act**

For section 74 of the principal Act there is substituted the following—

**“74. Prohibition of negotiations**

(1) Negotiations shall not be carried out between a procuring and disposing entity and a contractor, in respect of the proposal of the contractor, except where—

- (a) the competitive procurement method was used and only one bid was received in response to the call for bids;
- (b) the direct procurement method was used; or
- (c) the procurement is for consultancy services.

(2) Negotiations under subsection (1) shall only be carried out where the best evaluated bid or proposal exceeds the budget of the procuring and disposing entity.

(3) For the purposes of the negotiations under this section, the procuring and disposing entity shall investigate why the cost of the procurement exceeds the budget of the procuring and disposing entity and may—

- (a) cancel the procurement process and request for new proposals; or
- (b) negotiate with the best evaluated bidder in order to obtain a reduction of the scope or the quantities of the procurement.”

PART VII—AMENDMENT OF PART VI OF THE PRINCIPAL ACT

**36. Amendment of section 79 of principal Act**

Section 79 of the principal Act is amended—

- (a) by substituting for the words in the marginal note, “Choice of procurement method”;
- (b) by substituting for subsection (1) the following—

“(1) A procuring and disposal entity shall in respect of—

- (a) the procurement of goods, works and non consulting services, use any of the methods

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specified in sections 80, 81, 82, 83, 84, 85 and 86 and the conditions for their use specified in the Fourth Schedule to this Act; and

- (b) the procurement of consulting services, use section 88A and the conditions for procuring consultancy services specified in the Fourth Schedule to this Act.”

**37. Amendment of sections 80, 81, 82 and 83 of principal Act**

Sections 80, 81, 82 and 83 of the principal Act are amended by repealing the words “or disposal” appearing in each of those sections.

**38. Amendment of section 84 of principal Act**

Section 84 of the principal Act is amended—

- (a) by substituting for the words in the marginal note, “Quotation method”;
- (b) by substituting for subsection (1) the following—

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

- (c) by repealing the words “and Proposal” appearing in subsection (2);
- (d) by substituting for subsection (3) the following—

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

**39. Amendment of section 85 of principal Act**

Section 85 of the principal Act is amended by repealing the words “or disposal” appearing in the marginal note and in the section.

**40. Amendment of section 86 of the principal Act**

Section 86 of the principal Act is amended—

- (a) by repealing the words “or disposal” appearing in the marginal note;
- (b) by substituting for subsection (1) the following—

“(1) Micro procurement is a procurement method which shall be used for very low value procurement requirements.”;
- (c) by repealing the words “or disposal” appearing in subsection (2).

**41. Amendment of section 87 of the principal Act**

Section 87 of the principal Act is amended—

- (a) by substituting for the words in the marginal note, “Methods of disposal of public assets”;
- (b) by substituting for subsection (1) the following—

“(1) Public assets may be disposed of using any of the following methods—

  - (a) public auction;
  - (b) public bidding;
  - (c) direct negotiations;
  - (d) sale to public officers;
  - (e) destruction of the assets;
  - (f) conversion or classification of assets into another

form for disposal by sale;

- (g) trade-in;
  - (h) transfer to another procuring and disposing entity; and
  - (i) donation.”;
- (c) by inserting immediately after subsection (1), the following—

“(1a) Where a public asset is to be donated the procuring and disposing entity shall take into account the following factors—

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

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

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

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

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

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

#### **42. Insertion of new section 88A in principal Act**

The principal Act is amended by inserting immediately after section 88 the following—

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

(1) A procuring and disposing entity shall procure a consultancy service by publishing a notice, as specified in the Fourth Schedule to this Act, inviting expression of interest for a required assignment.

(2) The procuring and disposing entity shall, from the expressions received in respect of the notice under subsection (1), prepare a shortlist of consultants, who have the capacity to perform the required assignment.

(3) Notwithstanding subsection (1), a procuring and disposing entity may procure consultancy services using a short list of consultants developed—

- (a) from the register of providers of the Authority;
- (b) on the recommendation of a competent authority;



- (c) using the pre-qualified list of the procuring and disposing entity; or
- (d) using the pre-qualified list of another procuring and disposing entity.

(4) A procuring and disposing entity shall procure consultancy services using subsection (3) where—

- (a) the required consultancy services can only be provided by a limited number of consultants;
- (b) the time and cost required to examine and evaluate a large number of expressions of interest is not proportionate to the value of the assignment to be undertaken; or
- (c) there is an emergency situation.

(5) The selection methods to be used for the selection of consultants shall be prescribed by regulations made under this Act and shall include—

- (a) quality and cost based selection method;
- (b) quality based selection method;
- (c) fixed budget selection method;
- (d) least cost based selection method; and
- (e) the consultants' qualifications selection method.

(6) The procuring and disposing entity may conduct negotiations with the selected consultants but negotiations shall not be held with several consultants simultaneously.

(7) Notwithstanding this section, where exceptional circumstances prevent the use of competitive bidding and where any of the conditions for using the direct procurement method as

specified in the Fourth Schedule to this Act are satisfied, a procuring and disposing entity may source a consultant who has the capacity to perform the required assignment.”

PART VIII—INSERTION OF PART VIA IN PRINCIPAL ACT

**43. Insertion of Part VIA in principal Act**

There is inserted immediately after Part VI of the principal Act, the following—

“PART VI A—TYPES OF CONTRACT

**88B. Choice of contract**

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

**88C. Lump sum contract**

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

**88D. Time-based contract**

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

**88E. Admeasurement contract**

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

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

hidden foundation problems, are likely.

**88F. Framework contract**

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

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

**88G. Percentage based contract**

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

**88H. Cost reimbursable contract**

A cost reimbursable contract shall be used—

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

**88I. Target price contract**

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

**88J. Retainer contract**

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

**88K. Success fee contract**

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

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

(1) For any other type of contract or contracting arrangement, other than those specified in sections 88C to 88K, including acquisition by rental, lease, hire purchase, licence, tenancy, franchise or by an arrangement that involves the mobilisation of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects or concessioning, the procuring and disposing entity shall seek guidance from the Authority on the applicable procurement procedures and documents.

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

**PART IX—AMENDMENT TO PART VII OF THE PRINCIPAL ACT**

**44. Amendment of section 89 of principal Act**

Section 89 of the principal Act is amended—

- (a) by renumbering the existing provision as (1);

- (b) by inserting immediately after subsection (1) the following—
- “(2) A procuring and disposing entity shall provide a bidder who seeks administrative review with—
- (a) a summary of the evaluation process;
  - (b) a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and
  - (c) the reasons for rejecting the concerned bids.
- (3) The information provided to a bidder under subsection (2) shall be used only for administrative review purposes.”

**45. Amendment of section 90 of principal Act**

Section 90 of the principal Act is amended—

- (a) by substituting for subsection (1), the following—
- “(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.”;
- (b) by inserting after subsection (1) the following—
- “(1a) A complaint by a bidder against a procuring and disposing entity shall—
- (a) be in writing and shall be submitted to the accounting officer of the procuring and disposing entity with the prescribed fee, and a copy shall be

given to the Authority;

- (b) be made within ten working days from the date the bidder, first becomes aware or ought to have become aware, of the circumstances giving rise to the complaint;

- (c) by substituting for subsection (2), the following—

“(2) On receiving the complaint and the prescribed fee, the accounting officer shall—

- (a) immediately suspend the procurement proceedings; and

- (b) make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her decisions and submit a copy of the decision to the Authority.”;

- (d) insert immediately after subsection (3), the following—

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

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

- (6) The bidder who makes a complaint under this

section has a right to proceed under Part VIIA of this Act, where the Authority fails to make a recommendation as required under subsection (4).”

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

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

**46. Amendment of section 91 of principal Act**

Section 91 of the principal Act is amended by inserting immediately after subsection (4) the following—

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

**PART X—INSERTION OF PART VIIA IN THE PRINCIPAL ACT**

**47. Insertion of Part VIIA in principal Act**

There is inserted immediately after Part VII of the principal Act, the following—

**“PART VIIA—REVIEW OF DECISIONS OF THE AUTHORITY**

**91A. Interpretation**

In this Part, unless the context otherwise requires—

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

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

*Establishment of the Public Procurement and Disposal of  
Public Assets Appeals Tribunal***91B. Public Procurement and Disposal of Public Assets Appeals Tribunal**

(1) There is established the Public Procurement and Disposal of Public Assets Appeals Tribunal which shall consist of a chairman and four other members appointed in accordance with this Part.

(2) A person to be appointed chairperson of the Tribunal shall be a person qualified to be a judge of the High Court.

(3) A person to be appointed a member of the Tribunal shall be a person with knowledge and experience in public procurement, finance, commerce, business, administration or law.

(4) A person does not qualify for appointment as a member of the Tribunal unless the person—

- (a) is of high moral character and proven integrity;
- (b) has not been convicted of an offence of moral integrity;
- (c) is of sound mind; and
- (d) has not been declared bankrupt.

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

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

(7) The members of the Tribunal shall hold office on such



terms and conditions as the Minister may prescribe, including terms and conditions relating to remuneration and allowances.

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

(1) The members of the Tribunal shall hold office for three years and are eligible for re-appointment for one further term.

(2) Where necessary, the Minister may extend the tenure of a member for a period not exceeding six months from the date of expiry of the period of appointment.

(3) A member of the Tribunal may be removed from office by the Minister for—

- (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) misbehaviour or misconduct;
- (c) incompetence;
- (d) failure to attend at least three consecutive meetings of the Tribunal without reasonable grounds;
- (e) corruption;
- (f) conviction of an offence involving moral turpitude; or
- (g) being adjudged bankrupt by a court of law.

(4) Any member of the Tribunal may resign his or her office upon giving a notice of one month, in writing to the Minister.

*Management of the Tribunal*

**91D. Arrangement of business**

(1) Subject to this Part, the Chairperson is responsible for ensuring the orderly and expeditious discharge of the business of

the Tribunal and shall for that purpose, give directions as to—

- (a) the arrangement of the business of the tribunal;
- (b) the place at which the Tribunal may sit;
- (c) the procedure of the Tribunal generally; and
- (d) the procedure of the Tribunal at a particular place.

(2) The times and places of the hearings of the Tribunal shall be determined by the chairperson with a view to securing a reasonable opportunity for the parties to the proceedings to appear before the Tribunal with as little inconvenience and expense as possible.

(3) In carrying out its lawful writs, processes, orders, rules, decrees or commands, the Tribunal shall have the assistance available to a court in Uganda.

### **91E. Constitution of the Tribunal**

(1) The Tribunal shall be constituted for proceedings by three members.

(2) At a hearing of proceedings before the Tribunal at which the Tribunal is constituted by three members—

- (a) if the chairperson is present, he or she shall preside; or
- (b) in any other case, a member elected by the members present from among their number shall preside.

(3) Where one of the members of the Tribunal ceases to be a member for the purpose of the proceedings, or ceases to be available for the purpose of the proceedings, before the matter to which the proceedings relates is determined—

- (a) if the parties to the proceedings agree, then the proceedings shall be completed by the Tribunal constituted by the remaining two members of the Tribunal; or
- (b) if the parties do not agree, the proceedings shall be adjourned and another member shall replace the member who ceased to be a member for the purpose of the proceedings and the proceedings shall then be reheard.

(4) Where as a result of subsection (3) (a), the members do not agree on the decision to be made, the chairperson shall assign another member to the Tribunal for the purpose of the proceedings, and the proceedings shall then be reheard.

(5) Where the proceedings is reheard by the Tribunal, the Tribunal may, for the purpose of the proceedings, have regard to the record of the proceedings before the Tribunal as previously constituted, including a record of any evidence taken in the proceedings.

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

(1) Where a member of the Tribunal has any pecuniary or other interest, that may conflict with the proper performance of the functions of the member, the member shall disclose the interest to the parties to the proceedings.

(2) Where a member discloses an interest under subsection (1), the member shall not take part in the proceedings or exercise any powers in relation to the review by the Tribunal of the decision to which the proceedings relate, except where the parties to the proceedings give their consent.

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

(1) The Tribunal shall have a registrar who shall be a person qualified to be a registrar of the High Court.

(2) The registrar shall be in charge of the registry of the Tribunal and shall be responsible for keeping records and the seal, conducting correspondence and performing such other functions necessary for the purposes of assisting the chairperson under section 91D.

**91H. Official seal**

(1) The Tribunal shall have a seal which shall be judicially noticed.

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

*Review of decisions of the Authority by the Tribunal*

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

(1) A bidder who is aggrieved by a decision made by the Authority under section 91 (4), may make an application to the Tribunal for a review of the decision of the Authority.

(2) A bidder who alleges that the Authority has a conflict of interest in respect of a matter before the Authority and who believes that the matter cannot be handled impartially by the Authority, may apply to the Tribunal for a determination of the allegation and where necessary, of the matter that was before the Authority.

(3) In addition to subsections (1) and (2), the Tribunal has power to review a decision of the Authority where an application is properly made to the Tribunal by a procuring and disposing entity or by any person whose rights are adversely affected by a decision made by the Authority.

(4) For the avoidance of doubt, the following matters shall not be subject to review by the Tribunal—

- (a) a decision by a procuring and disposing entity to reject any or all bids prior to award of a contract under Section 75;
- (b) a decision of a procuring and disposing entity to discontinue a procurement process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and
- (c) a decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.

(5) In reviewing a decision before it, the Tribunal may—

- (a) suspend any action by the concerned procuring and disposing entity, until the Tribunal makes a decision on the matter;
- (b) direct the concerned procuring and disposing entity, with respect to anything to be done or redone in the procurement or disposal process;
- (c) order that the procurement or disposal process be terminated; and
- (d) require the payment of compensation for any costs, reasonably incurred by the bidder who is a party to the proceedings, as a result of an unlawful act or decision of the concerned procuring and disposing entity or of the Authority.

(6) For the purposes of reviewing a decision of the Authority, the Tribunal shall make a decision in writing and give

reasons for the decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based and may—

- (a) affirm the decision of the Authority;
- (b) vary the decision of the Authority; or
- (c) set aside the decision of the Authority, and
  - (i) make a decision in substitution for the decision so set aside; or
  - (ii) refer the matter to the Authority for reconsideration in accordance with any directions or recommendations of the Tribunal.

(7) The Tribunal shall issue a decision within a period of not more than ten working days after receiving an application for review.

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

(1) Where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, the Authority may in addition to the actions provided under section 9 of the principal Act, refer the matter to the Tribunal.

(2) Where the Tribunal establishes that a bidder is involved in a fraudulent practice, the Tribunal shall direct the procuring and disposing entity to cancel the contract of the bidder.

(3) The Authority may also refer a matter to the Tribunal, where as a result of an investigation or a procurement or disposal contract audit or a performance audit carried out in accordance with section 8 (c) of the principal Act, the Authority establishes

that the continuation of a procurement or disposal proceeding may result in an incorrect contract award decision or a worsening of any damage already done to the procurement or disposal proceeding.

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

**91K. Powers of the tribunal.**

(1) In performing its functions, the Tribunal shall have power to—

- (a) take evidence on oath;
- (b) proceed in the absence of a party who has had reasonable notice of the proceedings;
- (c) adjourn the hearing of the proceedings;
- (d) make an order as to costs against any party, which shall be enforceable like an order of the High Court; and
- (e) request to examine a witness who is outside Uganda.

(2) For the purpose of the hearing of proceedings before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it—

- (a) to give evidence; or

- (b) to produce books, documents or things mentioned in the summons, that are in the possession, custody or control of the person named in the summons.

(3) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered to make a full and true reply to the interrogations.

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

(1) An application to the Tribunal for review of a decision of the Authority made under section 91I shall—

- (a) be in writing in the prescribed form;
- (b) include a statement of the reasons for the application;
- (c) be lodged with the Tribunal within ten working days of being served by the Authority with its decision.

(2) Where the Authority refers a matter to the Tribunal under section 91J, the Authority shall—

- (a) do so within 10 working days of determining the fact in section 91J (1) and (3); and
- (b) submit to the Tribunal a statement of the justification for the cancellation of the contract or suspension of the proceedings.

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

(1) A party to proceedings before the Tribunal who is



aggrieved by the decisions of the Tribunal, may, within thirty days after being notified of the decision of the Tribunal or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court.

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

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

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

*Finances of the Tribunal*

**91O. Funds of the Tribunal**

- (1) The funds of the Tribunal shall consist of—
- (a) monies appropriated by Parliament for the functions of the Tribunal;
  - (b) fees and fines levied by the Tribunal to be retained as appropriation in aid;
  - (c) grants received by the Tribunal with the approval of

the Minister; and

- (d) any other money as may with the approval of the Minister, be received by or made available to the Tribunal for the purpose of performing its functions.

(2) The funds of the Tribunal shall be administered and controlled by the registrar.

**91P. Financial year**

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

**91Q. Accounts and audit**

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

**91R. Annual report**

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

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

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

**91T. Regulations under this Part**

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

PART XI—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT

**48. Insertion of section 91U in principal Act**

The principal Act is amended by inserting immediately before section 92 the following—

**“91U. Limitation on contracts with members of procuring and disposing entities**

(1) Except where expressly allowed by regulations, a procuring and disposing entity shall not enter into contract with—

- (a) a member of the Contracts Committee or of the evaluation committee, an employee of the procuring and disposal entity or a member of the Board of Survey;
- (b) a person appointed to politically or administratively control the procuring and disposing entity, including a Minister, the accounting officer or a member of the governing body of the procuring and disposing entity; and
- (c) a company, where a person specified in paragraph (a) or (b) has a controlling interest.

(2) A member of a Contracts Committee, a member of a procurement and disposal unit; a member of the governing body of a procuring and disposing entity, or a member of the Board of Survey, who has a conflict of interest with respect to a procurement or disposal shall not—

- (a) take part in any procurement or disposal proceedings; and
- (b) after a procurement or disposal contract is entered into, take part in any decision relating to the procurement or disposal contract.

(3) “Conflict of interest” in subsection (2), in relation to a

person to whom that subsection applies, includes the personal interest of a relation or business associate which that person has knowledge or would have had knowledge if he or she exercised due diligence having regard to all the circumstances.

(4) “Relation” in subsection (3) means a biological or adopted child, a spouse and a parent.

(5) A person to whom this section applies shall reveal any personal interest that may impinge or which may be deemed to impinge on the business dealings of that person, with the procuring and disposing entity.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or to imprisonment for a term not exceeding five years, or both.”

**49. Replacement of section 94 of principal Act**

For section 94 of the principal Act there is substituted the following—

**“94. Suspension of providers**

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

- (a) the provider breaches the Code of Ethics of providers;
- (b) the provider is debarred from the procurement processes of an international agency of which Uganda is a member;
- (c) after investigations by the Auditor General or an

independent body appointed by the Auditor General, the provider is found to have a record of unsatisfactory performance;

- (d) the provider is convicted of a corrupt practice or a fraudulent practice under this Act;
- (e) the provider fails to substantially perform the obligations specified in the contract;
- (f) the provider is suspended by the professional body of the provider, for professional misconduct; or
- (g) the provider is found to have faulted on the obligations specified under the law.”

**50. Amendment of section 95 of principal Act**

Section 95 of the principal Act is amended—

- (a) by substituting for subsection (1) (d) the following—

“(d) connives or colludes to commit a corrupt practice or a fraudulent practice,”

- (b) by inserting immediately after subsection (1) the following—

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

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

- (b) engages in a corrupt practice or a fraudulent practice during a procurement or disposal process,

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

(1b) An accounting officer who signs a contract contrary to—

- (a) section 26 (2), commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or to imprisonment not exceeding five years, or both; and
- (b) section 26 (5), commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or to imprisonment not exceeding five years, or both and in addition to the fine, may be ordered by court to make a refund of an amount equivalent to the difference in price between the price paid for the supplies, services or works and the market price.

(1c) Where it is proved that a provider is involved in a fraudulent practice in any procurement proceeding—

- (a) the provider shall be disqualified by the Contracts Committee from the procurement proceeding; and
- (b) the Contracts Committee shall recommend to the Authority to suspend the provider.

(1d) Where a provider is suspended under section 94,

and there is an existing contract between the provider and the procuring and disposing entity, the contract shall be voidable at the option of the procuring and disposing entity.

(1e) Notwithstanding subsections (1c) and (1d), a procuring and disposing entity may seek any other legal remedy available, against the provider.

(1f) Where a procuring and disposing entity, after appropriate investigations, is satisfied that any bidder to whom a proposal to award a contract is to be made, is engaged in a corrupt practice or a fraudulent practice in competing for the contract in question, the procuring and disposing entity may—

- (a) reject the proposal for award of the contract; or
- (b) recommend to the Authority that the bidder be suspended from participating in any procurement or disposal process.

(1g) Where it is determined after a special audit or by a court that a bidder is engaged in a corrupt practice or a fraudulent practice during the procurement process, the award of a contract or execution of a contract, the Authority shall suspend the bidder from participating in any procurement or disposal process.”

**51. Insertion of new section 95A in principal Act**

The principal Act is amended by inserting immediately after section 95 the following—

**“95A. Force account mechanism**

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

(2) In this section “force account mechanism” means undertaking the works of a procuring and disposing entity using the personnel and equipment of the procuring and disposing entity or of another procuring and disposing entity.

(3) Where a procuring and disposing entity uses the force account mechanism—

- (a) the supplies to be used for the assignment shall be procured in accordance with the requirements of this Act; and
- (b) the procuring and disposing entity shall determine that the direct, indirect and overhead costs to be incurred are less than would be incurred if the assignment was executed by a contractor.

(4) Where there is an emergency situation or where no contractor is willing to execute the assignment, the force account mechanism may be used, without fulfilling the requirements of subsection (3)(b).

(5) For the purpose of ensuring value for money in the application of the force account mechanism, the accounting officer of a procuring and disposing entity shall—

- (a) make available, materials, employees tools and equipment, adequate for the works;
- (b) ensure that the works are executed in accordance with the applicable technical standards;
- (c) ensure that the works are supervised by a qualified supervisor;



- (d) ensure that the employees and supplies used for the works are commensurate to the works; and
- (e) maintain and manage the records, equipment and supplies of the works in accordance with the Public Finance and Accountability Act, 2003.”

**52. Replacement of section 96 of principal Act**

For section 96 of the principal Act there is substituted the following—

**“96. Regulations**

(1) The Minister shall, on the recommendation of the Authority and approval of Parliament, issue regulations for the better carrying out of the objectives and functions of this Act.

(2) Without prejudice to the general effect of subsection (1), the Minister shall, on the recommendation of the Authority, and approval of Parliament, issue regulations for procurement and disposal by a procuring and disposing entity outside Uganda.

(3) Regulations made under this section may prescribe for a contravention of any of the provisions of the regulations or any guidelines issued under this Act, a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both.”

**53. Replacement of section 97 of principal Act**

For section 97 of the principal Act there is substituted the following—

**“97. Guidelines**

For the better carrying out of the objectives of and functions

under this Act, the Authority shall issue and *Gazette* guidelines.”

PART XII—AMENDMENTS TO THE SCHEDULES TO THE PRINCIPAL ACT

**54. Insertion of new Schedule 1 A in principal Act**

There is inserted immediately after the First Schedule of the principal Act, the following—

“SCHEDULE 1 A

*Section 11*

**ORGANISATION TO NOMINATE MEMBERS OF THE  
BOARD OF DIRECTORS**

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

**55. Amendment of Fourth Schedule to principal Act**

The Fourth Schedule to the principal Act is amended—

- (a) by substituting for paragraph 6 (1) (b) the following—

“(b) in the circumstances specified in subparagraph (1) (a) (iii), (iv) and (v), where the value of the new works, services or supplies does not exceed fifteen percent of the value of the original or existing contract and the original or existing contract is awarded through a competitive process.”;

- (b) by inserting immediately after paragraph 6 (1) (b) the following—

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

- (c) by substituting for paragraph 6 (2), the following—

**“7. Micro procurement**

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

- (d) by renumbering paragraph 6 (3) as paragraph 7 (2);
- (e) by inserting immediately after paragraph 7 (2) (b), the following—

“(c) a comparison of at least three quotations shall be made.”;

- (f) by inserting immediately after paragraph 7 (2) (c), the following—

“(3) A procuring and disposing entity shall not use micro procurement—

- (a) to split procurements in order to avoid using the appropriate procurement method; or
- (b) for the procurement of works, services or supplies where they are required continuously or repeatedly over a set period of time or for which

a framework contract is required.”;

(g) by inserting immediately after paragraph 7 the following—

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

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

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

(h) by repealing the words “and disposal” and the words “or disposal” wherever they appear in the Schedule.

**56. Amendment of Fifth Schedule to principal Act**

The Fifth Schedule to the principal Act is amended by inserting immediately after paragraph 7 the following—

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

**57. Transitional provisions**

(1) The amendments made by section 9 of this Act shall not apply to the Board in existence immediately before the coming into force of this Act.

(2) The amendment made by section 46 of this Act shall not apply to a decision made by the Authority before the coming into force of this Act.

(3) A procurement process that had commenced before the

coming into force of this Act shall be continued to completion under the principal Act, as amended by this Act.

## **CROSS REFERENCE**

Bank of Uganda Act, Cap 51.

Companies Act, Cap 110.

Public Finance and Accountability Act, Act No. 6 of 2003

Universities and other Tertiary Institutions Act, Act No. 7 of 2001.