

ACTS SUPPLEMENT

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Act 15 *Public Procurement and Disposal of Public* **2021**
Assets (Amendment) Act

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(AMENDMENT) ACT, 2021

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**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS (AMENDMENT) ACT, 2021**

An Act to amend the Public Procurement and Disposal of Public Assets Act; to provide for the functions of the Authority and of the Board of Directors of the Authority; to provide for electronic records and communication; to provide for the aggregation of procurement requirements; to provide for marginalised groups under reservation schemes; to remove the Authority from the administrative review process; to provide for the appointment of a registrar of a Tribunal; to provide for the powers of the High Court in procurement proceedings; to amend the Kampala Capital City Act and the Local Governments Act with respect to procurement and for related purposes.

Date of Assent: 2nd June, 2021

Date of publication: 1st July, 2021

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY**1. Commencement**

This Act shall commence on publication in the Gazette.

PART II—AMENDMENTS OF PART I OF PRINCIPAL ACT

2. Amendment of section 2 of the Public Procurement and Disposal of Public Assets 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) in subsection (1) (b) by inserting immediately after the word “co-financing” the phrase “ or pre contract financing by providers”; and
- (b) by repealing subsection (2).

3. Amendment of section 3 of principal Act

Section 3 of the principal Act is amended—

- (a) by substituting for the definition of the word “award” the following—

““award decision” means a decision made by a Contracts Committee in accordance with section 28 (1) (a);”;
- (b) in the definition of “consultancy service”, by substituting the phrase “practitioner who is” with “consultant or consulting firm,”;
- (c) by substituting for the definition of the term “consultant” the following—

““consultant” means an individual who provides consultancy services to a procuring and disposing entity;”;
- (d) by inserting immediately after the definition of “consultant” the following—

““consulting firm” means a company, corporation, organisation or partnership that provides consultancy services to a procuring and disposing entity;”;

- (e) by substituting for the definition of the words “Contracts Committee” the following—

““Contracts Committee” means the Contracts Committee of a procuring and disposing entity;” and

- (f) in the definition of “procuring and disposing entity” by—
- (i) repealing the phrase “or department” appearing in paragraph (a);
- (ii) substituting for paragraph (c) the following—

“(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”.

4. Insertion of new section 4B in principal Act

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

“4B. The role of the 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 III—AMENDMENTS OF PART II OF PRINCIPAL ACT

5. Amendment of section 7 of principal Act

Section 7 of the principal Act is amended in subsection (1) by substituting for paragraph (a) the following—

- “(a) advise procuring and disposing entities on the application of this Act and regulations and guidelines made under the Act;”

6. Amendment of section 8 of principal Act

Section 8 of the principal Act is amended by—

- (a) substituting subsection (1) (a) (b) and (c) with the following—

“(1) In the exercise of its regulatory function under section 7 (j), the Authority shall have power to—

- (a) require any information, documents, records and reports in the respect of a procurement or disposal process;
- (b) call for the production of books of accounts, plans or documents;
- (c) institute procurement and disposal contract and performance audits; and

- (b) by substituting for subsection (1) (e) the following—

“(e) 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;”

7. Amendment of section 9 of principal Act

Section 9 of the principal Act is amended in subsection (1) by repealing the words “or serious”.

8. Amendment of section 10 of principal Act

Section 10 of the principal Act is amended—

- (a) in subsection (1), by substituting for the phrase “execute the functions and powers of the Authority specified in sections 7 and 8 of this Act”, the phrase “be the governing body of the Authority and which shall be responsible for the general direction and supervision of the Authority”; and
- (b) in subsection (2), by substituting for the word “Notwithstanding” the words, “In addition to”.

9. Amendment of section 15 of principal Act

Section 15 of the principal Act is amended in subsection (1) by—

- (a) repealing paragraph (a); and
- (b) repealing the phrase “and the Complaints Review Committee” appearing in paragraph (b).

10. Repeal of section 15A of principal Act

Section 15A of the principal Act is repealed.

11. Amendment of section 17 of principal Act

Section 17 of the principal Act is amended—

- (a) in subsection (1) by substituting the word “three” with the word “five”; and
- (b) by repealing subsection (3).

12. Amendment of section 21 of principal Act

Section 21 of the principal Act is amended by inserting immediately after subsection (1), the following new subsection—

“(1a) 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.”

13. Replacement of section 22 of principal Act

For section 22 of the principal Act, there is substituted the following—

“22. 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.”

14. Repeal of section 23 of principal Act

Section 23 of the principal Act is repealed.

PART IV—AMENDMENTS OF PART III OF PRINCIPAL ACT

15. Amendment of section 26 of principal Act

Section 26 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately after paragraph (f) the following—

“(fa) certifying that the price of the works, services or supplies to be procured conform to the prices in the guidelines issued by the Authority;

(fb) 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;”;

- (b) by repealing subsection (4);

- (c) by substituting for subsection (5) the following—

“(5) 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.”

16. Amendment of section 28 of principal Act

Section 28 of the principal Act is amended—

- (a) in subsection (1) (a) by substituting for the words “award of contracts” the words “making award decisions”; and
- (b) by repealing subsection (1) (ca).

17. Amendment of section 29 of principal Act

Section 29 of the principal Act is amended—

- (a) by numbering the existing provision as (1);
- (b) by substituting for the words “award contracts” in paragraph (c), the words “make award decisions”; and
- (c) by inserting immediately after subsection (1) the following—

“(2) A decision under this section shall be made within ten working days upon receipt of a submission from the procuring and disposal unit.”

18. Amendment of section 41 of principal Act

Section 41 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(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.”

PART V—AMENDMENTS TO PART V OF PRINCIPAL ACT

19. Amendment of section 56 of principal Act

Section 56 of the principal Act is amended by—

(a) substituting for the headnote, the words “Standard forms”; and

(b) inserting immediately after subsection (4), the following —

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

(6) 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.”

20. Amendment of section 57 of principal Act

Section 57 of the principal Act is amended—

(a) in subsection (1), by inserting immediately after the words “shall be in writing”, the words “and may be transmitted electronically”; and

(b) by inserting immediately after subsection (3), the following—

“(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.”

21. Amendment of section 58 of principal Act

Section 58 of the principal Act is amended by—

- (a) inserting immediately after subsection (2), the following—
- “(2a) 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.
- (2b) 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.
- (2c) The procurement of aggregated requirements shall be in accordance with guidelines issued for that purpose.
- (2d) 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.” and
- (b) repealing subsection (3).

22. Amendment of section 59B of principal Act

Section 59B of the principal Act is amended in subsection (2) by—

- (a) inserting at the end of paragraph (b), “including registered small and medium enterprises and business ventures”; and

(b) inserting immediately after paragraph (c), the following—

“(d) promote the participation of registered associations of women, youth and persons with disabilities, respectively.”

23. Insertion of new section 61A in principal Act

The principal Act is amended by inserting immediately after section 61 the following—

“61A. 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.”

24. Insertion of new section 71A in principal Act

The principal Act is amended by inserting immediately after section 71 the following—

“71A. Time period for completion of procurement process

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

25. Amendment of section 74 of principal Act

Section 74 of the principal Act is amended by substituting for subsection (1) the following—

“74. 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.”

26. Replacement of section 75 of principal Act

For section 75 of the principal Act, there is substituted the following—

“75. 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.

(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.”

PART VI—AMENDMENT OF PART VI OF PRINCIPAL ACT**27. Amendment of section 79 of principal Act**

Section 79 of the principal Act is amended in subsection (1) by—

- (a) inserting in paragraph (a) immediately after the word “works” the word “consulting services” and substituting for the words “the Fourth Schedule to this Act”, the words “regulations made under this Act”; and
- (b) repealing paragraph (b).

28. Insertion of new section 86A in principal Act

The principal Act is amended by inserting immediately after section 86 the following—

“86A. 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.”

29. Amendment of section 87 of principal Act

Section 87 of the principal Act is amended in subsection (1) by inserting immediately after paragraph (g) the following—

“(ga) electronic auctioning;”.

30. Repeal of sections 88 and 88A of principal Act

Sections 88 and 88A of the principal Act are repealed.

31. Insertion of new section 88AA in principal Act

The principal Act is amended in Part VI by inserting at the end of the Part the following—

“Methods of procurement of complex, specialised and strategic goods, works and services

88AA 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 a 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.”

PART VII—AMENDMENT OF PART VIA OF PRINCIPAL ACT

32. Repeal of section 88L of principal Act

Section 88L of the principal Act is repealed.

PART VIII—AMENDMENT OF PART VII OF PRINCIPAL ACT

33. Replacement of section 89 of principal Act

For section 89 of the principal Act, there is substituted the following—

“89. 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 by a procuring and disposing entity, of this Act, regulations or guidelines made under this Act or any provision of the bidding documents.

(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;

- (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 VIIA 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 subsection (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.”

34. Repeal of sections 90 and 91 of principal Act

Sections 90 and 91 of the principal Act are repealed.

PART VIII—AMENDMENT OF PART VIIA OF PRINCIPAL ACT

35. Amendment of section 91B of principal Act

Section 91B of the principal Act is amended —

- (a) in subsection (1) by substituting for the word “four” the word “six”;
- (b) in subsection (3) by inserting the words “or any other profession” immediately after the word “law”; and
- (c) by inserting immediately after subsection (3) the following—

“(3a) two of the members of the Tribunal shall be women”.

36. Amendment of section 91C of principal Act

Section 91C of the principal Act is amended in subsection (1) by substituting for the word “three”, the word “four”.

37. Amendment of section 91G of principal Act

Section 91G of the principal Act is amended by inserting immediately after subsection (2) the following—

“(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.”

38. Replacement of section 91I of principal Act

For section 91I of the principal Act, there is substituted the following—

“91I. 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 89 (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 89 (9).
- (2) The application shall be made—
- (a) for section 89 (7), within ten working days from the date of receipt of the decision of the Accounting Officer;
 - (b) for section 89 (8), within ten days from the date of expiry of the period specified in the section; and
 - (c) for section 89 (9), 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 75;
 - (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.”

39. Repeal of section 91J of principal Act

Section 91J of the principal Act is repealed.

40. Repeal of section 91L of principal Act

Section 91L of the principal Act is amended by—

- (a) repealing paragraph (c) of subsection (1);
- (b) substituting for subsection (2) the following—

“(4) 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.”

41. Amendment of section 91M of principal Act

Section 91M of the principal Act is amended by inserting immediately after subsection (2) the following—

“(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 91L (4) 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.”

42. Repeal of section 91N of principal Act

Section 91N of the principal Act is repealed.

43. Amendment of section 91T of principal Act

Section 91T of the principal Act is amended by numbering the existing provision as (1) and inserting a new subsection (2), as follows—

“(2) The regulations 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 IX—AMENDMENT OF PART VIII OF PRINCIPAL ACT

44. Amendment of section 95 of principal Act

Section 95 of the principal Act is amended in subsection (1) by inserting immediately after paragraph (d) the following—

“(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 the 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) cause 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.”

45. Insertion of new section 95B in principal Act

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

“95B. 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.”

46. Amendment of section 96 of principal Act

Section 96 of the principal Act is amended—

- (a) in subsections (1) and (2) by repealing the words “and approval of Parliament;” and
- (b) by inserting immediately after sub section (3) the following—

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

47. Insertion of new section 96A in principal Act

The principal Act is amended by inserting immediately after section 96 the following new section—

“96A. 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.”

48. Insertion of new section 97A in principal Act

The principal Act is amended by inserting immediately after section 97 the following—

“97A. Amendment of Schedules

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

PART X—MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT**49. Repeal of Fourth Schedule of principal Act**

The Fourth Schedule and wherever the phrase “Fourth Schedule” appears in the principal Act are repealed.

50. Miscellaneous amendments to principal Act

The principal Act is amended by—

- (a) substituting for “First Schedule” wherever the words appear in the principal Act, with “Schedule 1”;
- (b) substituting for “Schedule 1A” wherever the words appear in the principal Act, with “Schedule 2” and inserting

immediately after paragraph 6 of the Schedule, the following—

- “7. The Institute of Procurement Professionals of Uganda.”;
- (c) substituting for “Second Schedule” wherever the words appear in the principal Act, with “Schedule 3”;
 - (d) substituting for “Third Schedule” wherever the words appear in the principal Act, with “Schedule 4”;
 - (e) substituting for “Fifth Schedule” wherever the words appear in the principal Act, with “Schedule 5”;
 - (f) substituting for Public Finance and Accountability Act, 2003” wherever the words appear in the Act with “Public Finance Management Act, 2015”; and
 - (g) substituting for the word “Authority” appearing in the title of Part VIIA, section 91I(6) and section 91L, the term “Accounting Officer”.

51. Transitional and saving provisions

(1) An administrative review process that is on going before the Authority, at the commencement of this Act, shall where the complainant so requests, be referred to the Tribunal by the Authority.

(2) The contract of the registrar of the Tribunal who is in office at the commencement of this Act shall not be affected by section 38 of this Act.

(3) The contract of the Executive Director appointed under section 17 of the principal Act and in office at the commencement of this Act shall be for five years from the date of commencement of the contract and the contract may be renewed for the period specified in section 11 of this Act.

52. Amendment of the Kampala Capital City Act and the Local Governments Act

- (1) The Kampala Capital City Act is amended by—
 - (a) repealing sections 64, 68 and 82 (2) (b) and (h) of the Act; and
 - (b) repealing the words, “by regulations made under section 82” appearing in section 66 (1) and (2) and section 67 (4) of the Act.
- (2) The Local Governments Act is amended by—
 - (a) repealing sections 94, 94E (5) and 94F of the Act; and
 - (b) repealing the words, “by regulations made under section 175” appearing in sections 94D (1), 94E (4) of the Act.