

GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2011

Date of Assent: 12th April, 2011

An Act to amend the Public Procurement Act, 2008.

[15th April, 2011

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Public Procurement (Amendment) Act, 2011, and shall be read as one with the Public Procurement Act, 2008, in this Act referred to as the principal Act.

Short title

Act No. 12 of 2008

2. Section *twelve* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

Amendment of section 12

(2) A procurement shall only be carried out by a person qualified and knowledgeable in procurement in accordance with the Zambia Institute of Purchasing and Supply Act, 2003.

3. The principal Act is amended in section *nineteen*—
(a) by the insertion of “(1)” between “19” and “A”; and
(b) by the insertion, immediately after subsection (1), of the following new subsection:

Act No. 15 of 2003

Amendment of section 19

(2) A Procurement Committee shall—

(a) appoint the chairperson of the sub-committee referred to in subsection (1); and

(b) appoint the head of a procurement unit in an institution where a sub-committee is established, as an *ex-officio* member of, and secretary to, the sub-committee.

4. Section *twenty-two* of the principal Act is amended—
(a) in subsection (1), by the deletion of paragraph (b) and the substitution therefor of the following:

Amendment of section 22

(b) standard solicitation documents prior to their issue, upon approval by the Authority;

(b) by the deletion of subsection (8) and the substitution therefor of the following:

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- (8) The authorisation of the appropriate approvals authority shall be obtained for all subsequent stages of the procurement process; and
- (c) by the insertion immediately after subsection (8) of the following new subsection:
- (9) The authorisation issued under subsection (8) may be cancelled or re-started on the ground that the authorisation was given by an approvals authority not authorised to do so under this Act:
Provided that the Authority may authorise the continuation of the procurement where it determines that the procurement was conducted in a transparent manner and that it is in the public interest to do so.
- Amendment of section 39 **5.** Section *thirty-nine* of the principal Act is amended in subsection (4) by the deletion, immediately after the word “Authority”, of the words “in public procurement standards”.
- Amendment of section 40 **6.** The principal Act is amended in section *forty* by the deletion of subsection (1) and the substitution therefor of the following:
- (1) A public officer and a member of a Procurement Committee shall keep confidential the information that comes into the public officer’s and member’s possession relating to procurement proceedings and bids, including any bidders proprietary information.
- Amendment of section 54 **7.** Section *fifty-four* of the principal Act is amended in paragraph (b) of subsection (2) by the deletion, immediately after the word “section”, of the words “*fifty-one*” and the substitution therefor of the words “*fifty-three*”.
- Amendment of section 73 **8.** Section *seventy-three* of the principal Act is amended in subsection (1) by the deletion, immediately after the words “is employed”, of the words “or over which the public officer exercises any supervisory or oversight authority”.
- Amendment of section 75 **9.** Section *seventy-five* of the principal Act is amended by the insertion, immediately after subsection (2), of the following new subsection:
- (3) Without prejudice to the generality of subsection (2), the Authority may, where a public officer contravenes any provision of this Act, recommend to the employer appropriate administrative and legal sanctions on the public officer, including—
- (a) disciplinary proceedings;
 - (b) suspension from employment;
 - (c) demotion;
 - (d) surcharge;

- (e) transfer or refusal of transfer;
- (f) summary dismissal; or
- (g) any other recommendation that the Authority may consider appropriate.

10. The First Schedule to the principal Act is amended by the deletion of paragraph (1) and the substitution therefor of the following: Amendment
First
Schedule

- (1) There is hereby established the Board of the Authority which shall be the governing body of the Authority and shall exercise and perform the powers and functions of the Authority.

11. The principal Act is amended by the repeal of the Second Schedule and the substitution therefor of the Second Schedule set out in the Appendix. Repeal and
replacement
of Second
Schedule

APPENDIX
(Section 11)
SECOND SCHEDULE
(Section 84)
TRANSITIONAL PROVISIONS

1. (1) The provisions of this Part shall cease to have effect on 31st December, 2012, or such later date prescribed by the Minister by statutory instrument. Interim
arrangements

(2) During the interim period, the Authority shall manage and effect a gradual decentralisation process and shall—

- (a) provide secretariat services to the Central Tender Committee;
- (b) assess the capacity of procuring entities;
- (c) issue and update the levels of authority for procuring entities;
- (d) advise procuring entities on the actions needed to improve their capacity ratings;
- (e) facilitate capacity building in procuring entities; and
- (f) advertise locally and abroad all tenders for the procurement of goods, works and services for Government, local authorities, parastatals and statutory bodies.

2. (1) There is hereby established the Central Tender Committee, which shall consist of the following part-time members appointed by the Minister: Establishment
of Central
Tender
Committee

- (a) the Permanent Secretary responsible for financial management and administration, who shall be the Chairperson;
- (b) the Vice-Chairperson, who shall be a Permanent Secretary;
- (c) eight Permanent Secretaries;
- (d) a representative of the Attorney-General;
- (e) the Deputy Governor of the Bank of Zambia responsible for administration;

(f) the Commissioner-General of the Zambia Revenue Authority;

(g) the Director of Budget; and

(h) the Director-General and the Secretary to the Authority, who shall be *ex-officio* members of the Committee.

(2) The members shall elect the Vice-Chairperson from among the members who are Permanent Secretaries.

(3) A member appointed under sub-paragraph (1) may, in writing, appoint a senior officer from the organisation that the member represents to be the alternate and to attend and participate in their stead at any meeting of the Central Tender Committee which the member is unable to attend.

Powers and
functions of
Central
Tender
Committee

3. (1) The function of the Central Tender Committee is to ensure that all procurement submitted for its prior authorisation is conducted in accordance with this Act.

(2) The Central Tender Committee shall be the highest approvals authority, during the interim period only, and shall provide prior authorisation of specified stages of the procurement process in accordance with this Act.

(3) The Central Tender Committee shall have an unlimited level of authority, but shall have no authority over any procurement which falls within a procuring entity's level of authority.

(4) In order to build capacity in Procurement Committees—

(a) all submissions to the Central Tender Committee shall be made through the procuring entity's Procurement Committee, which may reject a submission and require corrections to be made, before onward submission to the Central Tender Committee; and

(b) all decisions of the Central Tender Committee shall be sent to, or copied to, the procuring entity's Procurement Committee, with written explanations of the reasons for the rejection of a submission or any other variations recommended to be made.

Proceedings
of Central
Tender
Committee

4. Subject to the other provisions of this Act, the Central Tender Committee shall regulate its own procedure.

Secretariat
of Central
Tender
Committee

5. (1) The Authority shall provide secretariat services to the Central Tender Committee which shall include the performance of the functions of Procurement Units specified under this Act, where the value of the procurement is above the capacity rating of the Procurement Unit of a procuring entity.

(2) Notwithstanding the provisions of sub-paragraph (1), in order to build capacity in Procurement Units, the Authority shall—

- (a) work with the staff of a Procurement Unit of a procuring entity in performing the functions; and
- (b) review and advise on the work of the Procurement Unit, prior to its submission to the relevant approvals authority.

6. (1) In order to maintain independence of functions, the Authority shall ensure a separation of its secretariat functions performed pursuant to paragraph 5 from all its other functions.

Separation of functions in Authority

(2) The Authority shall establish a structure which ensures that staff are involved in either secretariat functions or other functions, but not both.

(3) Staff involved in providing secretariat services shall not be involved in—

- (a) monitoring compliance and procurement performance;
- (b) assessing the capacity of procuring entities or determining levels of authority;
- (c) deciding on a list of bidders or suppliers to be suspended from participating in public procurement; or
- (d) any other function which could be considered a conflict of interest.

7. (1) The Authority shall issue levels of authority for each procuring entity which shall be determined by the capacity of each procuring entity to undertake procurement.

Levels of authority and capacity ratings for procuring entities

(2) All procurement with a value above the level of the authority determined under sub-paragraph (1) shall be submitted to the Central Tender Committee for prior authorisation in accordance with paragraph 3.

(3) The Authority shall assess the procurement capacity of each procuring entity regularly and not less than once in twelve months.

(4) An assessment under sub-paragraph (3) shall be conducted in accordance with guidance provided in regulations made under this Act and shall take into account the capacity of both the Procurement Committee and the Procurement Unit.

(5) The Authority shall, after each capacity assessment of a procuring entity—

- (a) advise the procuring entity of its capacity rating and level of authority;
- (b) advise the procuring entity on the actions needed to improve its capacity rating; and

(c) facilitate, to the extent possible, any capacity improvements.

(6) A procuring entity which has implemented measures to improve its capacity may request the Authority to review its capacity rating and level of authority and the Authority shall undertake the review as soon as possible, but in no case later than three months from the date of the request.
