



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

PUBLIC PROCUREMENT (AMENDMENT) BILL, N.A.B. NO. 17 OF 2023

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

FOREWORD

Honourable Madam Speaker, the Committee on National Economy, Trade and Labour Matters has the honour to present its Report on the Public Procurement (Amendment) Bill, N.A.B. No. 17 of 2023, for the Third Session of the Thirteenth National Assembly. The functions of the Committee are set out under Standing Orders 197(j) and 198(j) of the National Assembly of Zambia Standing Orders, 2021.

The Committee held ten meetings to consider the Bill. In order to gain insight into the ramifications of the Bill, the Committee sought both written and oral submissions from various stakeholders. The list of the stakeholders is at Appendix II of the Report.

The Report is in three Parts. Part I contains the salient provisions of the Bill. Part II highlights concerns raised by stakeholders, while Part III contains the Committee's observations and recommendations.

The Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. It further wishes to thank you, Madam Speaker, for affording it an opportunity to study the Public Procurement (Amendment) Bill, N.A.B. No. 17 of 2023. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly during its deliberations.



Ms Sibeso Kakoma Sefulo, MP
CHAIRPERSON

November, 2023
LUSAKA

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1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Ms Sibeso Kakoma Sefulo, MP (Chairperson); Mr Joel Chibuye MP (Vice-Chairperson); Mr Gift S Sialubalo, MP; Mr Kabwe T Chewe, MP; Mr Davison Mung'andu, MP; Mr Derricky Chilundika, MP; Dr Simon Mwale, MP; Mr Ronald Chitotela, MP; Mr Walusa Mulaliki, MP; and Mr Wesley Kolala, MP.

2.0 BACKGROUND

The *Public Procurement Act, No. 8 of 2020* regulated public procurement. However, it had been observed that the law had some inadequacies in dealing with identified issues of public procurement. Therefore, it needed to be amended to provide for a more efficient, effective, transparent and accountable public procurement system.

In view of the forgoing, the Government introduced the Public Procurement (Amendment) Bill, No. 17 of 2023 in order to deal with the inadequacies.

3.0 OBJECT OF THE BILL

The object of the Bill was to amend the *Public Procurement Act, 2020* so as to:

- (a) revise the period for conducting a procurement process;
- (b) restrict subcontracting to procurement of works;
- (c) extend subcontracting to local bidders; and
- (d) provide for matters connected with, or incidental to, the foregoing.

PART I

4.0 SALIENT PROVISIONS OF THE BILL

The salient provisions of the Bill were as set out hereunder.

Clause 2 – Amendment of Section 2

This clause sought to amend section 2 of the principal Act by deleting and replacing the definitions “international procurement agreement”, “limited bidding” and “limited selection” so as to clearly define the phrases for the purposes of the law.

Clause 3 – Amendment of Section 3

This clause sought to amend section 3 (2) and (3) of the principal Act by the deletion of the words “defence or international relations” and the substitution therefor of the words “defence, currency or international relations”, wherever the words appeared.

Clause 4 – Amendment of Section 4

This clause sought to amend section 4 (1) and (2) of the principal Act by the deletion of the words “and the Treasury”, wherever the words appeared so as to remove Treasury approval as a requirement for entering into an international procurement agreement.

Clause 5 – Amendment of Section 12

This clause sought to amend section 12 (4) of the principal Act by the deletion of the words “Authority” and the substitution therefor of the words “relevant approvals authority” so that

the relevant approvals authority approved the price reasonableness analysis undertaken by a procuring entity.

Clause 6 – Amendment of Section 14

The clause sought to amend section 14 (3) of the principal Act by the deletion of paragraph (i) and the substitution therefor of a new paragraph (i) so as to replace solicitation documents with an appeal form, which would form part of the standard procurement documents.

Clause 7 - Amendment of Section 15

The clause sought to amend section 15 (2) (a) of the principal Act by the deletion of the word “except” to make it clearer so as to preclude a person who served as a procurement officer or participated in the approval of a procurement from participating in the award, modification or extension of the contract for that procurement.

Clause 8 – Amendment of Section 17

This clause sought to amend section 17 (3) of the principal Act by the deletion of paragraph (e) so as to remove the requirement for a procuring entity to advertise an invitation to tender in a foreign newspaper or journal if it was an international bidding or selection method of procurement.

Clause 9 – Amendment of Section 18

The clause sought to amend section 18 (4) of the principal Act by the deletion of paragraph (a) and the substitution therefor of a new paragraph (a), which inserted the requirement for a disqualification of a bidder who contravened subsection (1), from participating in any existing procurement proceeding to be done on procedures as prescribed.

Clause 10 – Amendment of Section 19

This clause sought to amend section 19 (6) of the principal Act by extending the consideration for a conflict of interest with respect to a procurement to an associate.

Clause 11 – Amendment of Section 29

The clause sought to amend section 29 (2) of the principal Act by the deletion of subsection (2) and the substitution therefor of a new subsection (2), which sought to provide clarity that a Controlling Officer or Chief Executive Officer was supposed to inform the Authority of the membership of the Procurement Committee of any change in the membership of the Committee.

Clause 12 – Amendment of Section 34

This clause sought to amend section 34 (1) of the principal Act by the deletion of subsection (1) and the substitution therefor of a new subsection (1), so as to provide clarity on the stages of the procurement process that required prior authorisation of the relevant approvals’ authority.

Clause 13 - Repeal and replacement of Section 36

This clause sought to amend the principal Act by repealing and replacing section 36, which permitted a procuring entity to appoint a procurement agent or procurement service provider to carry out procurement functions on its behalf.

Clause 14 – Amendment of Section 37

This clause sought to amend section 37 of the principal Act by the insertion of a new paragraph, which sought to include a Government to Government procurement as a method of procurement.

Clause 15 – Amendment of Section 39

This clause sought to amend section 39 of the principal Act by the deletion of subsection (2) and the substitution therefor of a new subsection, which limited open national bidding to citizens and local bidders.

Clause 16 – Amendment of Section 41

This clause sought to amend section 41 (2) of the principal Act by the insertion of a new paragraph, which set out an additional circumstance when open international selection could be used by a procuring entity. The clause further put a limit on section 41 by deleting and replacing subsection (3), which sought to extend participation in open national selection to citizens and local bidders. Lastly, the clause inserted a new subsection (4), which mandated a local bidder that was awarded a procurement contract under open national selection, to partner with a citizen supplier.

Clause 17 – Repeal and Replacement of Section 48

This clause sought to amend the principal Act by repealing and replacing section 48, which provided the objective of electronic reverse auction, and set out the conditions on which a procuring entity may use electronic reverse auction and the conditions on which a procuring entity qualified to use the reverse auction method.

Clause 18 – Amendment of Section 51

This clause sought to amend section 51 (1) and (2) of the principal Act by the deletion of the words “Government agency”, wherever the words appeared, and substituting them with the words “procuring entity”.

Clause 19 – Insertion of Section 51A

This clause sought to amend the principal Act by inserting a new section 51 (a), which provided for the objective of a Government to Government procurement.

Clause 20 – Amendment of Section 56

This clause sought to amend section 56 (2) of the principal Act by the deletion of paragraph (a) which required an approvals authority to confirm the availability for funds for the procurement requirement prior to a procuring entity commencing procurement proceedings.

Clause 21 - Repeal and Replacement of Section 66

This clause sought to amend the principal Act by repealing and replacing section 66 of the principal Act which, among others, mandated a procuring entity to establish an evaluation committee to evaluate electronic or non-electronic bids, and set out the factors upon which the evaluation methodology and criterion would be determined.

Clause 22 – Amendment of Section 68

This clause sought to amend section 68 (4) of the principal Act by the insertion of a new paragraph so as to set out an additional circumstance when a procuring entity may conduct negotiations, as prescribed.

Clause 23 – Amendment of Section 71

This clause sought to amend section 71 (2) of the principal Act by the deletion of the word “ten” and the substitution therefor of the word “five” so as to reduce the period in which a procuring entity shall award a contract from ten working days to five working days.

Clause 24 – Amendment of Section 72

This clause sought to amend section 72 (2) of the principal Act by deleting and substituting paragraph (e), which sought to prohibit the issuance of a contract, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid or award of contract prior to any other approvals required including, the legal advice of the Attorney General on a contract, which was above the prescribed threshold for simplified biddings.

The clause further sought to amend the principal Act in section 72 (4) by the deletion of the words “Treasury and the” so as to remove the requirement of Treasury clearance for a standard contract.

Clause 25 – Amendment of Section 76

This clause sought to amend section 76 (1) of the principal Act by the insertion of the words “in writing” immediately after the words “contract manager”, so as to insert the requirement for the appointment of a contract manager by a procuring entity to be in writing.

Clause 26 – Repeal and Replacement of Section 77

This clause sought to amend the principal Act by repealing and replacing section 77, which sought to prohibit an amendment or variation to a contract without the approval and legal advice of the Attorney-General, and set a limit for an increment to the total contract price by the cumulative value of contract variation and amendment.

Clause 27 – Amendment of Section 84

This clause sought to amend section 84 (4) (b) of the principal Act by the deletion of the word “ten” and the substitution therefor of the word “fifteen”, so as to allow the Authority ample time to issue a written decision within fifteen working days of the commencement of the investigation.

Clause 28 – Amendment of Section 89

This clause sought to amend the principal Act by deleting and substituting subsection (1) of section 89, which set out the conditions upon which a bidder was eligible to participate in a procurement. The clause further inserted a new subsection (2) immediately after subsection (1), which provided that the requirement for a foreign bidder to partner with a citizen supplier would not apply to an original equipment manufacturer or franchise holder. Lastly, the clause inserted a new subsection (7), which provided that the eligibility requirements for community participation would be prescribed.

Clause 29 – Amendment of Section 93

This clause sought to amend section 93 of the principal Act by deleting and substituting subsection (1), which restricted the requirement for a foreign or local bidder or supplier to subcontract a percentage of the total value of the procurement, to procurement of works exceeding the prescribed thresholds to citizen bidders and suppliers. The clause further made a consequential amendment to subsection (3) by inserting the words, “A local bidder or supplier and a foreign bidder or supplier” so as to extend the principles of subcontracting to a local bidder or supplier.

Clause 30 – Amendment of Section 97

The clause sought to amend section 97 (1) of the principal Act by the deletion of the words “permanently prohibit” and the substitution therefor of the words “fine and suspend”, so as to permit the Authority to fine and suspend a bidder or supplier from participating in a public procurement on the grounds set out in paragraphs (a) to (f), rather than to permanently prohibit. The clause further inserted new subsections (2) and (3) immediately after subsection (1), which

set out the amount of the fine referred to under subsection (1) and sought to permanently prohibit a bidder from participating in public procurement who was found liable for a second time under subsection (1).

Clause 31 – Repeal and Replacement of Section 99

This clause sought to amend the principal Act by repealing and replacing section 99, which permitted a bidder or supplier aggrieved by a decision of the Authority to submit the matter to arbitration within ten working days of the Authority’s decision.

Clause 32 – Amendment of Section 100

This clause sought to amend section 100 (3) of the principal Act by the deletion of the word “ten” and the substitution therefor of the word “five” so as to reduce the period within which an appeal could be accepted by the Authority.

Clause 33 – Amendment of Section 105

This clause sought to amend section 105 (4) of the principal Act by the deletion of the words “the employer appropriate” and the substitution therefor of the words “an appropriate authority” to make it clear that the Authority may recommend to an appropriate authority if an office holder contravened the provisions of the Act.

The clause further inserted a new subsection (6) immediately after subsection (5), which mandated an appropriate authority to submit a report to the Authority on any action taken, where the Authority recommended to the appropriate authority administrative and legal sanctions on an office holder, within fourteen days of the receipt of a recommendation from the Authority.

PART II

5.0 CONCERNS RAISED BY STAKEHOLDERS

Stakeholders who appeared before the Committee supported the Bill and in doing so, they, however, raised concerns as outlined below.

Clause 2(a)- International Agreement

Stakeholders noted that “international procurement agreement” meant a convention, treaty or other agreement to which Zambia was a State Party, a letter of intent, memorandum of understanding or agreement between a procuring entity and another country or a foreign company, institution, or organisation, which required the Government to contribute its resources in any form to any procurement activities within the Republic, wholly, partially, jointly, or severally. They observed that this definition was inadequate and were of the view that the definition of “international procurement agreement” should include “a foreign company, institution or organisation,” to show that it was dealing with entities outside Zambia.

Clause 6 (5)- Standard Procurement Documents

Stakeholders observed that in clause 6 (5), the information contained in the standard procurement documents would not be confidential except under circumstances as provided for in clause 6 (5), (a) to (d).

They argued that except for the confidentiality on the contents of the expression of interest, the clause had the potential of compromising accountability and transparency of the whole procurement process by making most of the documents used in the process confidential. The

problem that the proposed amendment created was that it did not specifically set the boundaries within which such discretion was to be used by the procuring entity.

In this regard, they were of the view that there must be certainty regarding documents that were likely to be marked confidential as opposed to merely stating “in accordance with this Act, or other written law” as the qualifying test to be applied.

Additionally, there was need for the Bill to have a pre-determined criterion clearly stipulated within the principal Act for procuring entities to follow. Otherwise, dissemination of important documents (or information) during the bidding, procurement and post procurement processes would be frustrated under the guise of “confidentiality”.

Further, access to information was likely to be limited, and only made available at the discretion of the procuring entity, which might lead to abuse of the proposed provision. On this basis, stakeholders recommended that the Bill needed to provide for certainty in the law as regards confidentiality. Stakeholders contended that in as much as discretionary power was a necessary, there was need to clearly define the boundaries of such discretionary powers under clause 6 (5) (d) of the Bill.

Clause 15- Open National Bidding

Stakeholders noted that section 39 of the principal Act was amended by the deletion of subsection (2) and the substitution therefor of the following:

“Participation in open national bidding shall be limited to citizen and local bidders, except that citizen bidders shall be given priority in the evaluation of bids as prescribed.”

Stakeholders were of the view that the subsection should not be amended in order to preserve open national bidding for citizen bidders only. This would ensure that citizen bidders were not disadvantaged in anyway and funds were not externalised but remained in the country.

General Concerns

Stakeholders submitted that the Bill had no provisions relating to the bidding period. They were of the view that the floatation periods for various bidding methods which range from four to six weeks in the principal Act were too long. In this regard, they strongly recommended that the Bill be amended to reduce the periods for all floatation methods to fourteen days.

PART III

6.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Committee makes the observations and recommendations outlined below.

Clause 20- Amendment of Section 56- Availability of Funding

The Committee notes that clause 20 amends section 56 (2) of the principal Act by deleting paragraph (a), which requires the approvals authority to confirm the availability of funds for the procurement requirement before the procuring entity can commence procurement proceedings. The Committee further notes that a procuring entity may only commence procurement proceedings on activities that are within the approved budget, hence the deletion of paragraph (a).

The Committee observes that initiating procurement without confirming funding may result in delayed payments to suppliers, affect the cashflow of suppliers and potentially discourage their participation in future procurement processes.

In view of the foregoing, the Committee recommends that the Government should implement regular and transparent financial reporting mechanisms to provide stakeholders with insights into the financial status of ongoing procurement activities. This will enhance accountability and facilitate early intervention when budgetary concerns arise. Additionally, procuring entities should engage in thorough budget planning to ensure that funds are available for procurement activities especially with regards to the increased Constituency Development Fund (CDF).

Clause 21- Repeal and Replacement of Section 66- Evaluation Committee

The Committee notes that clause 21 amends section 66 of the principal Act, which establishes an evaluation committee for the purposes of electronic or non-electronic evaluation of bids. However, the Committee is of the view that inadequate technological infrastructure such as a lack of reliable internet access may hinder the smooth implementation of electronic bid evaluation.

In this regard, the Committee recommends that the Government should increase investment in the development and expansion of broadband infrastructure, particularly in underserved and rural areas. This will ensure more widespread and reliable internet access for all stakeholders involved in public procurement.

In addition, the Government should collaborate with the private sector entities to jointly invest in and maintain broadband infrastructure. Public-Private Partnerships can accelerate the deployment of high-speed internet across the country.

Clause 29- Amendment of Section 93 - Subcontracting Percentage

The Committee observes that clause 29 amends section 93 (1) of the principal Act by including a local bidder or supplier to subcontract a percentage of the total value of the procurement, for procurement of works exceeding the prescribed thresholds to citizen bidders and suppliers. The Committee is concerned that local bidders may subcontract to citizen bidders only on paper, without actually transferring work or benefits which could lead to abuses in the subcontracting process.

The Committee, therefore, strongly urges the Government to introduce incentives for citizen-bidders who actively and successfully engage in subcontracting arrangements. This includes preferential treatment in future procurement opportunities and better financing options. Further, there is also a need to establish a Government-backed loan programme that will provide favourable terms and conditions for citizen-bidders. This can include low-interest rates, longer repayment periods, and flexible terms to ease financial burdens and machinery and equipment, which small and medium scale enterprises can hire from the Government.

7.0 GENERAL RECOMMENDATIONS

i. Procurement General

The Committee notes that section 9 of the Principal Act establishes the Office of Director-General as the Chief Executive Officer of ZPPA who is responsible for the day-to-day management of the affairs of the Authority and is subject to the general or specific directions of the Board.

The Committee, however, observes that the procurement profession does not have an office that monitors and evaluates the performance of procurement personnel at a higher level. The Director General for ZPPA is the sole regulator and administrator of the *Public Procurement Act, 2020*. In view of the foregoing, the Committee recommends that there is need to amend the public procurement law so as to establish the Procurement General's Office, as is the case with the *Public Finance Management Act, 2018*, which established the Office of the Accountant General and the Office of the Controller of Internal Audit. The proposed amendment to introduce the Office of the Procurement General is vital as the office will be responsible for managing policy and human resource in procurement and stores. This office will serve as a law implementor, while the ZPPA Director General will act as a regulator.

ii **Stores Management**

The Committee also observes that having the stores section under the supervision of the Director of Finance has proved problematic as accountants are being used to manage stores despite them not being qualified to perform this function. In this regard, the Committee is of the view that since most officers managing the stores section are procurement professionals, the functions of stores management and procurement should be moved from the Ministry of Finance and National Planning to the Ministry of Transport and Logistics. Procurement officers should be reporting to the Permanent Secretary or the proposed Procurement General's Office once established. Additionally, there is need to raise the profile of procurement and supply practitioners in procuring entities to enhance legitimate power. In this vein, the position of Head of Procurement should be elevated to the level of director or higher.

iii **Bidding period**

The Committee agrees with stakeholders that in order to shorten the time taken for public goods to be procured, there is need to amend the Bill to reduce the floatation periods for each procurement method to fourteen days.

8.0 CONCLUSION

The Committee supports the Public Procurement (Amendment) Bill, N.A.B No. 17 of 2023, as it will enhance transparency and accountability in the public procurement process. The Bill also enhances citizens' participation in public procurement; ensures transparent competition among bidders; and prevents collusion and cartels. The Committee is confident that its recommendations will be taken into consideration in order to improve the law.

We have the honour to be, Madam Speaker, the Committee on National Economy, Trade and Labour Matters mandated to consider the Public Procurement (Amendment) Bill, N.A.B No. 17 of 2023.



Ms Sibeso Kakoma Sefulo, MP
CHAIRPERSON

November 2023
LUSAKA

APPENDIX I**LIST OF NATIONAL ASSEMBLY OFFICIALS**

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mrs Angela M Banda, Acting Deputy Principal Clerk of Committees (FC)
Ms Chitalu R Mulenga, Senior Committee Clerk (FC2)
Mr Emmanuel Bwalya, Committee Clerk
Ms Hellen Namuchimba, Administrative Assistant II
Mr Danny Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II**LIST OF WITNESSES**

Minister of Finance and National Planning
Ministry of Justice
Office of the Auditor General
Anti-Corruption Commission
Alliance Procurement and Capacity Building Limited
Lusaka City Council
Road Development Agency
Smart Zambia Institute
Zambia Institute for Policy Analysis and Research
Zambia Medicines and Medical Supplies Agency
Zambia Public Procurement Authority