

THE PUBLIC PROCUREMENT ACT, 2008

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GOVERNMENT OF ZAMBIA

ACT

No. 12 of 2008

Date of Assent: 24th September, 2008

An Act to continue the existence of the Zambia National Tender Board and re-name it as the Zambia Public Procurement Authority; revise the law relating to procurement so as to ensure transparency and accountability in public procurement; regulate and control practices relating to public procurement in order to promote the integrity of, fairness and public confidence in, the procurement process; repeal and replace the Zambia National Tender Board Act, 1982; and provide for matters connected with or incidental to the foregoing.

[26th September, 2008]

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Public Procurement Act, 2008, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“approvals authority” means the body or individual with authority to grant prior authorisation of certain key steps in the procurement process in accordance with section *twenty-two*;

“Authority” means the Zambia Public Procurement Authority referred to under section *five*;

“best evaluated bidder” means the bidder ranked as first, following the application of the specified evaluation methodology and criteria;

“bid” means an offer to provide goods, works or services submitted by a bidder in response to an invitation from a

- procuring entity and includes a tender, proposal, quotation and, where applicable, an application to pre-qualify;
- “bidder” means a person or group of persons that offers to provide goods, works or services in response to an invitation from a procuring entity and includes, where applicable, a potential bidder and applicant to pre-qualify;
- “Board” means the Board of Directors of the Authority;
- “Central Tender Committee” means the Central Tender Committee established under paragraph 2 of the Second Schedule;
- “chief executive officer” means the chief executive officer of a parastatal, statutory body or a local authority;
- “citizen bidder or supplier” means a citizen-empowered company, citizen-influenced company or citizen-owned company;
- “citizen-empowered company” means a company where twenty-five to fifty percent of its equity is owned by citizens, and is licenced to undertake business activities in Zambia;
- “citizen-influenced company” means a company where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company, and is licensed to undertake business in Zambia;
- “citizen-owned company” means a company where at least fifty point one percent of its equity is owned by citizens and in which the citizens have significant control of the management of the company, and is licensed to undertake business in Zambia;
- “close relative” means a spouse, child, sibling, uncle, cousin, aunt, niece, nephew, parent or a child of a spouse, child, sibling or parent;
- “coercive practices” means harming or threatening to harm, directly or indirectly, a person, or a person’s property, to influence that person’s participation in a procurement process or affect the execution of a contract;
- “collusive practices” means a scheme or arrangement between two or more bidders, with or without the knowledge of the procuring entity, designed to establish bid prices at artificial, non-competitive levels;
- “consulting services” means services of an intellectual or advisory nature, the delivery of reports, drawings or designs including engineering designs, supervision, accountancy,

auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice, assistance with institutional reforms and software development;

“contract” means an agreement between a procuring entity and a supplier for the provision of goods, works or services;

“Controlling Officer” has the meaning assigned to it in the Public Finance Act, 2004;

Act No. 15
of 2004

“corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the procurement process or in contract execution;

“direct bidding ” means a procurement method where a bid is obtained directly from a single bidder, without competition;

“ Director-General ” means the person appointed as such under section *seven*;

“due diligence ” means the assessment of a bidder or supplier’s technical, financial and management capabilities and the bidder’s or supplier’s governance record to effectively execute a contract;

“ e-procurement ” means the process of procurement using the internet or other information and communication technologies;

“ foreign bidder or supplier ” means a bidder or supplier who is not licensed to undertake business activities in Zambia;

“fraudulent practice ” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

“goods” means objects of every kind and description including raw materials, products, equipment, objects in solid, liquid or gaseous form, electricity, and works and services incidental to the supply of the goods if the value of those incidental works and services does not exceed that of the goods themselves;

“Government agency” has the meaning assigned to it in the Public Finance Act, 2004;

Act No. 15
of 2004

- Cap. 30
- “interim period” means the period referred to in the Second Schedule during which the provisions of that Schedule shall apply;
- “international competitive bidding” means bidding open to all bidders, including citizens, local and foreign bidders;
- “legal practitioner” has the meaning assigned to it in the Legal Practitioners’ Act;
- “limited bidding” means a procurement method for goods, works and non-consulting services where bids are obtained by direct invitation to a shortlist of bidders, without open advertisement;
- “limited selection” means a procurement method for consulting services where bids are obtained by direct invitation to a shortlist of bidders, without open advertisement;
- Cap. 281
- “local authority” means a city, municipal or district council established under the Local Government Act;
- “local bidder or supplier” means a bidder or supplier who is licensed to undertake business activities in Zambia, but who is not a citizen supplier;
- “national competitive bidding” means bidding which is limited to citizen and local bidders;
- “non-consulting services” means services other than consulting services, for the carrying out of work of any kind, with or without the use of vehicles, machinery or equipment or the provision of operators, technicians or drivers;
- “open bidding” means a procurement method for goods, works and non-consulting services which is open to participation on equal terms by all eligible bidders through advertisement of the opportunity;
- “open selection” means the procurement method for consulting services which is open to applications for short listing on equal terms by all bidders through advertisement of the opportunity;
- “parastatal body” means a statutory corporation or body, a local authority or a company in which the Government has a majority or controlling interest;

“procurement” means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise or any combination thereof;

“Procurement Committee” means the Committee established under section *fourteen*;

“Procurement Unit ” means the division or department in each procuring entity responsible for the execution of the procurement function;

“procuring entity ” means a Government agency, parastatal body or any other body or unit established and mandated by Government to carry out procurement using public funds;

“post-qualification ” means the conduct of due diligence to determine whether the bidder is qualified to perform the contract effectively;

“public funds” has the meaning assigned to it in the Public Finance Act, 2004;

Act No. 15
of 2004

“public office ” includes an office the emoluments of which are a charge on or paid out of the revenues of the Republic;

“public officer” means a person holding or acting in any public office;

“repealed Act ” means the Zambia National Tender Board Act, 1982;

Cap. 394

“services” means any object of procurement other than goods or works, which involve the furnishing of labour, time or effort;

“simplified bidding ” means a procurement method which compares quotations from a number of bidders;

“solicitation document ” means a bidding document, a request for proposals, request for quotation and, where applicable, a pre-qualification document or document of any kind issued by a procuring entity, inviting bidders to participate in procurement proceedings;

“supplier ” means a contractor, consultant, service provider or a natural person or incorporated body that is party to a contract with a procuring entity for the provision of goods, works or services;

“user department” means any department, division, branch, section or project unit of the procuring entity which initiates procurement requirements and is, or represents, the end-user of the goods, works or services; and

“works” means all work associated with the construction, re-construction, demolition, repair or renovation of a building, road, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to a contract, if the value of those services does not exceed that of the works themselves.

Application

3. (1) This Act applies to all procurement carried out by procuring entities using public funds, except as otherwise provided under subsection (2).

(2) A procuring entity may, where any procurement involves or relates to the security, defence or international relations of the Republic, modify the application of the rules and procedures of procurement set out in this Act only to the extent necessary to protect the public interest and in accordance with such procedures as the Authority may determine.

(3) Where a procuring entity undertakes any procurement that is related to or involves the security, defence or international relations of the Republic, the procuring entity shall—

(a) agree with the Authority on the type of goods, works or services to be subject to modified rules and procedures of procurement;

(b) agree with the Authority on the modifications to be made to the rules and procedures provided for in this Act and to be applied to the goods, works and services referred to under paragraph (a); and

(c) apply the rules and procedures provided for in this Act to the procurement of goods, works and services in a manner that is not prejudicial to the security, defence and international relations of the Republic.

(4) The type of goods, works and services subject to modified rules and procedures of procurement and the modified rules and procedures of procurement referred to in subsections (2) and (3)

shall be reviewed and updated by the procuring entity and the Authority on an annual basis or as need arises.

(5) Any procurement that is subject to the modified rules and procedures of procurement under subsection (2) shall be subject to classified audit.

4. (1) A procuring entity shall, before entering into any international agreement relating to procurement, obtain the approval of the Authority, and the advice of the Attorney-General.

Approval
required for
international
agreements
on
procurement

(2) Any agreement purportedly entered into without the approval of the Attorney-General is void.

PART II

THE ZAMBIA PUBLIC PROCUREMENT AUTHORITY

5. (1) The Zambia National Tender Board established under the repealed Act shall continue to exist as if established under this Act and for purposes of this Act is hereby re-named the Zambia Public Procurement Authority.

Continuation
and re-naming
of Zambia
National
Tender Board
Cap. 394

(2) The Authority shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may, by law, do or perform.

(3) The provisions of the First Schedule apply to the Authority.

6. (1) The Authority shall be an independent regulatory body with responsibility for policy, regulation, standard setting, compliance and performance monitoring, professional development and information management and dissemination in the field of public procurement.

Powers and
functions of
Authority

(2) Without prejudice to the generality of subsection (1), the functions of the Authority are to---

- (a) regulate the procurement of goods, works and services by procuring entities and ensure transparency and accountability in public procurement;
- (b) monitor compliance with this Act and the procurement performance of the procuring entities and make recommendations to the Minister on the performance and functioning of the public procurement system;

- (c) issue standard bidding documents and other standard procurement documents for use by procuring entities;
- (d) advise the Government and procuring entities on procurement policy and other matters relating to public procurement;
- (e) consider applications for deviations to public procurement processes, methods and rules and for the accreditation of alternative procurement systems;
- (f) commission and undertake investigations in public procurement matters and institute procurement audits;
- (g) promote economy, efficiency and maximum competition to ensure value for money in the use of public funds;
- (h) promote private sector participation, through fair and non-discriminatory treatment of bidders;
- (i) formulate preference and reservation schemes to promote the economic development of citizen bidder and suppliers in collaboration with the appropriate Government institutions;
- (j) maintain a register of bidders and suppliers who are suspended or debarred from participating in public procurement;
- (k) coordinate and promote capacity building and professional development in the public procurement system;
- (l) monitor the execution of contracts entered into by procuring entities;
- (m) organise and maintain systems for the management of procurement data, statistics and information and for the publication of data on public procurement opportunities, contract awards and other information of public interest; and
- (n) do all such other acts and things as are incidental to the foregoing or conducive to the attainment of the objectives of the Authority.

(3) The Authority may—

- (a) collect any data and report from procuring entities for purposes of this Act;
- (b) access information, documents, records and reports of a procuring entity in respect of any public procurement process;

- (c) access, at any reasonable time, the premises of any procuring entity whose procurement is being monitored and request for any relevant information from any person responsible for the financial administration of the procuring entity; and
- (d) suspend or debar any bidder or supplier from participating in public procurement in accordance with the provisions of this Act.

(4) Subject to subsection (5), the authority shall not access any information, document, record or report, or enter upon any premises of the Zambia Defence Force or the Zambia Security Intelligence Service.

(5) The Authority may, where the circumstances of a procurement audit so require, with the written consent of the President, access any information, document, record or report, or enter upon any premises, of the Zambia Defence Force and the Zambia Security Intelligence Service.

7. (1) The President shall appoint, on such terms and conditions as the President may determine, a Director-General who shall be the chief executive officer of the Authority.

Director-
General of
Authority

(2) The office of Director-General shall be an office in the public service.

(3) The Director-General shall attend all meetings of the Board, and shall be entitled to address such meetings, but shall not vote on any matter under discussion:

Provided that the Board may, for good cause, request the Director-General to withdraw from any meeting of the Board.

8. (1) There shall be a Secretary to the Board who shall be appointed by the Board on such terms and conditions as the Board may determine.

Secretary
and other
staff

(2) The Board may appoint, on such terms and conditions as it may determine, such other staff as it may consider necessary for the performance of its functions under this Act.

9. (1) In order to ensure due compliance with the provisions of this Act, the Board shall establish under the general supervision of the Director-General, an inspectorate unit which shall monitor, in accordance with the rules or regulations made under this Act, the procurement performance of procurement entities.

Inspectorate
unit

(2) The Board may appoint such inspectors and other staff to the inspectorate unit as may be necessary for the performance of its functions under this Act.

Cooperation
with other
authorities

10. (1) The exercise by the Authority of its functions under this Act shall not affect in any manner any functions exercised by other authorities under any other written law.

(2) The Authority shall co-operate with other organs exercising oversight functions over public procurement in Zambia and may, for that purpose, establish mechanisms for sharing information and working jointly with those organs.

(3) A procuring entity and any person involved in public procurement shall co-operate with the Authority and any other authority exercising monitoring and oversight functions over public procurement.

PART III

PROCURING ENTITIES

Composition
of procuring
entities

11. For the purposes of this Act, a procuring entity shall consist of—

- (a) a Controlling Officer or Chief Executive Officer;
- (b) a Procurement Committee;
- (c) a Procurement Unit; and
- (d) user departments.

Functions of
procuring
entities

12. (1) A procuring entity shall be responsible for the management of all procurement activities within its jurisdiction in accordance with this Act.

(2) Any functions related to procurement shall be carried out only by persons qualified and knowledgeable in procurement in accordance with the Zambia Institute of Purchasing and Supply Act, 2003.

Act No. 15
of 2003

(3) A person who contravenes subsection (2) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

13. (1) A Controlling Officer or a chief executive officer, as the case may be, shall be responsible and accountable for ensuring that all the procurement of the procuring entity is conducted in accordance with this Act.

Duties of
Controlling
Officer and
chief
executive
officer

(2) Without prejudice to the generality of subsection (1), the functions of a Controlling Officer and a chief executive officer are to—

- (a) appoint the members of a Procurement Committee;
- (b) act as chairperson of the Procurement Committee;
- (c) certify the availability of funds, prior to the commencement of any procurement activity or designate an officer or officers to whom this function shall be delegated;
- (d) authorise contract awards which fall within their level of authority;
- (e) authorise contract documents; and
- (f) submit such reports as are required by the Authority for purposes of this Act.

14. There shall be established in every procuring entity a Procurement Committee.

Establishment
of
Procurement
Committees

15. (1) A Procurement Committee shall ensure that all procurement of the procuring entity is conducted in accordance with the provisions of this Act.

Powers and
functions of
Procurement
Committee

(2) A Procurement Committee shall be the highest approvals authority for the procuring entity, and shall be responsible for providing prior authorisation of the procurement process in accordance with the procedure specified in section *twenty-two*.

(3) Subject to paragraph 7 of the Second Schedule, a Procurement Committee shall have an unlimited level of authority.

16. (1) A Procurement Committee shall consist of —

- (a) a Controlling Officer or chief executive officer, who shall be the chairperson;
- (b) not less than four and not more than eight members, appointed by the Controlling Officer or chief executive officer in writing; and

Composition
of
Procurement
Committees

(c) the head of the Procurement Unit, who shall be an ex-officio member of and the secretary to the Procurement Committee.

(2) Where a procuring entity is too small to be able to constitute a Procurement Committee, the Authority shall prescribe the procedures to be followed by the procuring entity.

(3) Members of a Procurement Committee shall be officers of the procuring entity with not more than two appointed from outside the procuring entity:

Provided that members of the Procurement Committee who are not officers of the procuring entity shall not be public officers or employees of any parastatal body.

(4) Members of the Procurement Committee shall be appointed with regard to their —

- (a) technical and professional competence;
- (b) procurement skills and knowledge required for the discharge of the functions of the Procurement Committee; and
- (c) proven integrity and sound decision making abilities.

(5) A Controlling Officer or chief executive officer shall, in selecting the members of a Procurement Committee, seek to establish a balance of skills and experience among the members to ensure that the Procurement Committee—

- (a) has an appropriate level of seniority and experience in decision making;
- (b) includes knowledge and experience in public procurement and other relevant professional disciplines; and
- (c) includes persons with knowledge and experience of the procuring entity's operations.

(6) Notwithstanding the provisions of subsection (4), when appointing members of the Procurement Committee for the first time after the commencement of this Act, a Controlling Officer or chief executive officer shall appoint half the members for a tenure of two years, in order to ensure both continuity and rotation in the membership of the Procurement Committee.

17. (1) A member of the Procurement Committee appointed under paragraph (b) of subsection (1) of section *sixteen* shall hold office for a period of three years and may be re-appointed for a further like period.

Tenure of
office of
Procurement
Committee

(2) A Controlling Officer or chief executive officer shall inform the Authority of the membership of the Procurement Committee not later than fourteen days from the date of its appointment or of any change in its membership.

(3) A Controlling Officer or chief executive officer, as the case may be, may terminate the appointment of a member of the Procurement Committee if the member—

- (a) abuses the member's office;
- (b) is involved or participates in corrupt or coercive practices;
- (c) is incompetent;
- (d) becomes physically or mentally incapable of performing the duties of a member of the Procurement Committee;
- (e) is absent from three consecutive meetings of the Procurement Committee of which the member has had notice without the prior approval of the Procurement Committee;
- (f) is convicted of an offence involving dishonesty; or
- (g) is adjudged or declared bankrupt.

(4) A Controlling Officer or chief executive officer, as the case may be, may remove or substitute any member of the Procurement Committee prior to the expiry of the member's term of office where—

- (a) it is necessary in order to maintain a balance of skills and experience on the Procurement Committee in accordance with section *sixteen*;
- (b) the structure or status of the procuring entity has changed;
- (c) the post of an incumbent member has changed, or the member has resigned; or
- (d) the member dies.

18. (1) Subject to the other provisions of this Act, a Procurement Committee shall regulate its own procedure.

Proceedin
of
Procurer
Commit

(2) A member or person who is present at a meeting of a Procurement Committee or a subcommittee of a Procurement

Committee at which any matter, in which that person or any member of the person's close relative, is directly or indirectly interested in a private capacity, is the subject of consideration, shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, unless the Procurement Committee or the subcommittee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to, that matter.

(3) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made. Subcommittees of Procurement Committee.

Subcommittees
of
Procurement
Committee

19. A Procurement Committee may—

- (a) establish a sub-committee with delegated level of authority to provide procurement authorisation for a sub division of the procuring entity, where the sub division's procurement would be more effectively managed by a sub-committee; and
- (b) establish a subcommittee to carry out particular functions of the Procurement Committee:

Provided that—

- (i) the appointment of the members of the subcommittee shall meet the requirements of section *sixteen*; and
- (ii) the Procurement Committee shall be responsible and accountable for the activities of any subcommittee.

Establishment
of
Procurement
Units

20. (1) There shall be established in every procuring entity a Procurement Unit which shall be responsible for managing all procurement activities of the procuring entity in accordance with the provisions of this Act and obtaining all required approvals from the appropriate approvals authority.

(2) Without prejudice to the generality of subsection (1), the functions of a Procurement Unit are to

- (a) plan the procurement activities of a procuring entity and recommend the appropriate method of procurement;
- (b) prepare solicitation documents, bid notices, short-lists, evaluation reports, contract award recommendations and contracts;
- (c) manage the bidding process, including pre bid meetings, clarifications, receipt and opening of bids;

- (d) manage the evaluation of bids and any post qualification or negotiations;
- (e) manage contracts and oversee contracts management by the designated contracts manager; and
- (f) prepare any procurement reports required by the Authority, a Controlling Officer, chief executive officer or a Procurement Committee for purposes of this Act.

21. The functions of a user department, in relation to procurement, are to—

Functions of
user
departments

- (a) provide information on forecast procurement requirements to the Procurement Unit for the purposes of procurement planning;
- (b) initiate procurement requirements;
- (c) provide technical inputs to the procurement process;
- (d) represent the end-user of the goods, works or services in the procurement process; and
- (e) manage contracts or assist the designated contract manager as required.

22. (1) The following stages of the procurement process shall require the prior authorisation of the relevant approvals authority:

Procurement
authorisation
and levels of
authority

- (a) the use of the limited or direct bidding methods of procurement, except where direct bidding is on the grounds of the low value;
- (b) solicitation documents prior to their issue;
- (c) evaluation reports prior to any further bid opening, the subsequent stage of evaluation or notification of award;
- (d) any other documents incorporating contract award recommendations, such as reports on negotiations, prior to any notification of award;
- (e) amendments to contracts prior to their issue;
- (f) the cancellation of procurement proceedings; and
- (g) the termination of a contract.

(2) The approvals authority shall be—

- (a) a Controlling Officer or chief executive Officer where the value of the procurement does not exceed the level of authority specified in regulations issued under this Act;

(b) a Procurement Committee for all other procurement, subject to the level of authority specified in paragraph 7 of the Second Schedule during the interim period only; and

(c) the Central Tender Committee for any procurement in excess of the level of authority specified in Paragraph 7 of the Second Schedule during the interim period only.

(3) Contract documents shall be authorised by a Controlling Officer or chief executive officer prior to their issue:

Provided that the contracts are in line with the contract award recommendations previously authorised by the Procurement Committee.

(4) A Controlling Officer or chief executive officer may delegate a level of authority, up to the maximum specified in paragraph (a) of subsection (2), to any designated senior officer or officers, including the head of the Procurement Unit.

(5) Any delegation made by a Controlling Officer or chief executive officer, as the case may be under sub-section (4) shall be in writing and copied to the head of the Procurement Unit.

(6) For purposes of subsection (2), the value of the procurement shall be—

(a) the estimated value in the case of paragraphs (a), (b) and (f) of subsection (1) and technical evaluation reports under paragraph (c) of subsection (1);

(b) the proposed contract value, in the case of paragraph (d) of subsection (1) and financial evaluation reports under paragraph (c) of subsection (1); and

(c) the original or amended contract value, whichever is higher, in the case of paragraph (e) and (g) of subsection (1).

(7) Where the proposed or actual value of a contract exceeds the value originally estimated for the procurement and thereby exceeds the level of authority of the approvals authority who authorised any previous stage in the procurement process, a procuring entity shall make a subsequent request for authorisation by the appropriate approvals authority, with details of the earlier stages and prior authorisation.

(8) The authorisation of the appropriate approvals authority shall be obtained for all subsequent stages in the procurement process, save that a procurement shall not be cancelled or restarted purely on the grounds that the authorisation was given by an approvals authority not authorised to do so under this Act.

23. (1) The Minister may, on the recommendation of the Authority, by statutory instrument -

Procurement
of common
use items

- (a) designate a central agency or unit with responsibility for the procurement of common use items for a procuring entity or for a group of procuring entities; and
- (b) specify the procedure for the use of a central agency or unit, the common use items subject to the arrangements, the procedure for determining such items and the procuring entities subject to the rules.

(2) A procuring entity shall, until the Minister establishes a central agency or unit pursuant to subsection (1), procure common use items in accordance with the provisions of this Act.

24. A procuring entity may, in such manner as may be prescribed, appoint a procurement agent or procurement service provider to carry out procurement functions on its behalf:

Use of
procurement
agent or
procurement
service
provider

Provided that—

- (a) the procurement agent or procurement service provider shall be appointed in accordance with the provisions of this Act; and
- (b) all procurement by the procurement agent or procurement service provider shall be undertaken in accordance with the provisions of this Act.

PART IV

METHODS OF PROCUREMENT

25. (1) The objective of open bidding shall be to obtain value for money and promote private sector participation through the maximum possible competition.

Open bidding

(2) Except as provided for in this Act, a procuring entity shall use open bidding for the procurement of all goods, works and non consulting services.

(3) A procuring entity shall use open national bidding or open international bidding in accordance with section *twenty-six*.

National
and
international
bidding

26. (1) Subject to subsection (2), a procuring entity shall use open national bidding for all procurement.

(2) A procuring entity shall use open international bidding where—

- (a) the estimated value of the procurement exceeds the prescribed threshold;
- (b) the goods, works or services are not available under competitive price and other conditions from at least three suppliers in Zambia; or
- (c) regional or international participation is required in accordance with an agreement entered into by the Government.

(3) Participation in open national bidding shall be limited to citizen and local bidders.

(4) Participation in open international bidding shall be open to all bidders, including citizen, local and foreign bidders.

(5) Where open international bidding is used—

- (a) a bid notice shall, in addition to the national media, be published in any regional or international media; and
- (b) the period for submission of bids or pre-qualification applications shall be increased to allow sufficient time for foreign bidders to respond.

(6) A foreign bidder shall partner with a citizen or local supplier or bidder.

Open
selection

27. (1) The objective of open selection is to promote private sector participation to obtain the best possible shortlist in order to obtain value for money.

(2) Except as provided for in this Act, a procuring entity shall use open selection for the procurement of all consulting services.

National
and
international
selection

28. (1) Subject to subsection (2), a procuring entity shall use open national selection in all procurements.

(2) A procuring entity shall use open international selection where—

- (a) the estimated value of the procurement exceeds the prescribed threshold;
- (b) the consulting services are not available under competitive price and other conditions from at least three suppliers in Zambia; or
- (c) regional or international participation is required in accordance with an agreement entered into by the Government.

(3) Participation in open national selection shall be limited to citizen and local bidders.

(4) Participation in open international selection shall be open to all bidders, including citizen, local and foreign bidders.

(5) Where open international selection is used—

(a) a bid notice shall, in addition to the national media, be published in any regional or international media; and

(b) the period for submission of expressions of interest shall be increased to allow sufficient time for foreign bidders to respond.

(6) A foreign bidder shall partner with a citizen or local supplier or bidder.

29. (1) The objective of limited bidding is to obtain competition and value for money to the extent possible where the circumstances do not justify or permit the use of open bidding. Limited bidding

(2) Limited bidding may be used where—

(a) the goods, works or services are only available from a limited number of suppliers; or

(b) there is an urgent need for the consulting services and engaging in open bidding would therefore be impractical

30. (1) The objective of limited selection is to obtain competition and value for money to the extent possible where the circumstances do not justify or permit the use of open selection. Limited selection

(2) Limited selection may be used where—

(a) the consulting services are only available from a limited number of suppliers; or

(b) there is an urgent need for the consulting services and engaging in open selection would therefore be impractical.

31. (1) The objective of simplified bidding is to obtain competition and value for money to the extent possible, while maintaining economy and efficiency, where the circumstances do not justify the use of open bidding. Simplified bidding

(2) Simplified bidding may be used where the estimated value of the goods, works or consulting or non consulting services does not exceed the prescribed threshold.

32. (1) The objective of direct bidding shall be to achieve timely and efficient procurement, where the circumstances or value do not justify or permit the use of competition. Direct bidding

(2) Direct bidding may be used where—

- (a) the goods, works or consulting or non-consulting services are only available from a single source and no reasonable alternative or substitute exists;
- (b) due to an emergency, there is urgent need for the goods, works or services making it impractical to use other methods of procurement because of the time involved in using those methods;
- (c) additional goods, works or services must be procured from the same source because of the need for compatibility, standardisation or continuity;
- (d) an existing contract could be extended for additional goods, works or services of a similar nature and no advantage could be obtained by further competition; or
- (e) the estimated value of the goods, works or services does not exceed the prescribed threshold.

Force account

33. (1) Force account, which is construction by the use of the procuring entity's own personnel and equipment, may be the only practical method of constructing some kind of works.

(2) The use of force account may be justified where—

- (a) the quantities of work involved cannot be defined in advance;
- (b) the works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) work is required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by the procuring entity than by a bidder or supplier; and
- (e) there are emergencies needing prompt attention.

Purchases
from other
procuring
entities

34. (1) Where a procuring entity is able to fulfil a procurement requirement through purchase from a Government agency and there would be no benefit in purchasing from a supplier, the procuring entity may purchase directly from the Government agency without the application of any other method of procurement:

Provided that the Government agency must be able to meet all the procuring entity's requirement as specified in the statement of requirements.

(2) A statutory corporation or body or company in which the Government has a majority or controlling interest shall be eligible to participate as a bidder or supplier in public procurement in accordance with the provisions of this Act, if the statutory corporation, body or company is legally and financially autonomous.

35. (1) Any award of contract for—

- (a) the construction, rehabilitation or operation of public infrastructure and other public goods on the basis of private investment;
- (b) service concessions; and
- (c) comparable forms of contracting;

Procurement
of
infrastructure
for private
financing
and award
of
concessions

shall be subject to such special procedures as the Minister may prescribe by statutory instrument.

(2) An award of contract made under subsection (1)—

- (a) shall be consistent with the general procurement rules set out in Part V of this Act; and
- (b) may vary the procurement process set out in Part VI of this Act to the extent necessary to meet the requirements of the contract under this section.

36. (1) Where, in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable in selected project components to—

Community
participation
in
procurement

- (a) call for participation of local communities and non-governmental organisations;
- (b) increase the utilisation of local know-how and materials; and
- (c) employ labour-intensive and other appropriate technologies;

the procurement procedures, specifications, and contract packaging shall be suitably adapted by the Authority to reflect these considerations, provided these are efficient.

(2) The procedures under subsection (1) shall be specified by statutory instrument.

PART V

GENERAL PROCUREMENT RULES

Participation and non discrimination **37.** A bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion not related to its eligibility or qualifications, except to the extent provided for in this Act.

Records of procurement **38.** (1) A procuring entity shall maintain records of all procurement proceedings.

(2) The records required under subsection (1) shall be maintained for a period of seven years from the date of—

- (a) contract completion or termination;
- (b) the decision to terminate the procurement proceedings;
- (c) the settlement of any dispute under the contract; or
- (d) the resolution of any complaint or appeal made under this Act;

whichever is later.

(3) The contents of procurement records shall be in accordance with regulations issued under this Act.

Communications **39.** (1) All communication between a procuring entity and a bidder or supplier shall be in writing and where it is made in any other form, it shall be reduced to and confirmed in writing.

(2) For the purposes of this section, “in writing” means in a form that provides a record of the content of the communication.

(3) The use of electronic bidding, or any other form of modern information and communications technology, shall only be permitted in accordance with public procurement standards issued by the Authority.

(4) Unless otherwise permitted by the Authority in public procurement standards, English shall be the language of communication.

Confidentiality **40.** (1) A public officer shall keep confidential the information that comes into the public officer’s possession relating to procurement proceedings and to bids, including any bidder’s proprietary information.

(2) Without prejudice to the generality of subsection (1), a procuring entity shall not, except where required to do so by an order of court, disclose any information relating to procurement proceedings and bids where the disclosure would —

- (a) amount to a contravention of the law;
- (b) obstruct law enforcement;
- (c) prejudice the legitimate commercial interests of the parties;
- (d) inhibit fair competition in public procurement; or
- (e) in anyway be contrary to public interest.

PART VI

PROCUREMENT PROCESS

41. (1) All procurement requirements shall be documented prior to the commencement of any procurement proceedings, recording at least the goods, works or services required and the estimated value.

Initiation of
procurement
requirements

(2) Procurement shall only be initiated where —

- (a) the availability of funding for the requirement has been confirmed; and
 - (b) approval to proceed has been given;
- by a Controlling Officer, chief executive officer or by an officer designated by the Controlling Officer or chief executive officer, as the case may be, to perform the function.

42. (1) A procuring entity shall plan its procurement in a rational manner and in particular shall—

Procurement
planning

- (a) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;
- (b) make use of rate or running contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure goods, works or services that are required continuously or repeatedly over a set period of time;
- (c) avoid splitting of procurement to defeat the use of appropriate procurement methods; and
- (d) integrate its expenditure programme with the procurement plan.

(2) Procuring entities shall submit all annual procurement plans to the Authority.

Choice of
procurement
method

43. (1) A procuring entity shall use one of the procurement methods specified in Part IV.

(2) The choice of procurement method shall be determined in accordance with the conditions specified in Part IV, taking into account—

- (a) the estimated value of the procurement;
- (b) whether the procurement is of goods, works, non-consulting or consulting services;
- (c) any special circumstances, such as a limited number of potential sources or an emergency requirement; and
- (d) whether national or international competition is required.

(3) A procuring entity shall not split up procurement requirements with the intention of avoiding a particular method of procurement, where such requirements could be procured as a single contract.

Statement of
procurement
requirements

44. (1) A statement of procurement requirements shall give a correct and complete description of the goods, works or consulting or non-consulting services required.

(2) A statement of procurement requirements shall be—

- (a) included in the solicitation document to inform bidders of the procuring entity's requirements;
- (b) used in evaluation to determine whether a bidder meets the procuring entity's requirements, as specified in the solicitation document, and where appropriate, to determine the quality of the bid; and
- (c) included in the contract to define the goods, works or services being purchased.

(3) A statement of procurement requirements included in the solicitation document shall be prepared with a view to

- (a) creating fair and open competition; and
- (b) ensuring that the goods, works or services are fit for the purpose for which they are being purchased and are of appropriate quality.

(4) To the extent possible, a statement of procurement requirements shall be based on the relevant, objective, technical and quality characteristics of the goods, works or services to be procured.

45. (1) A solicitation document shall use the appropriate standard document issued by the Authority or any other document approved by the Authority.

Solicitation documents

(2) A solicitation document shall contain—

- (a) clear instructions on the management of the procurement process and the applicable rules;
- (b) a clear description of the object of the procurement in the form of a statement of requirements; and
- (c) the proposed form and conditions of contract or a statement of the form and conditions of contract which will apply.

46. (1) The method for selection of bidders shall be determined by the procurement method used and shall be—

Selection of bidders

- (a) by publication of a bid notice or through a pre qualification process for open bidding;
- (b) by publication of a notice requesting expressions of interest in order to develop a shortlist for open selection;
- (c) by development of a shortlist for limited bidding and simplified bidding; or
- (d) by selection of a single bidder for direct bidding.

(2) The Minister may, by statutory instrument, prescribe the rules for publication of notices, pre-qualification, development of shortlists and selection of single bidders.

47. (1) A procuring entity shall keep a record of all bidders to whom the solicitation document is issued.

Invitation of bids

(2) Where solicitation documents are issued to pre-qualified or shortlisted bidders, the documents shall be issued to all bidders at the same time.

(3) Bidding documents may be sold at such fee as may be prescribed by statutory instrument.

(4) In setting bidding deadlines, a procuring entity shall -

- (a) allow sufficient time for bidders to obtain solicitation documents, prepare complete and responsive bids and submit bids; and
- (b) comply with the minimum bidding periods as may be prescribed by statutory instrument.

(5) A procuring entity may require bidders to submit bid securities, in the manner and in accordance with such procedure as may be prescribed by statutory instrument.

(6) The Minister may, by statutory instrument, make rules for the management of the bidding process, including pre-bid meetings, clarification and amendment of solicitation documents and the withdrawal, modification and substitution of bids.

(7) A procuring entity shall require bidders to submit sealed, written bids, unless otherwise provided for in this Act.

(8) The method for bid submission shall be as specified in regulations made under this Act and shall take into account the method of procurement, the complexity of the procurement and the evaluation methodology used.

Receipt of
bids

48. (1) A solicitation document shall clearly state the date and time of the bidding deadline and that late bids shall be rejected.

(2) A procuring entity shall ensure that—

(a) a bid box, or other means of receiving bids, is made available to bidders;

(b) bids are kept confidential, and in the case of sealed bids unopened, until the time for opening of bids; and

(c) bidding is closed at the precise date and time of the bidding deadline and no late bids are accepted.

Opening of
bids

49. All open bidding, limited bidding and open selection processes shall include a public bid opening, in accordance with the procedures specified in regulations made under this Act.

Evaluation

50. (1) The choice of evaluation methodology shall be determined by the type, value and complexity of the procurement requirement and shall be done in accordance with regulations made under this Act.

(2) A solicitation document shall clearly state the methodology and criteria to be used in the evaluation of bids and the determination of the best evaluated bidder.

(3) No methodology or criteria, other than those stated in the solicitation document, shall be taken into account and all criteria shall be applied equally to all bids.

(4) A procuring entity may ask a bidder to clarify their bid in order to assist in the evaluation, but no changes in the substance of bids, including changes in price, shall be permitted after the date and time of the closing of the bid, unless otherwise provided for in this Act.

(5) A post qualification may be undertaken in accordance with the criteria in the solicitation document, to determine whether the best evaluated bidder has the capability and resources to effectively carry out the contract.

(6) A procuring entity shall prepare an evaluation report for submission to the appropriate approvals authority.

51. (1) Subject to subsection (3), negotiations shall only be undertaken in accordance with the conditions and procedures specified in regulations made under this Act. Negotiations

(2) Negotiations shall not relate to the price of the bid, except in the case of direct bidding or where the price of the bid has not been taken into account in the evaluation methodology.

(3) The use of compound interest in any negotiation or contract is hereby prohibited.

52. (1) An award of contract shall be recommended to the best evaluated bidder, as determined by the evaluation methodology and criteria specified in the solicitation document. Decision to award contract

(2) The decision to award a contract shall be taken by the appropriate approvals authority.

(3) A decision to award a contract by the approvals authority does not constitute a contract.

53. (1) A procuring entity shall, within seven days of awarding a contract, prepare a notice indicating the best evaluated bidder and the value of the proposed contract, and send the notice to all bidders who submitted bids. Publication of best evaluated bidder

(2) No award of contract shall be made for a period of ten working days following the completion of the requirements stipulated in subsection (1).

(3) The provisions of this section do not apply to—

- (a) procurement using simplified bidding;
- (b) procurement using direct bidding; or
- (c) procurement using limited bidding on grounds of insufficient time in accordance with section *twenty-nine*.

Award of
contract

54. (1) A solicitation document shall state the procedure for award of contract, which shall be—

- (a) by placement of a written contract document; or
- (b) by issue of a letter of bid acceptance, which shall be confirmed by the written contract.

(2) No contract, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid or award of contract shall be issued prior to—

- (a) an award decision by the appropriate approvals authority in accordance with section *fifty*;
- (b) publication and dispatch of the notice of best evaluated bidder in accordance with section *fifty-one*;
- (c) confirmation that the procurement is not subject to administrative review;
- (d) confirmation that funding is available for the contract; and
- (e) any other approvals required, including the approval of the contract by the Attorney-General.

(3) Any contract, purchase order, letter of bid acceptance or other communication issued contrary to subsection (2) is void.

Contract

55. (1) A contract shall use the appropriate standard document issued by the Authority or any other document approved by the Authority.

(2) The type of contract shall be as determined by statutory instrument.

(3) A procuring entity shall publish a notice of all contracts awarded which exceed the prescribed threshold.

Information
of
unsuccessful
bidder

56. A procuring entity shall, after the commencement of a contract with the successful bidder, inform all the other bidders that their bids have not been successful and shall give reasons for that decision by the procuring entity.

Contract
management

57. (1) A procuring entity shall appoint a contract manager for every contract awarded, who shall be responsible for—

- (a) managing the obligations of the procuring entity specified in the contract; and
- (b) ensuring that the supplier performs the contract in accordance with the terms and conditions specified in the contract.

(2) A contract manager shall be selected in accordance with the procedure prescribed by statutory instrument, taking into account the skills, experience and functions required for management of the contract.

58. (1) All amendments to a contract shall require the prior authorisation of the appropriate approvals authority and the Attorney-General. Amendment of contract

(2) Any amendment to a contract shall be determined by the original or revised value of the contract, whichever is greater.

(3) Any amendment to a contract purportedly effected without the approval of the Attorney-General shall be void.

59. The Authority may, in such manner and procedure as the Minister may prescribe by statutory instrument, permit a procuring entity to deviate from the use of a public procurement method, rule, process or document— Deviations

- (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with the provisions of this Act;
- (b) where market conditions or behaviour do not allow the effective application of the procurement methods, rules, processes or documents; or
- (c) specialised or particular requirements are regulated or governed by international standards or practices.

60. The Authority may, in the prescribed manner, accredit an alternative procurement system where a procuring entity— Accreditation of alternative procurement system

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

PART VII

BIDDERS AND SUPPLIERS

Eligibility of
bidders

61. (1) A procuring entity shall require all bidders to meet the following criteria, in order to be eligible to participate in public procurement:

- (a) the bidder shall have the legal capacity to enter into contract;
- (b) the bidder shall be solvent, and not be in receivership, bankrupt or wound up, its affairs administered by a court or a judicial officer, or its business activities suspended or the subject of legal proceedings for any of the foregoing;
- (c) the bidder shall have fulfilled its obligations to pay taxes and social security contributions;
- (d) the bidder should not, nor its directors or officers have been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings, or have been suspended pursuant to section *sixty-five*; and
- (e) the bidder should not have a conflict of interest in relation to the procurement requirement.

(2) A procuring entity may require bidders to be citizen or local bidders to be eligible to participate in public procurement where—

- (a) open national bidding is used in accordance with section *twenty-six*;
- (b) open national selection is used in accordance with section *twenty-eight*; or
- (c) the procurement is subject to a reservation scheme in accordance with section *sixty-three*.

(3) A solicitation document shall state the eligibility requirements and specify any documentary evidence required as proof of eligibility.

(4) The review of the eligibility of the bidders shall be conducted as part of the preliminary examination of bids, except where it has been conducted as part of the pre-qualification proceedings.

62. (1) A procuring entity may require a bidder to meet such qualification criteria as the procuring entity considers appropriate to the particular procurement requirement, to demonstrate that the bidder has the capability and resources to effectively carry out the contract.

Qualification
of bidders

(2) A qualification criteria shall be specified in the solicitation document and may relate to—

- (a) professional and technical qualifications;
- (b) financial resources and condition;
- (c) equipment and other physical facilities;
- (d) personnel and managerial capability;
- (e) record of past performance of similar contracts; and
- (f) registration or licensing with the relevant professional body in Zambia or in the bidder's country of origin where so required by law.

(3) A solicitation document shall state any qualification requirements and specify the documentary evidence or information required to demonstrate the bidder's qualifications.

(4) Qualifications shall be assessed by examining whether the bidder does or does not meet the qualification criteria and not by using a point system for comparing the relative level of qualifications of participating bidders.

(5) A review of the qualifications of the bidders shall be conducted separately from the evaluation and comparison of bids.

(6) If pre-qualification proceedings are not conducted, post qualification, in which the procuring entity ascertains the qualifications of the best evaluated bidder, may be utilised.

63. (1) Notwithstanding the provisions of section *thirty-five*, a procuring entity may, in the prescribed manner—

Preference
and
reservation

- (a) grant a margin of preference for the benefit of bids by a target group offering goods, works or services manufactured or performed by the target group; or
- (b) reserve or set aside certain procurement requirements for a target group, by restricting bidding to the target group.

(2) A target group for any preference or reservation scheme shall be determined in accordance with Government economic and social policies and may include—

- (a) citizen or local suppliers;
- (b) goods, works or services manufactured in or provided from Zambia or a particular region or performed by Zambians or persons from a particular region;
- (c) Zambian suppliers in a particular industry or economic sector;
- (d) small and medium -sized enterprises;
- (e) enterprises owned by women; or
- (f) any other group designated by Government policy.

(3) Preference or reservation schemes shall be formulated by the Authority, in consultation with the Government bodies responsible for economic and social policy, and issued by the Minister by statutory instrument.

(4) Preference or reservation schemes shall clearly state—

- (a) the target group and eligibility requirements;
- (b) the percentage of the preference, where applicable;
- (c) the period for the operation of the scheme; and
- (d) the objectives of the scheme and the means of measuring its effectiveness in achieving those objectives.

(5) Where a margin of preference is granted to citizen or local suppliers—

- (a) greater preference shall be granted to citizen suppliers, than local suppliers, with no preference to foreign suppliers;
- (b) the preference to be accorded shall be proportional to the percentage of the contract to be actually executed by citizen or local suppliers; and
- (c) greater preference shall be granted where citizen or local suppliers form part of a joint venture or association agreement, than where they are sub-contracted by foreign suppliers.

(6) The Authority may, in consultation with the relevant authorities, recommend other measures to facilitate private sector participation in public procurement and to further the development of economic capacity in Zambia, which shall be issued by the Minister by statutory instrument.

64. (1) The Authority may organise and maintain a system, in the form of a database or list, to provide centralised information on potential suppliers of goods.

Supplier
databases or
lists

(2) A procuring entity may organise and maintain a system or database of potential suppliers and shall copy the information recorded in the system or database to the Authority for inclusion in the centralised system referred to under subsection (1).

(3) A supplier shall not be required to register in any database or list as a condition of participating in any procurement proceedings.

(4) Inclusion in any database or list shall be open at any time to potential suppliers and requests to register shall be acted upon within a reasonable period of time.

(5) The Authority, and any procuring entity operating any system or database in accordance with this section, shall regularly publicise—

- (a) the existence of the database or list;
- (b) procedures for registering and updating entries on the database or list;
- (c) the conditions to be satisfied for entry on the database or list and the documentary evidence required; and
- (d) the period of any registration and requirements for updating entries.

(6) Entry in the database or list shall not be subject to any eligibility criteria more stringent than that set out in section *sixty-one*.

(7) A database or list maintained under this section shall be reviewed and updated on a regular basis.

(8) The Authority and any procuring entity operating a system or database under this section shall notify potential suppliers of—

- (a) their inclusion in the database or list;
- (b) any rejection of a request to register and the reasons for such rejection; and

(c) their removal from the database or list and the reasons for such removal.

Suspension

65. (1) The Authority may suspend a bidder or supplier from participating in public procurement on the grounds specified in section *sixty-six*.

(2) A bidder or supplier shall not be suspended unless—

(a) reasonable notice has been given to the bidder or supplier of the grounds for the proposed suspension and the details of the alleged grounds;

(b) reasonable opportunity has been given to the bidder or supplier to respond to the alleged grounds and provide information in defence; and

(c) a thorough investigation of the facts of the case has been undertaken by the Authority.

(3) A suspension shall be for a minimum period of one year and a maximum period of five years.

Grounds for suspension

66. A bidder or supplier shall be suspended from participating in procurement on any of the following grounds:

(a) providing false information in a bid or any other document submitted to a procuring entity in connection with a procurement process or contract;

(b) connivance to interfere with the participation of other bidders;

(c) refusal to sign a contract or to furnish a performance security in accordance with the terms of the solicitation document and bid, if required to do so; or

(d) failure to comply with a bid securing declaration.

Permanent bar of bidder or supplier

67. (1) A bidder or supplier shall be permanently barred from participating in procurement on any of the following grounds:

(a) misconduct relating to the submission of bids, including corrupt, fraudulent, collusive or coercive practices, price fixing, a pattern of under-pricing of bids and breach of confidentiality;

(b) substantial non-performance or under-performance of contractual obligations:

Provided that the non-performance or under performance is not due to any *force majeure*;

- (c) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or
- (d) conviction of a crime related to business or professional activities.

(2) In subsection (1), “*force majeure*” means an event which is beyond the reasonable control of a bidder or supplier which makes the performance of the contract impossible or impracticable under the circumstances.

68. A procuring entity shall reject a bid, proposal, offer or quotation of a bidder or supplier if the bidder or supplier offers, gives, or agrees to give, directly or indirectly an inducement or anything of value to a public officer to influence an act, decision or proceeding of a procuring entity.

Inducement
by bidder or
supplier

69. A bidder or supplier aggrieved by a decision of the Authority to suspend the bidder or supplier from participating in public procurement or over any other matter under this Act shall submit the matter to arbitration.

Appeal
against
suspension

PART VIII

ARBITRATION

70. (1) A bidder or supplier who is aggrieved with a decision made by a procuring entity under this Act may appeal against the decision to the Authority.

Review of
decision by
procuring
entity

(2) An application under subsection (1) shall be made in the prescribed manner upon payment of the prescribed fee.

(3) The Authority shall not accept an application made under this section unless it is submitted within ten working days from the date the bidder submitting the application was informed of or became aware of the circumstances giving rise to the application or from the date the bidder should have become aware of those circumstances, whichever is earlier.

(4) Unless an application is dismissed or resolved by mutual agreement between the applicant and the procuring entity, the Authority shall—

- (a) upon receipt of the application, institute an investigation;
- (b) ensure that no contract award is made prior to the resolution of the application; and
- (c) issue a written decision, within ten working days after the submission of the application.

(5) A decision issued under paragraph (c) of subsection (4) shall state—

- (a) whether the application is upheld, in whole or in part or dismissed;
- (b) the reasons for the decision; and
- (c) any corrective measures that are to be taken by the procuring entity or the bidder, as the case may be.

(6) A bidder or supplier who is aggrieved by the decision of the Authority may submit the matter to arbitration under section seventy-one.

Dispute to be
determined by
arbitration

Act No. 19
of 2000

71. Any dispute over a matter or decision made under this Act shall be determined by arbitration in accordance with the provision of the Arbitration Act.

PART IX

GENERAL PROVISIONS

Code of
conduct

72. The Authority may promulgate a code of conduct to regulate public officers, bidders and suppliers involved in public procurement.

Restriction
on public
officers

73. (1) A public officer, or a public officer's close relative, shall not participate as a bidder in the public procurement of the procuring entity by which the public officer is employed or over which the public officer exercises any supervisory or oversight authority.

(2) Any person who served as procurement officer or participated in the approval of any procurement activities with respect to a procurement shall not—

- (a) participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification or extension of the contract for such procurement; or
- (b) participate personally or substantially on behalf of a supplier in the performance of such a contract.

(3) The restriction in subsection (2) shall remain in effect for the duration of the procurement proceeding and contract, if any, in question.

74. (1) A bidder or supplier participating in public procurement shall—

Conduct of
bidder and
supplier

- (a) at all times abide by their obligations under this Act, the contract and other instruments applicable to their conduct and activities related to public procurement; and
- (b) not commit or abet corrupt, fraudulent, collusive or coercive practices.

(2) Subject to subsection (3), a bidder or supplier who contravenes subsection (1) commits an offence and is liable, upon conviction to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(3) A bidder or supplier who commits an act of corruption shall be prosecuted in accordance with the provisions of the Anti-Corruption Commission Act.

Cap. 91

75. A person commits an offence who—

Offences by
public officers
and other
persons

- (a) without reasonable excuse fails or refuses to give information, or produce any document, record or report required under this Act;
- (b) assaults, resists or obstructs any officer or employee of the Authority, or any other authority exercising monitoring and oversight functions over public procurement, in the exercise of their functions under this Act; or
- (c) contrary to the provisions of this Act, interferes with or exerts undue influence on any officer or employee of the Authority or a procuring entity in the performance of their functions or in the exercise of their powers under this Act.

(2) A public officer commits an offence who—

- (a) due to recklessness or dishonesty fails to exercise the powers as a public officer and to discharge duties in accordance with the requirements of this Act;
- (b) uses the position as a public officer dishonestly or with the intention of directly or indirectly gaining an advantage for oneself or someone else or causing detriment to a procuring entity;
- (c) uses the position as a public officer recklessly without regard to whether the conduct may directly or indirectly gain an advantage for oneself or someone else or cause detriment to a procuring entity;

- (d) uses information obtained because of the position as a public officer to gain an advantage for oneself or someone else or cause detriment to a procuring entity;
- (e) tampers with a bid, including any document or item submitted with the bid, by opening, burning, tearing, destroying, or partially burning, tearing or destroying, altering, erasing, falsifying or rendering incomplete or misleading, the bid;
- (f) publishes or discloses information relating to procurement, other than in the proper and authorised course of duties as a public officer; or
- (g) contravenes or fails to comply with any provision of this Act;

and is liable to the applicable administrative and legal sanctions applicable to public officers under their conditions of employment and any other written law.

Responsibilities
of Controlling
Officers and
chief executive
officers

76. (1) Notwithstanding anything to the contrary contained in any written law, where any commitment or expenditure is incurred on any procurement, a Controlling Officer or chief executive officer of a procuring entity shall ensure that such procurement is in accordance with the provisions of this Act.

(2) Subject to the provisions of subsections (3) and (4), a Controlling Officer or chief executive officer of a procuring entity shall be accountable for failing to comply with subsection (1).

(3) Where a Controlling Officer or chief executive officer of a procuring entity satisfies the Authority, or other relevant oversight or enforcement body, that the Controlling Officer or chief executive officer had, in accordance with the provisions of this Act delegated functions under subsection (1) to another person or body or committee, such other person and every member of such body or committee shall be accountable for any failure to comply with subsection (1).

(4) Where a Controlling Officer or chief executive officer satisfies the Authority, or other relevant oversight or enforcement body, that the Controlling Officer or chief executive officer is, under the provisions of any written law, subject to the control or direction of another person, board, committee or other body, and that such control or direction caused the failure to comply with subsection (1), then such other person or every member of such board, committee or other body, shall be accountable for the failure to comply with subsection (1).

- 77.** (1) A person who contravenes any provision of this Act for which no penalty is provided is liable, upon conviction - General penalty
- (a) in the case of an individual , to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both; and
- (b) in the case of a body corporate or un-incorporate body, to a penalty not exceeding one million penalty units.
- 78.** If a body corporate or un-incorporate body is convicted of an offence under this Act, every person who - Offences committed by body corporate or un-incorporate body
- (a) is a director of, or is otherwise concerned with the management of, the body corporate or un-incorporate body; and
- (b) knowingly authorised or permitted the act or omission constituting the offence;
- shall be deemed to have committed the same offence and shall be liable, on conviction, to the penalty specified for that offence.
- 79.** (1) A court of competent jurisdiction may order a person to compensate a procuring entity for any damage or loss suffered by the procuring entity, if the damage or loss resulted from an offence committed by the person. Compensation
- (2) Any compensation ordered under subsection (1) is a civil debt due to the procuring entity.
- 80.** The Authority may, where a procuring entity contravenes this Act, transfer its procurement function to a body or procurement agency appointed by the Authority, until the Authority is satisfied that the causes of the contravention have been rectified by the procuring entity. Transfer of functions of procuring entity to other body
- 81.** (1) The Authority may issue public procurement circulars and instructions to provide further guidance on the interpretation and application of this Act. Circulars and publications
- (2) The Authority shall publish, for public information, texts of this Act, regulations, circulars, standards and directives of general application and the list of bidders and suppliers who are suspended or prohibited from participating in public procurement.
- 82.** The Minister may, on the recommendation of the Authority, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. Regulations

- Repeal of
Cap 394 **83.** (1) The Zambia National Tender Board Act, 1982, is hereby repealed.
- Cap 394 (2) Notwithstanding subsection (1), every order, direction or appointment issued, given or made pursuant to the provisions of the repealed Act shall be valid until otherwise cancelled, revoked or varied under the provisions of this Act.
- Cap 394 (3) Upon the commencement of this Act, all regulations or rules relating to public procurement promulgated under the repealed Act shall cease to have any effect, power, function, authority or duty in relation to any matter connected with the procurement of goods, works or services.
- (4) On or after the commencement of this Act, reference in any written law or other document to the Zambia National Tender Board shall be read and construed as references to the Authority.
- (5) For the avoidance of doubt, a person who immediately before the commencement of this Act held office as Director, Secretary or employee of the Board shall continue to hold such office as Director, Secretary or employee of the Authority as if appointed under this Act.
- (6) The service of the staff of the Board referred to under subsection (5) shall be treated as continuous service.
- Savings and
transitional
provisions **84.** The Second Schedule applies in relation to the savings and transitional provisions.

FIRST SCHEDULE

(Section 5 (3))

PART I

ADMINISTRATION OF AUTHORITY

- Composition
of Board **1.** (1) There is hereby established the Board of the Authority which shall be the Governing Board of the Authority.
- (2) The Board shall consist of the following part-time members:
- (a) the Minister responsible for finance, who shall be the Chairperson;
 - (b) four Ministers appointed by the President, one of whom shall be designated the Vice-Chairperson;
 - (c) the Secretary to the Cabinet;
 - (d) the Attorney General;

- (e) the Governor of the Bank of Zambia;
- (f) the Permanent Secretary in the Ministry responsible for financial management;
- (g) the Permanent Secretary in the Ministry responsible for commerce;
- (h) the Permanent Secretary in the Ministry responsible for works and supply; and
- (i) two other persons appointed by the President from among persons in the private sector, of good standing and recognised for their high levels of professional competence and integrity.

2. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary.

Seal of
Authority

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Board shall be received in evidence and shall be executed or issued, as the case may be, without any further proof, unless the contrary is proved.

3. (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be re-appointed for a further period of three years.

Tenure of
office and
vacancy

(2) Subject to the other provisions of this Part, a member shall, on the expiration of the period for which the member is appointed, continue to hold office until another member is appointed to succeed that member.

(3) The office of a member becomes vacant—

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent from three consecutive meetings of the Board of which the member has had notice, without the prior approval of the Board;

- (d) upon the expiry of one month's notice of the member's intention to resign from office, given by the member in writing to the Board;
- (e) if the member becomes mentally or physically incapable of performing the duties of a member of the Board; or
- (f) if the member is convicted of an offence under this Act or any other written law and sentenced therefor to imprisonment for a term of six months or more.

(4) A member may resign from office by giving not less than one month's notice in writing to the Board.

(5) The President shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

Proceedings
of
Board

4. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business, at least once in every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting upon receiving a written request from at least five members of the Board.

(4) If the urgency of any particular matter does not permit the giving of the notice required under subsection (3), a special meeting may be called the Chairperson upon giving a shorter notice.

(5) The quorum at a meeting of the Board shall be seven of the members of the Board.

(6) There shall preside at any meeting of the Board—

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson;
and
- (c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(7) A decision of the Board on any question shall be by a majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(8) Where a member is for any reason unable to attend any meeting of the Board, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting.

(9) The Board may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(10) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.

(11) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee established by the Board.

5. (1) The Board may, for the purpose of performing its functions under this Act, constitute any committee and delegate to any such committee such of its functions as it thinks fit.

Committees of
Board

(2) The Board may appoint as members of a committee constituted under sub-paragraph (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) A committee of the Board may regulate its own procedure.

6. There shall be paid to members of the Board or any committee of the Board such allowances as the Board may, with the approval of the Minister, determine.

Allowances of
members

7. (1) A member or person who is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or any member of the person's close relative, is directly or indirectly interested in a private capacity, is the subject of consideration, shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to, that matter.

Disclosure of
interest

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Prohibition
of
publication
of, or
disclosure of
information
to
unauthorized
persons

8. (1) A person shall not, without the consent in writing given by or on behalf of the Board, publish or disclose to any unauthorized person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes sub-paragraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity of
members and
staff of
Authority

9. An action or other proceeding shall not lie or be instituted against a member of the Board or a committee of the Board, or a member of staff of the Board, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act.

PART II

FINANCIAL PROVISIONS

Funds of
Authority

10. (1) The funds of the Authority shall consist of such moneys as may—

- (a) be appropriated to the Authority by Parliament for the purposes of the Authority;
- (b) be paid to the Authority by way of fees, charges, grants or donations; and
- (c) otherwise vest in or accrue to the Authority.

(2) The Authority may—

- (a) subject to the approval of the Minister, accept moneys by way of grants or donations from any source within or outside Zambia;

- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and
- (c) in accordance with the regulations made under this Act, charge fees for services provided by the Authority.
- (3) There shall be paid from the funds of the Authority —
- (a) the salaries, allowances, loans, gratuities and pensions of the staff of the Authority and other payments for the recruitment and retention of the staff;
- (b) such reasonable travelling and subsistence allowances or other allowances for members, members of any committee of the Board and staff of the Authority when engaged on the business of the Authority at such rates as the Board may, with the approval of the Minister, determine; and
- (c) any other expenses incurred by the Board in the performance of the Board's functions under this Act.
- (4) The Board may, with the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.
- 11.** The financial year of the Authority shall be the period of twelve months ending on 31st December of each year. Financial year
- 12.** (1) The Authority shall cause to be kept proper books of account and other records relating to its accounts. Accounts
- (2) The accounts of the Authority shall be audited annually by the Auditor-General in accordance with the provisions of the Public Finance Act, 2004. Act No. 15 of 2004
- 13.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Authority shall submit to the Minister a report concerning its activities during the financial year. Annual report
- (2) The report, referred to in subparagraph (1), shall include information on the financial affairs of the Authority and there shall be appended to the report—
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 84)

TRANSITIONAL PROVISIONS

Interim
arrangements

1. (1) The provisions of this Part shall cease to have effect two years from the date of the commencement of this Act.

(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, parastatal and statutory bodies.

Establishment
of Central
Tender
Committee

2. (1) There is hereby established the Central Tender Committee, which shall consist of the following members:

- (a) the Permanent Secretary responsible for financial management and administration, who shall be the Chairperson;
- (b) the Permanent Secretary responsible for administration at Cabinet Office;
- (c) the Permanent Secretary responsible for works and supply;
- (d) the Permanent Secretary responsible for commerce, trade and industry;
- (e) the Permanent Secretary responsible for agriculture;
- (f) the Permanent Secretary responsible for education;

- (g) the Permanent Secretary responsible for health;
- (h) the Permanent Secretary responsible for local government;
- (i) the Permanent Secretary responsible for defence;
- (j) a representative of the Attorney-General;
- (k) the Deputy Governor of the Bank of Zambia responsible for administration;
- (l) the Commissioner-General of the Zambia Revenue Authority; and
- (m) the Director-General and the Secretary to the Authority, who shall be ex-officio members of the Committee.

(2) A member appointed under subparagraph (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.

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.

Powers and
functions of
Central
Tender
Committee

(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 subparagraph (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.

Separation
of functions
in 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.

(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.

Levels of
authority and
capacity
ratings for
procuring
entities

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.

(2) All procurement with a value above the level of the authority determined under subparagraph (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 subparagraph (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.
