

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 2023

Date of Assent: 22nd December, 2023

An Act to amend the Public Procurement Act, 2020.

[26th December, 2023

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Public Procurement (Amendment) Act, 2023, and shall be read as one with the Public Procurement Act, 2020 in this Act referred to as the principal Act.

Short title
Act No. 8 of
2020

2. Section 2 of the principal Act is amended by the—

Amendment
of section 2

(a) deletion of the definitions of “international procurement agreement”, “limited bidding” and “limited selection” and the substitution therefor of the following definitions in the appropriate places in alphabetical order:

“international procurement agreement” means a convention, treaty or other agreement to which Zambia is a State party which requires the Government to contribute its resources in any form to any procurement activities within the Republic, wholly, partially, jointly or severally;

“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; and

“limited selection” means a procurement method for consulting services where bids are obtained by direct invitation to a shortlist of bidders;;

- (b) deletion of the definition of “procurement agreement”; and
- (c) by the insertion of the following new definition in the appropriate place:

“Government to Government procurement” means a procurement undertaken in accordance with an agreement between the Republic and a foreign State;.

Amendment
of section 3

3. Section 3 (2) and (3) of the principal Act is amended by the deletion of the words “defence or international relations” wherever the words appear and the substitution therefor of the words “defence, currency or international relations”.

Amendment
of section 4

4. Section 4 (1) and (2) of the principal Act is amended by the deletion of the words “and the Treasury” wherever the words appear.

Amendment
of section 12

5. Section 12 (4) of the principal Act is amended by the deletion of the word “Authority” and the substitution therefor of the words “relevant approvals authority”.

Amendment
of section 14

6. Section 14 of the principal Act is amended—

(a) in subsection (3), by the deletion of paragraph (i) and the substitution therefor of the following:

(i) an Appeal Form;; and

(b) by the deletion of subsection (5) and the substitution therefor of the following:

(5) The information contained in the standard procurement documents shall not be confidential except—

(a) the contents of expressions of interest, pre-qualification applications, bids, proposals, note taking books, minutes of bid evaluation meetings, comments or remarks on each expression of interest, pre-qualification application, bid or proposal after the contractor selection result is published;

(b) a request for clarification of bids or proposal made by the procuring entity and responses to those requests submitted by bidders during the bid evaluation process after publication of the contractor selection results;

(c) reports made by the procuring entity, by the evaluation team, appraisal reports, reports of consultants or other related reports in the selection process after publication of the contractor selection results; and

(d) other relevant documents in the selection process that are marked “confidential” in accordance with this Act, or other written law.

7. Section 15 (2) (a) of the principal Act is amended by the deletion of the word “except”. Amendment of section 15

8. Section 17 (3) of the principal Act is amended by the deletion of paragraph (e). Amendment of section 17

9. Section 18 (4) of the principal Act is amended by the deletion of paragraph (a) and the substitution therefor of the following: Amendment of section 18

(a) a bidder contravenes subsection (1), that bidder is disqualified, on procedures as prescribed, from participating in any existing procurement proceeding;

10. Section 19 (6) of the principal Act is amended by the deletion of the words “person or a relative” and the substitution therefor of the words “person, relative or associate”. Amendment of section 19

11. The principal Act is amended by the deletion of section 29 (2) and the substitution therefor of the following: Amendment of section 29

(2) A controlling officer or Chief executive officer shall inform the Authority of the membership of the Procurement Committee not later than fourteen days of the date of appointment of the Procurement Committee or of any change in the membership of the Procurement Committee.

12. Section 34 of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following: Amendment of section 34

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

Repeal and replacement of section 36

13. The principal Act is amended by the repeal of section 36 and the substitution therefor of the following:

Use of procurement agent or service provider

36. A procuring entity may, in accordance with this Act, as prescribed, appoint a procurement agent or procurement service provider to carry out procurement functions on its behalf.

Amendment of section 37

14. Section 37 of the principal Act is amended by the insertion of the following new paragraph immediately paragraph after (o):

(p) Government to Government procurement.

Amendment of section 39

15. Section 39 of the principal Act is amended—

(a) by the deletion of subsection (2) and the substitution therefor of the following:

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

(b) in subsection (4) by the insertion of the following new paragraphs immediately after paragraph (b):

(c) engaging an original equipment manufacturer or original product manufacturer may reduce on third party associated costs, ensure delivery reliability and quality assurance; or

(d) a procuring entity operates in a specialised industry and the goods, works or non consulting services to be procured are of a specialised nature.;

(c) in subsection (7), by the deletion of the word “shall” and the substitution therefor of the word “may”.

16. Section 41 of the principal Act is amended —

Amendment
of section 41

(a) in subsection (2) by the insertion of the following new paragraph immediately after paragraph (b):

(c) a procuring entity operates in a specialised industry and the consulting services to be procured are of a specialised nature.;

(b) by the deletion of subsection (3) and the substitution therefor of the following:

(3) Participation in open national selection shall be limited to citizen and local bidders, except that citizen bidders shall be given priority in the evaluation of proposals as prescribed.;

(c) by the insertion of the following new subsection immediately after subsection (3):

(4) A local bidder awarded a procurement contract in accordance with subsection (3) shall partner with a citizen supplier.;

(d) in subsection (5) by the deletion of the word “shall” and the substitution therefor of the word “may”; and

(e) by the renumbering of subsections (4), (5) and (6) by subsection (5), (6) and (7), respectively.

17. The principal Act is amended by the repeal of section 48 and the substitution therefor of the following:

Repeal and
replacement
of section 48

48. (1) The objective of electronic reverse auction is to enable a procuring entity to seek competitive pricing by inviting pre-qualified suppliers to participate in a real time dynamic online procurement proceeding.

Electronic
reverse
auction

(2) A procuring entity may use electronic reverse auction, if—

(a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction to ensure effective competition; and

(c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(3) A procuring entity shall only qualify to use the reverse auction method if it has—

(a) a procurement portal; and

(b) an appropriate secure software with electronic procurement capabilities and functionalities approved by the Authority.

Amendment
of section 51

18. Section 51 of the principal Act is amended—

(a) in subsections (1) and (2) by the deletion of the words “Government agency” wherever the words appear and the substitution therefor of the words “procuring entity”; and

(b) by the insertion of the following new subsection immediately after subsection (2):

(3) Section 89 of this Act shall not apply to purchases under this section.

Insertion of
section 51A

19. The principal Act is amended by the insertion of the following new section immediately after section 51:

Government
to
Government
procurement

51A. The objective of Government to Government procurement is to enable a procuring entity to acquire goods, works or services from a foreign State and to benefit from the expertise and development experience from that foreign State.

Amendment
of section 56

20. Section 56 of the principal Act is amended—

(a) in subsection (2)—

(i) by the deletion of paragraph (a); and

(ii) the re-numbering of paragraphs (b) and (c) as paragraphs (a) and (b), respectively; and

(b) in subsection (3) by the deletion of the words “or funds are available for the procurement”.

21. The principal Act is amended by the repeal of section 66 and the substitution thereof of the following:

Repeal and replacement of section 66

66. (1) A procuring entity shall establish an evaluation committee for the purposes of electronic or non-electronic evaluation of bids.

Evaluation

(2) The composition, functions, procedures and sittings of an evaluation committee shall be prescribed.

(3) The evaluation methodology and criteria shall be done in accordance with this Act and may be determined by—

(a) the type, value and complexity of the procurement;

(b) the price;

(c) the cost of operating, maintaining and repairing goods or of construction;

(d) the time of delivery of the goods, of construction or provision of services;

(e) the characteristics of the subject matter of the procurement;

(f) the terms of payment and guarantees relating to the subject matter of procurement; or

(g) where relevant, the experience, reliability and professional and managerial competence of the supplier or contractor and of the personnel involved in providing the subject matter of the procurement.

(4) In addition to the criteria set out in subsection (3), the determination of the evaluation methodology may also take into account a margin of preference for the benefit of domestic suppliers or contractors or of domestically produced goods, or any other preference.

(5) A procuring entity may request a bidder to clarify the bid in order to assist in the evaluation, but changes in the substance of the bid, including changes in price, shall not be permitted—

(a) following a clarification under this section or other provisions of this Act; or

(b) after the date and time of the closing of the bid, unless otherwise provided for in this Act.

(6) A procuring entity may correct arithmetical errors that are discovered during the examination of the submissions and shall promptly notify the bidder that presented the submission of that correction.

(7) A procuring entity that corrects an error in accordance with subsection (6) shall not make a—

(a) substantive change to the qualification information or to a submission;

(b) change aimed at making an unqualified bidder qualified or an unresponsive submission responsive; or

(c) change aimed at making a qualified bidder or a responsive submission unresponsive.

(8) A procuring entity shall not—

(a) engage in a negotiation with a bidder with respect to qualification information or submissions; or

(b) make a change in the unit price following a clarification under subsection (5) or other provisions of this Act.

(9) A procuring entity may undertake a post-qualification procedure 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.

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

22. Section 68 (4) of the principal Act is amended by the insertion of the following new paragraph immediately after paragraph (c):
- (d) the lowest evaluated price is above the market price.
- Amendment of section 68
23. Section 71 (2) of the principal Act is amended by the deletion of the word “ten” and the substitution therefor of the word “five”.
- Amendment of section 71
24. Section 72 of the principal Act is amended in—
- (a) subsection (2) by the deletion of paragraph (e) and the substitution therefor of the following:
- (e) any other approvals required, including the legal advice of the Attorney-General on a contract which is above the prescribed threshold for simplified bidding or simplified selection; and
- (b) subsection (4) by the deletion of the words “Treasury and the”.
- Amendment of section 72
25. Section 76 (1) of the principal Act is amended by the insertion of the words “in writing” immediately after the words “contract manager”.
- Amendment of section 76
26. The principal Act is amended by the repeal of section 77 and the substitution therefor of the following:
77. (1) Subject to section 72 (2) (e), an amendment or variation to a contract shall not be effected without the approval and the legal advice of the Attorney-General.
- Amendment or variation of contract
- (2) The cumulative value of contract variation and amendment shall not result in an increment of the total contract price by more than twenty-five percent of the original contract price as prescribed, except that where the variation results in an increment exceeding twenty-five percent, the contract shall be cancelled and the procurement re-tendered.
- (3) A controlling officer or chief executive officer shall submit a quarterly report of the varied or amended procurement contracts to the Authority.
- (4) A controlling officer or chief executive officer who contravenes subsection (3) commits an offence.

Amendment
of section 84

27. Section 84 (4) (b) of the principal Act is amended by deletion of the word “ten” and the substitution therefor of the word “fifteen”.

Amendment
of section 89

28. Section 89 of the principal Act is amended—

(a) by the deletion of subsection (1) and the substitution therefor of the following:

(1) A bidder is eligible to participate in a procurement if —

(a) the bidder has the legal capacity to enter into a contract;

(b) the bidder is solvent and not in receivership, or any business rescue proceedings or the subject of legal proceedings under the Corporate Insolvency Act, 2017;

(c) is licensed and in good standing with the professional body to which the bidder is aligned, where applicable;

(d) the bidder has fulfilled the bidder’s obligation to pay taxes and social security contributions;

(e) the bidder does not misrepresent the bidder’s bid status in relation to a bid by fronting or any other similar manner;

(f) the bidder’s directors or officers have not been convicted of any criminal offence related to professional conduct or the making of false statements or misrepresentations as to qualifications for entering into a contract within a period of five years preceding the commencement of the procurement proceedings;

(g) the bidder does not have a conflict of interest in relation to the procurement requirement;

Act No. 9 of
2017

(h) in the case of a foreign bidder that bidder partners with a citizen supplier; and

(i) the bidder has not been suspended or fined and suspended from participating in public procurement in accordance with section 95, 96 and 97.;

(b) by the insertion of the following new subsection immediately after subsection (1):

(2) Subsection (1)(h) does not apply to an original equipment manufacturer or franchise holder.;

(c) by the re-numbering of subsections (2), (3), (4) and (5) as subsections (3), (4), (5) and (6), respectively; and

(d) by the insertion of the following new subsection immediately after subsection (6):

(7) Despite subsections (1), (2), (3), (4) and (5), the eligibility requirements for community participation shall be prescribed.

29. Section 93 of the principal Act is amended—

Amendment
of section 93

(a) by the deletion of subsection (1) and the substitution therefor of the following:

(1) A procuring entity shall, for the purposes of this Act and any other written law, require a foreign or local bidder or supplier to subcontract a percentage of the total value of the procurement for procurements of works exceeding the prescribed thresholds to citizen bidders and suppliers.; and

(b) in subsection (3) by the deletion of the words “A foreign bidder or supplier” and the substitution therefor of the words “A local bidder or supplier and a foreign bidder or supplier”.

30. Section 97 of the principal Act is amended—

Amendment
of section 97

(a) in subsection (1) by the deletion of the words “permanently prohibit” and the substitution therefor of the words “fine and suspend”;

(b) by the insertion of the following new subsections immediately after subsection (1):

(2) A fine in subsection (1) shall be two million penalty units or five percent of a bidder's bid sum.

(3) A bidder who is found liable for a second time under subsection (1) shall be prohibited permanently from participating in public procurement.

Repeal and replacement of section 99

Appeal against decision of Authority

Amendment of section 100

Amendment of section 105

31. The principal Act is amended by the repeal of section 99 and the substitution therefor of the following:

99. A bidder or supplier aggrieved by a decision of the Authority may submit the matter to arbitration within ten working days of the Authority's decision.

32. Section 100 of the principal Act is amended in—

(a) subsection (3) by the deletion of the word “ten” and the substitution therefor of the word “five”; and

(b) subsection 4(c) by the deletion of the word “ten” and the substitution therefor of the word “fifteen”.

33. Section 105 of the principal Act is amended—

(a) in subsection (5) by the deletion of the words “the employer appropriate” and the substitution therefor of the words “an appropriate authority”; and

(b) by the insertion of the following new subsection immediately after subsection (5):

(6) An appropriate authority shall submit a report to the Authority on the action taken under subsection (4) within fourteen days of receipt of a recommendation from the Authority.