

C. HESSE

ACTS SUPPLEMENT

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Act 11 *Public Procurement and Disposal of
Public Assets (Amendment) Act* **2011**

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(AMENDMENT) ACT, 2011

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**THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC ASSETS (AMENDMENT) ACT, 2011**

An Act to amend the Public Procurement and Disposal of Public Assets Act; to provide for the entities and activities to which the Act applies; to broaden the definition of the term “accounting officer”; to provide for further functions and powers of the Authority; to provide for the composition of the Board; to provide for further functions of the Contracts Committees; to provide for accreditation for alternative procurement systems; to provide for procurement planning; to provide the different types of contracts to be used for procurement; to provide for the procedure for administrative review; to provide for the limitation of contracts with members of procuring and disposing entities; to provide for the suspension of providers; to establish the Public Procurement and Disposal of Public Assets Tribunal; to create new offences; to provide for the making of regulations for procuring and disposing entities outside Uganda and for related matters.

DATE OF ASSENT: 21st June, 2011

Date of Commencement: See section 1.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Commencement

This Act shall come into force on a date appointed by the Minister by statutory instrument.

PART II—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

2. Amendment of section 2 of principal Act

Section 2 of the Public Procurement and Disposal of Public Assets Act, in this Act referred to as the principal Act, is amended—

(a) by substituting for subsection (1) (c) the following—

“(c) procurement and disposal by a procuring and disposing entity, within or outside Uganda;”

(b) by inserting immediately after subsection (1) (c), the following—

“(d) procurement financed from specific public finances specified in paragraph (a), in the case of an entity not being of Government, except where the Authority confirms in writing, that the procurement system of the entity is satisfactory;

(e) procurement and disposal by a company registered under the Companies Act, in which a procuring and disposing entity has majority interest.”;

(c) by inserting immediately after subsection (1), the following—

“(1a) For the avoidance of doubt, the following activities by a procuring and disposing entity are not procurement to which this Act applies—

- (a) the acquisition of an asset or of equipment, where the asset or equipment is being disposed of by another procuring and disposing entity in accordance with section 87;
- (b) the acquisition of a service provided by another procuring and disposing entity, except a service normally offered by that procuring and disposing entity for a fee; and
- (c) the recruitment of the services of an individual as an employee of a procuring and disposing entity in accordance with the administrative policies of the procuring and disposing entity.

(1b) Subject to subsection (1c), this Act shall not apply to the Auditor General in the selection of private audit firms to undertake any assignment under the mandate of the Auditor General.

(1c) The Auditor General shall in exercise of his or her mandate in subsection (1b) apply the principles of transparency and competition in order to ensure value for money.”

3. Amendment of section 3 of principal Act

Section 3 of the principal Act is amended—

- (a) by substituting for the definition of “Accounting Officer” the following—

““accounting officer” means—

- (a) an accounting officer appointed as such by the Secretary to the Treasury;
- (b) a person appointed under an Act of Parliament or under an instrument of appointment made under an Act of Parliament, including the Companies Act, to perform the functions of accounting officer of a procuring and disposing entity; or

- (c) a person appointed to perform the functions of accounting officer of an entity not being of Government, to which section 2 (1) (d) applies;”;
- (b) by substituting for the definition of “procuring and disposing entity” the following—

““procuring and disposing entity” means—

- (a) a Ministry or department of Government;
- (b) a district council or a municipal council;
- (c) a body corporate established under an Act of Parliament other than the Companies Act;
- (d) a company registered under the Companies Act in which Government or a procurement and disposing entity—
 - (i) controls the composition of the board of directors of the company;
 - (ii) is entitled to cast, or controls the casting of more than fifty percent of the maximum number of votes that may be cast at a general meeting of the company; or
 - (iii) controls more than fifty percent of the issued share capital of the company, excluding any part of the issued share capital that does not carry a right to participate beyond a specified amount in the distribution of profits or capital; and
- (e) an entity not being of Government, to which section 2 (1) (d) applies;

and includes—

- (f) a commission established under the Constitution or under an Act of Parliament;
 - (g) a public university and a public tertiary institution established under the Universities and other Tertiary Institutions Act, 2001;
 - (h) Bank of Uganda except in exercise of the functions specified in section 4 of the Bank of Uganda Act; and
 - (i) any other procuring and disposing entity as may be prescribed by the Minister;”
- (c) in the interpretation of “supplies” by inserting immediately after “equipment” the words “livestock, assets, land”;
- (d) by inserting the following definitions in the appropriate alphabetical order—
- ““authorised officer” means a person appointed as an authorised officer under section 8;
- “competent authority” means a Government office which has the mandate to perform a specified function;
- “consultancy service” means a service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field or profession; and includes, but is not limited to, engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform;
- “consultant” means an individual who, or a firm, company, corporation, organisation or partnership which provides consultancy services to a procuring and disposing entity;

“emergency situation” means a circumstance which is urgent or unforeseeable or a situation which is not caused by dilatory conduct where—

- (a) Uganda is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;
- (b) life or the quality of life or environment may be seriously compromised;
- (c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness;
- (d) an investment project is seriously delayed for want of minor items; or
- (e) a Government programme would be delayed or seriously compromised unless a procurement is undertaken within the required time frame;

“information” means written, visual, aural and electronic information;

“non-consultancy service” means a service of a skilled or a non-skilled nature, which is not a consultancy service; and includes, cleaning, security and maintenance and repair services;

“procurement and disposal notice board” means the notice board of a procuring and disposing entity, which is used to display notices required to be displayed under this Act and regulations made under this Act and to display any other information relating to the procurement and disposal activities of the procuring and disposing entity;

“procurement specialist” means a person who is engaged in a profession, occupation or calling in which recourse to procurement is directly or indirectly involved and has such knowledge and experience of the practice of procurement or who is certified or registered by a procurement professional body;

“public asset” means any property, tangible or intangible, owned by Government or by a procuring and disposing entity, including physical property, shares, proprietary rights and land, except land held by the Uganda Land Commission or a district land board or land which is compulsorily acquired by Government in accordance with the law;

“urgent” does not include circumstances that—

- (a) should have been foreseen by the procuring and disposing entity;
- (b) are a result of inadequate planning; or
- (c) are a result of delays by or within the procuring and disposing entity;.”

4. Insertion of new section 4A in principal Act

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

“4A. Procurement procedures under bi-lateral tied loans

(1) Where a bilateral loan or negotiated grant contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with this Act.

(2) Notwithstanding subsection(1), where there is a conflict between this Act, regulations made under this Act or guidelines issued by the Authority and a condition imposed by the donor of the funds, the conditions of the donor shall prevail with respect to the procurement that uses the funds.”

PART III—AMENDMENTS TO PART II OF THE PRINCIPAL ACT

5. Amendment of section 6 of principal Act

Section 6 of the principal Act is amended by substituting for paragraph (b) the following—

“(b) advise Government, local governments and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary, on their harmonisation;”.

6. Amendment of section 7 of principal Act

Section 7 of the principal Act is amended—

(a) by renumbering the existing provision as (1);

(b) by substituting for “statutory bodies” appearing in paragraph (a), the words “other procuring and disposing entities”;

(c) by substituting for paragraph (c) the following—

“(c) advise competent authorities on standards for procurement education and training, competence levels and certification requirements;”;

(d) by substituting for paragraph (m) the following—

“(m) develop a procurement and disposal capacity building strategy for institutional and human resource development;”;

(e) by substituting for paragraph (n) the following—

“(n) where applicable, determine the prices of works, services and supplies which are used in common by two or more procuring and disposing entities and which may be subject to common procurement; and review the prices from time to time;”

(f) by inserting immediately after subsection (1), the following—

“(2) The Authority may contract a third party to carry out procurement audits, investigations and inspections.”

7. Amendment of section 8 of principal Act

Section 8 of the principal Act is amended—

(a) by renumbering the existing provision as (1);

(b) by substituting for paragraph (e) the following—

“(e) act upon complaints by procuring and disposing entities, providers or any other entity or person, in respect of any procurement or disposal activity, following the procedure in section 91;”;

(c) by inserting immediately after paragraph (e), the following—

“(f) suspend a provider from engaging in any public procurement or disposal process, in accordance with section 94.”;

- (d) by inserting immediately after subsection (1) the following—

“(2) For the purpose of conducting procurement and disposal audits, or compliance checks and investigations, the Executive Director may in writing—

- (a) authorise an officer of the Authority; or

(b) appoint any person to be an authorised officer, to enter any premises of a procuring and disposing entity, at a reasonable time and inspect the premises and to make any inquiries that may be necessary for the collection of information.

(3) Where an officer of the Authority or an authorised officer is refused entry or is prevented from entering premises, contrary to subsection (2), a magistrate may, on application by the Authority, issue a warrant authorising the Police to enter the premises, using such force as may be reasonably necessary and to conduct the search and obtain the required information.”

8. Amendment of section 9 of principal Act

Section 9 of the principal Act is amended—

- (a) by substituting for subsection (1) the following—

“(1) Where there is persistent or serious breach of this Act or regulations or guidelines made under this Act, the Authority may—

- (a) direct the concerned procuring and disposing entity to take such corrective action as may be necessary in the circumstances, to rectify the breach; or

- (b) recommend to a competent authority—
 - (i) to suspend the officer responsible for the breach;
 - (ii) to replace the head of the procurement and disposal unit or the Chairperson of the Contracts Committee, as the case may be;
 - (iii) to discipline the accounting officer;
 - (iv) to transfer temporarily, the procuring and disposing function of a procuring and disposing entity to a third party procurement agency”;
- (b) in subsections (2) and (3), by substituting for “subsection (1)” the words “subsection (1) (b)”.

9. Replacement of section 11 of principal Act

For section 11 of the principal Act there is substituted, the following—

“11. Composition of the Board

- (1) The Board shall be composed of—
 - (a) a non-executive chairperson, appointed by the Minister in consultation with Cabinet;
 - (b) the following non-executive members—
 - (i) the Secretary to the Treasury or a person nominated by him or her in writing;
 - (ii) not less than three and not more than five other members appointed by the Minister in consultation with Cabinet; and
 - (c) the Executive Director of the Authority who shall be an *ex officio* member and who shall not vote.