

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 9 Volume CVII dated 14th February, 2014

Printed by UPPC, Entebbe, by Order of the Government.

S T A T U T O R Y I N S T R U M E N T S

2014 No. 6.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
REGULATIONS, 2014.**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and Commencement.
2. Interpretation.
3. Action on recommendations by the Authority.
4. Procedure for transfer of procurement and disposal function.
5. Exercise of powers of Board to acquire property, borrow etc.
6. Delegation of functions and powers of the Board.
7. Procurement and disposal by the Authority.
8. Registration of providers.
9. Registered providers to notify of any changes in circumstances.
10. Deviation from use of standard documents.
11. Accreditation of alternative public procurement and disposal systems.
12. Suspension of providers by the Authority.
13. Recommendations to suspend provider.
14. Investigations by the Authority.
15. Appeal against suspension.
16. Website and notice board of the Authority.
17. Revocation of SI No. 70 of 2003.

S T A T U T O R Y I N S T R U M E N T S

2014 No. 6.

The Public Procurement and Disposal of Public Assets Regulations, 2014.

(Made under section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003, on the recommendation of the Authority and with the approval of Parliament, these Regulations are made, this 6th day of February, 2014.

1. Title and Commencement.

(1) These Regulations may be cited as the Public Procurement and Disposal of Public Assets Regulations, 2014.

(2) These Regulations shall come into force on the 3rd day of March, 2014.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Public Procurement and Disposal of Public Assets Act, 2003;

“competent authority” means a Government office which has the mandate to perform a specified function;

“third party procurement agency” includes a procuring and disposing entity.

3. Action on recommendations by the Authority.

(1) Where as a result of persistent or serious breach of the Act or regulations made under the Act, the Authority carries out an investigation and makes a recommendation to a competent authority in respect of the investigation, the competent authority shall, in writing, respond to the recommendation of the Authority, within twenty working days from the date of receipt of the recommendation of the Authority.

(2) The competent authority shall in the response indicate the action to be taken.

(3) Where a competent authority disagrees with a recommendation of the Authority, the competent authority shall state—

- (a) the recommendation with which it disagrees;
- (b) the reason for the disagreement; and
- (c) the alternative recommendation proposed, if any.

4. Procedure for transfer of procurement and disposal function.

(1) Where, as a result of persistent or serious breach of the Act, or regulations or guidelines made under the Act, the Authority makes a recommendation to a competent authority to transfer temporarily, a procurement and disposal function of a procuring and disposing entity to a third party procurement agency, the Authority shall state—

- (a) the third party procurement agency to which the function is to be transferred;
- (b) the functions and powers to be transferred;
- (c) the duration of the transfer; and
- (d) the conditions to be fulfilled before the procurement and disposal function is given back to the procuring and disposing entity.

(2) The accounting officer of the procuring and disposing entity whose procurement and disposal function is to be transferred temporarily to a third party agency shall in writing state—

- (a) the functions to be transferred, which shall be the function recommended by the Authority;
- (b) the mechanisms for the implementation of the procurement or disposal function to be transferred;

- (c) the reporting and monitoring procedures and responsibilities;
- (d) any limitations or exceptions to the transfer; and
- (e) the costs to be paid, if any.

5. Exercise of powers of Board to acquire property, borrow etc.

(1) The Authority shall only acquire or dispose of property or borrow money on the authority of a written resolution of the Board.

(2) A resolution of the Board shall not be valid unless it is signed by the Chairperson and the Executive Director and is sealed with the seal of the Authority.

6. Delegation of functions and powers of the Board.

(1) Where the Board delegates any of its functions or powers in accordance with section 15A of the Act, the instrument of delegation shall state—

- (a) the delegated functions or powers;
- (b) the person to whom the delegation is made;
- (c) the date of commencement of the delegation;
- (d) the duration of the delegation, which may be a specified period of time or an unspecified period of time;
- (e) the limitations or exceptions to the delegation, if any;
- (f) the requirements for reporting on the execution of the delegated functions or powers; and
- (g) that the delegation may, by written notice of the Board be revoked at any time.

(2) Where any person wishes to appeal to the Board against a decision made under a delegation of functions or powers, the person shall, within fifteen working days from the date of the communication of the decision, submit a written appeal to the Chairperson.

7. Procurement and disposal by the Authority.

(1) For the purposes of appointing an agent to carry out the procurement and disposal activities of the Authority under section 25 (2) of the Act, the Secretary to the Treasury shall use the Contracts Committee and the Procurement and Disposal Unit of the Ministry responsible for finance to procure the agent.

(2) The Authority shall be responsible for the contract management of a procurement, once a contract is placed.

8. Registration of providers.

(1) The registration of providers shall be open to all qualified providers and shall be continuous.

(2) The Authority shall consider an application for registration within fifteen working days of receipt of the application.

(3) The Authority shall—

(a) from time-to-time, publish a notice calling for the registration of providers;

(b) in the notice in paragraph (a), state the procedure and criteria for registration; and

(c) make available to the providers, the registration forms.

(4) The registration forms shall describe the rules, procedures and process of registration, and the classification and disciplining of providers.

(5) The Authority shall in registering providers for works, services and supplies, classify the providers using the following criteria—

(a) the size of the provider, including the physical and financial capacity of the provider;

- (b) the core operational area of the provider indicating the disciplines or codes;
- (c) the performance track record of the provider;
- (d) the certificate of compliance of the provider in respect of national, regional or international quality standards in the relevant disciplines or codes, where necessary; and
- (e) the ownership or control of the provider.

(6) The register of providers shall, in respect of each provider indicate—

- (a) the qualifications of the provider;
- (b) the physical and financial capacity of the provider;
- (c) the core areas of operation and the disciplines of the provider;
- (d) where applicable, the performance record of the provider;
- (e) the ownership and control of the provider, including the names of the directors of the provider; and
- (f) whether a provider is suspended or was previously suspended, by the Authority, from engaging in any public procurement or disposal process.

(7) The Authority shall for each registration give the provider a certificate of registration which shall indicate the reference of the registration.

(8) Where the Authority rejects an application for registration, the Authority shall within the time prescribed in subregulation (2), inform the applicant of the decision of the Authority and the reasons for the decision.

(9) The applicant whose application for registration is rejected may submit another application for registration.

9. Registered providers to notify of any changes in circumstances.

(1) A provider who is registered by the Authority under regulation 8, shall within ten days of any material change in the circumstances or details relating to the registration, inform the Authority of the change.

(2) Where a provider fails to notify the Authority of a change in the circumstances or details relating to the registration, the Authority may remove the name of the provider from the register.

(3) Where the Authority removes the name of a provider from the register, the provider shall be notified accordingly.

(4) A person whose name is removed from the register of providers may submit a new application for registration.

10. Deviation from use of standard documents.

(1) A procuring and disposing entity may, where the standard bidding documents, procedural forms or any other attendant documents are not suitable for a procurement or disposal process, apply to the Authority, in writing, for approval to deviate from the use of these documents.

(2) The Authority shall, in respect of the application made under subregulation(1), issue its decision within ten working days of the receipt of the application.

(3) The Authority may—

(a) approve the application for deviation without modifications or conditions;

(b) approve the application for deviation with modifications or conditions; or

(c) reject an application for deviation.

(4) Where the Authority approves an application for deviation, the Authority shall state whether the approval is for a single procurement or disposal requirement or for a number of procurement or disposal requirements.

(5) Where the approval is for a number of procurement or disposal requirements, the Authority shall state the duration of the deviation, the maximum value of the deviation and the limitations of the deviation, if any, and the circumstances or conditions for using the alternative document.

(6) Where the Authority rejects an application, the Authority shall state the reasons for rejecting the application.

(7) The Authority may, where it considers it appropriate, adopt an alternative bidding document, alternative procedural form or other alternative attendant document as a standard bidding document, procedural form or other attendant document.

11. Accreditation of alternative public procurement and disposal systems.

(1) A procuring and disposing entity which is not able to comply with a particular procurement procedure or disposal procedure required under the Act, shall, in writing, apply to the Authority for accreditation of an alternative procurement system or alternative disposal system, as the case may be.

(2) The Authority shall issue its decision within twenty working days of the receipt of the application.

(3) The Authority may—

(a) accept the application for accreditation without modifications to the proposed alternative system;

(b) approve the application for accreditation, subject to modifications to the proposed alternative system; or

(c) reject an application for accreditation of an alternative system.

(4) Where the Authority approves an application for accreditation, subject to modifications to the proposed alternative system or where the Authority rejects an application for accreditation, the Authority shall state the reasons for this.

(5) The Authority shall monitor the operation of the alternative system and shall, where appropriate, make modifications to the alternative system or withdraw the accreditation.

(6) The alternative accredited procurement or disposal system shall—

(a) comply with the basic principles of public procurement and disposal in Part IV of the Act; and

(b) except for the procedure the procuring and disposing entity cannot comply with, comply with all other provisions of the Act, Regulations and guidelines made under the Act and standard solicitation documents.

12. Suspension of providers by the Authority.

(1) The Authority may on the recommendation of a procuring and disposing entity or after investigations at its own initiative, suspend a provider from engaging in any public procurement or disposal process, for a period determined by the Authority.

(2) The suspension shall be communicated to the provider, by a written notice and may be with conditions, as may be imposed by the Authority.

(3) The notice under subregulation (2) shall state—

- (a) that the provider is excluded from participating in any public procurement or disposal proceedings for the period of the suspension;
- (b) the reasons for the suspension; and
- (c) the duration of the suspension.

(4) Suspension shall not relieve the suspended provider of the obligations under a contract entered into by the suspended provider with a procuring and disposing entity, before the suspension.

(5) Suspension of a provider shall apply to the successor in interest of the provider.

(6) The Authority shall on suspending a provider, immediately—

- (a) place the provider on the list of suspended providers of the Authority; and
- (b) inform all the procuring and disposing entities of the suspension.

(7) Where suspension is recommended on the grounds that a provider is debarred by an international agency of which Uganda is a member in accordance with section 94(b) of the Act, the Authority shall debar the provider for the same period and under the same conditions as the international agency.

(8) A procuring and disposing entity shall not—

- (a) award a contract to a suspended provider; or
- (b) enter into any other dealing or communication with a suspended provider, except in respect of a contract awarded before the suspension of the provider.

(9) After the expiry of the period of a suspension, a provider may in writing, apply to the Authority, to be removed from the list of suspended providers.

(10) The Authority shall within fifteen working days of the receipt of the application made under subregulation (9), remove the provider from the list of suspended providers.

(11) “Successor in interest” in subregulation (5) includes a person registered as a provider who is similar to the suspended provider or who employs, or is associated with a partner, member, officer, director, responsible managing officer, or responsible managing employee, of the suspended provider.

13. Recommendations to suspend provider.

(1) A recommendation by a procuring and disposing entity to suspend a provider under regulation 12 (1), shall be in writing and shall indicate—

- (a) the name of the provider;
- (b) the grounds for the recommendation to suspend the provider;
- (c) the procurement or disposal proceedings or contract to which the recommendation relates;
- (d) the documentary or other evidence supporting the recommendation; and
- (e) any other information relevant to the recommendation.

(2) Where the recommendation results from an investigation by a competent authority or a suspension by an international agency of which Uganda is a member, the procuring and disposing entity shall submit the report by the competent authority or the decision by the international agency.

14. Investigations by the Authority.

(1) Upon receipt of a recommendation to suspend a provider, the Authority shall immediately—

- (a) notify the provider, giving full details of the recommendation and invite the provider to submit information or evidence in defence; and
- (b) institute an investigation.

(2) Notwithstanding subregulation (1) (b), the Authority may suspend a provider without conducting investigations, where a recommendation for suspension is a result of an investigation conducted by a competent authority or suspension by an international agency of which Uganda is a member.

(3) In investigating the complaint, the Authority shall consider, as appropriate—

- (a) the information contained in the recommendation;
- (b) the information provided by the procuring and disposing entity which makes a recommendation for suspension;
- (c) the information provided by the procuring and disposing entity responsible for the relevant procurement or disposal;
- (d) any information submitted by a provider; and
- (e) any other relevant information.

(4) A provider who is the subject of a recommendation for suspension, shall be permitted to submit evidence—

- (a) in person or through a representative;
- (b) through presentation of witnesses; or
- (c) in writing.

(5) The Authority shall issue its decision on a recommendation to suspend a provider, in writing, within twenty one working days from the date of receipt of the recommendation.

(6) A decision made under this regulation shall indicate whether the recommendation for suspension is upheld or rejected, the reasons for the decision and details of the suspension, where imposed.

15. Appeal against suspension.

A provider who is suspended by the Authority, or who alleges that the Authority has a conflict of interest in respect of a recommendation for suspension and who believes that that the matter cannot be handled impartially by the Authority, may appeal to the Tribunal for a determination of the allegation and where necessary, for the determination of the suspension.

16. Website and notice board of the Authority.

(1) The Authority shall provide the following information to the public—

- (a) a list of the legislation on public procurement and disposal of public assets;
- (b) the public assets sold to public officers;
- (c) the practices in public procurement and disposal of public assets;
- (d) the procurement budgets of the procuring and disposing entities;
- (e) a list of the standard forms issued by the Authority;
- (f) a list of the solicitation documents issued by the Authority;
- (g) a list of the specification standards issued by the Authority;

- (h) a list of the deviations from the use of standard documents approved by the Authority;
- (i) details of the administrative reviews by the procuring and disposing entities and by the Authority;
- (j) reports of the procurement audits and investigations conducted by the Authority;
- (k) a list of the providers who are registered by the Authority;
- (l) a list of the providers who are suspended by the Authority;
- (m) a list of the works, services and supplies used in common by two or more procuring and disposing entities;
- (n) a list of the available public procurement courses;
- (o) a list of training institutions from which accredited training in public procurement and disposal of public assets may be obtained;
- (p) information on the procedure for registration of providers and the procedure for updating registrations;
- (q) the annual report of the Authority; and
- (r) any other information which may be of interest to the public.

(2) The information in subregulation (1) shall be displayed on the notice board or website of the Authority.

(3) The Authority shall position the notice board in subregulation (2) at a conspicuous location, within its premises, which is freely accessible to members of the public.

17. Revocation of SI No. 70 of 2003

The Public Procurement and Disposal of Public Assets Regulations, 2003 are revoked.

MARIA KIWANUKA,
Minister of Finance, Planning and Economic Development.