

# INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

## COMMENTS ON THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS (AMENDMENT) BILL 2019

21 AUGUST 2019

Comments by ICPAU

|   | ISSUE  | OBSERVATION  | COMMENT   |
|---|--|--|---|
| <b>THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS (AMENDMENT) BILL 2019</b> |  |  |   |
| 3   | <b>Amendment of section 3 of principal Act</b> | <p><b>Definition of ‘Award Decision’</b></p> <p>Clause 3(a) seeks to substitute for the definition of the term ‘award’ with ‘award decision’ in accordance with section 28(1)(a). We however note that throughout the PPDA Act, there is consistent usage of the terms ‘award(s)’, ‘award of a contract’ and ‘award decision’.</p> <p>It is not clear whether the new amendment is intended to substitute all the above terms as the proposed new term (award decision) can only effectively be used as a noun, yet in some circumstances the term ‘award’ is used as an action word (verb). Refer to sections - 52, 75,76 e.t.c</p> | <p>We thus propose to harmonise the definition to be used throughout the Act and hence the clause could be amended to read as follows:</p> <p>3 (a)..... “<b>award or award decision</b>” means a decision made by a contracts committee in accordance with section 28(1)(a)</p> <p><b><u>Justification:</u></b></p> <p>To ensure clarity</p> |
|   |  | <p><b>Definition of consultancy services</b></p> <p>We note that the Bill amends the above definition by substituting ‘practitioner’ with ‘consultant or consulting firm.’ This proposal introduces more ambiguity when applied into the general clause that is being amended. By principle the proposal seems</p>   | <p>We thus suggest to amend clause 3(b) to read as follows;</p> <p><b><u>Proposed Amendment</u></b></p> <p>Clause 3(b)</p> <p>.....by substituting the phrase “practitioner who is” with “<b>a firm of Consultants or a consultant,</b>”</p>  |

|   | ISSUE  | OBSERVATION  | COMMENT   |
|---|--|--|---|
|   |  | to imply that even the consulting firm(s), shall be expected to be skilled and qualified in a particular field or profession which is far from the normal.   | <p><b><u>Justification:</u></b></p> <p>To draw clarity and align the requirement for skill set directly to an individual consultant other than the consulting firm per se.</p>  |
|   |  | <p><b>Definition of consulting firm</b></p> <p>With the amendments above we propose that the term ‘consulting firm be deleted and replaced with a ‘firm of consultants’ wherever it is used in the Bill.</p> | <p>We therefore propose to further amend the definition under clause 3(d) to read as follows:</p> <p><b><u>Justification:</u></b></p> <p>Clause 3(d)<br/>“firm of Consultants” means a company, corporation, organization, <b><u>sole proprietorship</u></b> or partnership that provides consultancy services to a procuring and disposing entity</p> <p><b><u>Justification:</u></b></p> <ul style="list-style-type: none"> <li>• To provide for sole proprietorship a common business vehicle for single operators of business firms like under the accountancy profession.</li> <li>• Absence of such clarity may devoid such accountants participation and contribution to the procuring and disposal of assets since accounting firms can only operate as partnership or sole proprietorship and not any other form.</li> </ul> |
| 4 | <b>Clause 4<br/>Insertion of new section 4B in the Principal Act</b> | The clause introduces the role of the Ministry in the PPDA process. The current provisions under section 7 of the Principal Act had vested the power to advise including government and the issue of         | <p>We suggest to provide clarity and a definition of Ministry in the interpretations clause.</p> <p><b><u>Proposed Amendment</u></b></p>  |

|   | ISSUE  | OBSERVATION   | COMMENT  |
|---|--|---|--|
|   |  | <p>guidelines to the Authority.</p> <p>However, the amendment does not provide a specific definition of the term ‘Ministry.’</p>  | <p>Ministry” means the Ministry responsible for Finance.</p> <p><u>Justification:</u></p> <p>To ensure clarity</p>   |
| 6 | <b>Amendment of section 8 of the Principal Act</b>           | <p>We note that the proposal seeks to alienate powers to conduct an investigation from the Authority. Generally as a principle, whenever law establishes an Authority and bestows to it powers to manage a particular activity, the same will always empower such Authority with the mandate to institute investigations incase of any misconduct. The proposed amendment is negating that. The amendment is seeking to repeal the investigative powers, ability to summon witnesses, examination of parties among others, which in actual fact may not be desirable for a supervisory entity.</p> <p>Proposed clause 6(a) is not better than the current provision since requiring of any information by the Authority should arise from situations involving breach of the process.</p> | <p>We therefore propose that sections 8 (1)(a), (b) and (c) of the Principal Act be retained instead.</p> <p><u>Justification:</u></p> <p>To allow for the Authority carry on investigations whenever necessary.</p>   |
| 8 | <b>Clause 8 Amendment of section 10 of the Principal Act</b> | <p>The bill seeks amendments with respect to the functions of the Board of the Authority.</p>   | <p>This is a welcome proposal as it aligns the functions of the Board of the Authority to best practices in corporate governance.</p> <p>Note that a Board’s mandate generally is to establish policies for corporate management and oversight, making decisions on major issues and not really executing the functions and powers</p> |

|    | ISSUE   | OBSERVATION   | COMMENT  |
|----|---|---|--|
|    |   |   | of the entity as provided for in the current provision under section 10 of the Principal Act.  |
| 12 | <b>Amendment of section 21 of Principal Act</b> | The Bill seeks to amend section 21 relating to accounts and audit. We propose to have clarity on a number of provisions herein. | <ul style="list-style-type: none"> <li>▪ We propose to amend the proposed clause 12 and insert a new clause 21(1b) which should read as follows:</li> </ul> <p>“21(1a) The Executive Director shall cause to be prepared and submitted to the Accountant General and the Auditor General or an auditor appointed by the Auditor General in respect of each financial year, within two months after the end of the financial year, a statement of accounts of the Authority, which shall include—</p> <ul style="list-style-type: none"> <li>(a) a balance sheet, an income and expenditure account and a source and application of funds statement; and</li> <li>(b) any other information in respect of the financial affairs of the Authority as the Minister responsible for finance may, in writing, require.</li> </ul> <p>21(1b) The Auditor General or any auditor appointed by the Auditor General shall have access to all books of accounts, vouchers and other records of the Authority</p> <p><b><u>Justification:</u></b></p> <p>To provide for clarity</p> <ul style="list-style-type: none"> <li>▪ We propose that Section 21 (2) of the Principal Act be amended by including the words “or an auditor appointed by the Auditor General” immediately after the word ‘Auditor General ‘; for the section to read:</li> </ul> <p>“21(2) The annual accounts of the Authority and the</p> |

|    | ISSUE  | OBSERVATION   | COMMENT  |
|----|--|---|--|
|    |  |   | <p>procurement and disposal activities of the Authority shall be audited by the Auditor General <u>or an auditor appointed by the Auditor General</u></p> <p><u>Justification:</u></p> <ul style="list-style-type: none"> <li>• To provide the Auditor General with clear mandate on delegation of work in line with the practice of the accountancy profession.</li> <li>• Harmonise with other laws in the work for the Auditor General</li> </ul> |
| 27 | <b>Clause 27 Insertion of new section 73A in the Principal Act</b> | <p>The insertion aims to provide for the handling of low priced bids.</p> <p>There is need to guard against the section being utilized to allow for manipulated prices vis a vis genuinely low prices.</p>  | <p>We therefore call for introduction of strong measures against variation of prices to curb a tendency where a bidder will bid a low price but vary the price there after.</p> <p>We thus propose insertion of clear guidance that variations in prices shall not be allowed once the process commences.</p>  |
| 30 | <b>Amendment of section 79 of Principal Act</b>                    | <p>The Bill under clause 30 seeks to amend section 79(3) by replacing the word ‘Authority’ with ‘Minister’. This in essence implies that the use of other methods of procurement other than those provided for under Part VI shall be authorized by the Minister.</p> <p>(a) The proposed amendment draws the political leadership into procurement process and hence impliedly making the Minister equally accountable as an Accounting Officer instead of oversight officer.</p> <p>(b) The proposal would be in conflict with Section 24 of the Principal Act which enlists the structures</p> | <p>We thus propose deletion of the proposed and maintain the current section 79 (3) of the Principal Act which vests the mandate to use any other method other than the ones prescribed in the Act with the Authority.</p>   |

|    | ISSUE   | OBSERVATION  | COMMENT  |
|----|---|--|--|
|    |   | <p>for a procuring and disposing entity automatically having no provision for a Minister;</p> <p>(c) The proposal would also contradict section 26 of the Principal Act which places the overall responsibility for the execution of procurement and disposal process with the Accounting Officer. By having the Minister as part of the structure, it introduces hierarchical hurdles.</p>  |  |
| 34 | <b>Insertion of new section 88AA in Principal Act</b> | <p>We observe that the proposal seeks to give the Minister and Attorney General the mandate to approve 'other methods of procurement' particularly in respect to procurement of complex, specialised and strategic goods. This opens a window for discretion and hence likely abuse of the process. All known procurement methods should be put in the law to minimize discretion and any exceptions should be handled under the accreditation of alternative procurement system. Otherwise any other overriding issues should be addressed by policy.</p> <p>Secondly, the category of goods/ services is vague as any good/ service can be taken to be complex, specialized and strategic by the declaration of Attorney General and Minister.</p> | We thus propose that clause 34 should be deleted   |
| 36 | <b>Replacement of section 89 of principal Act</b>     | The current administrative reviews have a three tier system with the Accounting officer of the respective entity forming the first layer, then the PPDA and  | We thus propose to retain the administrative review structure as contained in the principal Act and hence we suggest that proposed amendment under clause 36 be deleted. |

|  | ISSUE | OBSERVATION  | COMMENT  |
|--|-------|--|--|
|  |       | <p>the PPDA Tribunal. This form of review system has been noted to be time consuming and costly to doing business.</p> <p>We recommend that for purposes of ensuring continuous flow of affairs even amidst a review, the procurement process should not be halted but instead sanctions or penalties for compensation should be introduced for the party that may lose the case after a review.</p> | <p><b><u>Justification:</u></b></p> <p>To ensure prudence in managing administrative reviews by retaining the role of an Accounting Officer since they are not necessarily part of the contracts committee of a particular procuring and disposal entity.</p> <p>We propose to insert clause section 90(7)(c) of the Principal Act to read as follows:</p> <p>“90(7)(C)(i)</p> <p>The above notwithstanding a contract may be awarded after the Accounting Officer’s review.</p> <p>90(7)(C)(ii)</p> <p>Any administrative review thereafter will result into penalties to the Accounting Officer and the procuring and disposal entity but the contract may not be terminated”</p> <p><b><u>Justification:</u></b></p> <ul style="list-style-type: none"> <li>▪ To handle economic transaction with the urgency needed.</li> <li>▪ To halt unnecessary administrative reviews to the detriment of the country</li> </ul> <p>We propose an insertion immediately after the current section 95 (1b) of the principal Act a new penalty the reads as follows:</p> <p>95(1b) (c)</p> <p>A procuring or disposal entity or an Accounting Officer who</p> |

|  | ISSUE | OBSERVATION | COMMENT   |
|--|-------|-------------|---|
|  |       |             | <p>signs a contract after his or her administrative review and at subsequent reviews the decision would have been otherwise is liable to 30% of the contract value.</p> <p><u>Justification :</u></p> <p>To provide for a penalty for the above commission.</p> |