



PRESS RELEASE

ZPPA provides guidance on the Public Procurement (Amendment) Act No. 17 of 2023

For immediate release

Friday, 18th January 2024. ZPPA wishes to provide guidance on the Public Procurement (Amendment) Act No. 17 of 2023 which has amended some provisions of the Public Procurement Act No. 8 of 2020.

On 22nd December 2023, the President of the Republic of Zambia, His Excellency Mr. Hakainde Hichilema assented to the Public Procurement (Amendment) Bill, 2023 which has amended some provisions of the Public Procurement Act No.8 of 2020.

The Public Procurement (Amendment) Act No. 17 of 2023 provides for government to government procurements, the procedure for disqualification of a bidder and the introduction of a suspension plus a fine to deter a bidder's misconduct.

Other provisions of the Public Procurement (Amendment) Act No. 17 of 2023 include the requirement for the appropriate authority to submit a report to the Authority following a recommendation for administrative and legal sanctions within fourteen days.

Therefore, all procuring entities are hereby advised and guided as follows:

1. Procurement Processes commenced before and after the enactment of the Public Procurement (Amendment) Act No. 17 of 2023

All procurements initiated after the enactment of the Public Procurement (Amendment) Act No. 17 of 2023 shall continue and do not require to be recommenced and will be completed under the provisions of the Public Procurement Act No. 8 of 2020 as read together with the Public Procurement (Amendment) Act No. 17 of 2023.

2. Appeals and Investigations

- a. Appeals and investigations shall be lodged and undertaken in accordance with the revised timelines contained in the Public Procurement (Amendment) Act, No.17 of 2023.
- b. The Authority shall issue a written decision for investigations instituted in line with section 84 of the Public Procurement Act No. 8 of 2020 within fifteen working days of commencement of the investigation.

- c. The Authority shall issue a written decision for appeals instituted in line with section 100 of the Public Procurement Act No. 8 of 2020 within fifteen working days after submission of the application.
- d. A bidder or supplier who is aggrieved with a decision made by a procuring entity under the Act may appeal against the decision to the Authority within five 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.
- e. 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.

3. Supplier Suspensions and Permanent Barring Order

- a. All supplier suspension and permanent barring orders issued under the Public Procurement Act No. 8 of 2020 are still valid and in force.
- b. The provisions for permanent bar of bidders or suppliers have been amended by the introduction of a fine and suspension, and the fine shall be 2,000,000 penalty units or 5% of a bidder's bid sum. However, a bidder who is found liable for a second time under section 97 (1) of the Public Procurement Act No. 8 of 2020 shall be permanently prohibited from participating in public procurements.

4. The Public Procurement Regulations, 2022

The Public Procurement Regulations, 2022 are still in force except for provisions that are inconsistent with the provisions of the Public Procurement (Amendment) Act No. 17 of 2023. Where there is an inconsistency, the provisions of the amendment Act will prevail.

5. Definition of International Procurement Agreement

The definition for international procurement agreements has been revised. The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has excluded contracts between procuring entities and foreign bidders/suppliers from the definition of international procurement agreement.

6. Clearance of Contracts, Contract Variations and Amendments by the Treasury and Legal Advice from the Attorney General

The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has removed the requirement for clearance of the contracts, variations and amendments by the Treasury. In addition, only contracts above the prescribed threshold for simplified bidding or simplified selection are required to be submitted to the Attorney General for legal advice.

7. Subcontracting Policy

The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has revised the subcontracting policy by restricting it to the procurement of works. It has also extended the requirement for subcontracting to local bidders or suppliers to subcontract a percentage of the total value of the procurement of works exceeding the prescribed threshold to citizen bidders and suppliers.

8. Commencement of procurement proceedings

The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has removed the requirement for an approvals authority to confirm availability of funding for the procurement requirement before commencing procurement proceedings. This is to allow procuring entities to commence procurement proceedings once institutional budgets are approved, without the need for procuring entities to wait for actual receipt of the funds for the procurement(s) in their institutional accounts.

9. Offences

The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has provided a mandatory requirement for an appropriate authority to submit a report to the Authority on an action taken within fourteen days of receipt of a recommendation from the Authority in line with section 105(4) of the Public Procurement Act No.8 of 2020 to ensure that the Authority is given feedback on the corrective actions taken against erring officers.

10. Government to Government Procurement

The Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has provided for Government to Government procurement whose objective is to enable a procuring entity to acquire good, works or services from a foreign state and to benefit from the expertise and development experience from the foreign state where there will be no benefit in procuring from a supplier in the national or international market. This will cater for procurements which arise from agreements that the Government enters into with other States.

11. Open Bidding

Participation in open national bidding/selection shall be limited to citizen and local bidders. However, citizen bidders shall be given priority in the evaluation of bids, and the procedure for the evaluation of bids as prescribed. This will shorten the procurement process as there will be no need to undertake two (2) procurement processes successively in the event that there are no successful citizen bids. In addition, the Authority is in the process of drafting a Statutory Instrument on Preference and Reservation Schemes which shall be issued in due course.

Additionally, the Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 has provided some additional circumstances for use of Open International Bidding/Selection to enable procuring entities to save on time and lost business opportunities by broadening the circumstances under which open international bidding/selection can be undertaken.

Furthermore, the Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023 provides for a local bidder awarded a procurement contract to partner with a citizen bidder under Open National Selection.

12. Notification of Best Evaluated Bidder

Procuring entities shall not award any contract until five working days have elapsed after publication of the Notice of Best Evaluated Bidder.

The Authority wishes to advise all procuring entities to adhere to the Public Procurement Act No. 8 of 2020 as amended by Act No. 17 of 2023.

ZPPA further wishes to advise that the Public Procurement (Amendment) Act No. 17 of 2023 can be downloaded from the National Assembly or the Authority websites. The Authority has issued details of the Public Procurement (Amendment) Act No. 17 of 2023 through Circular No. 3 of 2024 which can be accessed on the ZPPA website www.zppa.org.zm.

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ZPPA MANDATE

The Zambia Public Procurement Authority (ZPPA) is a regulatory body established under section 5 (1) of the Public Procurement Act No.8 of 2020. ZPPA is responsible for standard setting; compliance and performance monitoring; professional development; planning; information management and dissemination in public procurement.