



ZAMBIA PUBLIC PROCUREMENT AUTHORITY

Stand No. 11790 SUB-J, Procurement House, Off Alick Nkhata Road, Longacres,
P.O. Box 31009, Lusaka- Zambia

OFFICE OF THE DIRECTOR GENERAL

Our Ref:

CIRCULAR NO. 2 OF 2021

23rd April, 2021

To: All Permanent Secretaries
All Chief Executives of Parastatal and Statutory Bodies
All Town Clerks and Council Secretaries of Local Authorities

RE: COMMENCEMENT OF THE PUBLIC PROCUREMENT ACT NO. 8 OF 2020

The above caption refers.

The Authority wishes to advise that the Minister of Finance on 16th April, 2021 issued a Commencement Order through Statutory Instrument No. 26 of 2021 to bring into effect the Public Procurement Act No. 8 of 2020 which repealed and replaced the Public Procurement Act No. 12 of 2008.

Pursuant to Section 111(1) of the Public Procurement Act No. 8 of 2020, the Authority wishes to provide guidance on the commencement of the Public Procurement Act No. 8 of 2020 as follows:

1. The Public Procurement Act No. 8 of 2020 came into effect on 16th April, 2021, the date of the publication of the commencement order in the Government Gazette and all Procuring Entities (PEs) are advised to adhere to the provisions of the new Act.
2. The Public Procurement Act No. 8 of 2020, addresses among other issues, enhanced participation of citizens in public procurement, price benchmarking through publication of quarterly market prices, requirement to conduct price reasonableness analysis by procuring entities, mandatory usage of the electronic government procurement system and capping of contract variations to a maximum of 25% of the original contract price.
3. In line with section 14(3) of the Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia, PEs are guided that:
 - a) The commencement of the Public Procurement Act 2020 does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Public Procurement Act 2008;
 - b) The commencement of the Public Procurement Act No. 8 of 2020 does not affect any penalty or punishment incurred in respect of any offence committed under the Public Procurement Act No. 12 of 2008; and
 - c) The commencement of the Public Procurement Act 2020 does not affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment arising under the Public Procurement Act

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2008 and any such investigation, legal proceedings, or remedy may be instituted, continued or enforced, and any such penalty or punishment may be imposed in accordance with the provisions of the Public Procurement Act No. 12 of 2008.

4. Further, all PEs are hereby advised and guided as follows:

a. Procurement Processes commenced before and after the commencement of the Public Procurement Act No. 8 of 2020

- a) Procurement processes commenced under the provisions of the Public Procurement Act 2008 shall continue and do not require to be recommenced and will be completed under the provisions of the Public Procurement Act 2020; and
- b) All procurements initiated after the commencement of the Public Procurement Act 2020 shall be undertaken in accordance with the provisions of the Public Procurement Act 2020.

b. Reporting obligations under the Public Procurement Act No. 12 of 2008 and the Public Procurement Act 2020

All reporting obligations arising from the Public Procurement Act No. 12 of 2008 that remained outstanding or were in the process of being performed shall be fulfilled and performed. Performance and fulfilment of all reporting obligations under the Public Procurement Act 2020 shall commence.

c. Appeals and Investigations

- a) Appeals and investigations commenced under the Public Procurement Act No. 12 of 2008 shall continue under the provisions of the Public Procurement Act No. 8 of 2020. However, any rights, privileges or actions granted or taken under the Public Procurement Act No. 12 of 2008 will not be affected.
- b) Appeals and investigations arising after the commencement of the Public Procurement Act No. 8 of 2020 shall be lodged and undertaken in accordance with the provisions of the Public Procurement Act No. 8 of 2020.

d. Supplier Suspensions and Permanent Barring Order

All supplier suspension and permanent barring orders issued under the Public Procurement Act No. 12 of 2008 are still valid and in force.

e. Deviations and Accreditation of Alternative Procurement Systems

- a) All deviations and accreditations of alternative procurement systems granted under the Public Procurement Act No. 12 of 2008 are still valid and in force.

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b) All applications for deviations and accreditations of alternative procurement systems arising after the commencement of the Public Procurement Act No. 8 of 2020 shall be made in accordance with the Public Procurement Act No. 8 of 2020.

f. Contracts executed under the provisions of the Public Procurement Act No. 12 of 2008

Contracts executed under the provisions of the Public Procurement Act No. 12 of 2008 shall be completed and performed in accordance with the terms of the said contracts. However, contract amendments and variations arising after the commencement of the Public Procurement Act No. 8 of 2020 shall be approved in accordance with the provisions of the Public Procurement Act No. 8 of 2020.

g. The Public Procurement Regulations 2011

The Public Procurement Regulations 2011 are still in force and effect and shall continue to be used until repealed and replaced with new regulations except where any provisions of the Public Procurement Regulations 2011 are inconsistent with the provisions of the Public Procurement Act No. 8 of 2020, the provisions of the Act will prevail.

h. Quarterly Market Price Index and Price Reasonableness Analysis

The Quarterly Market Price Index (MPI) has not yet been published in accordance with section 12(3) of the Public Procurement Act No. 8 of 2020 and PEs are therefore directed to conduct price reasonable analysis for the procurement of standard goods, services and works and submit to the Authority for approval, until the Authority publishes the MPI.

Procedure for Price Reasonableness Analysis

(1) A procuring entity will be required to conduct a price reasonableness analysis for goods, works and services during the following stages:

- (a) evaluation; or
- (b) contract execution in relation to variations or amendments which affect price.

(2) A procuring entity should take the following into consideration when undertaking a price reasonableness analysis:

- (a) historical prices, which involve comparison of prices offered in the past for similar contracts;
- (b) similar procurements by other procuring entities;
- (c) published prices by relevant government

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- institutions;
(d) budget and procurement plan estimates; or
(e) insurance and demurrages.

(3) A procuring entity should ensure that the reasonable prices take into account inflation, profit, labour and transport costs.

(4) Where a price reasonableness analysis is conducted at evaluation stage, it should only be conducted on the best evaluated bidder.

(5) A procuring entity will be required to maintain a record of a price reasonableness analysis.

(6) A procuring entity should submit a price reasonableness analysis to the approvals authority and once approval is granted, obtain approval from the Authority.

PEs are hereby encouraged to engage the Authority for guidance on any matter that may not be clear or not specifically covered under this Circular.

All addressees are urged to ensure that the contents of this Circular are brought to the attention of all staff under their supervision.



Idah C. Chella (Mrs.)
DIRECTOR GENERAL

cc: The Secretary to Cabinet
Cabinet Office
LUSAKA

The Secretary to Treasury
Ministry of Finance
LUSAKA

The Senior Private Secretary
State House
LUSAKA

The Auditor General
Office of the Auditor General
LUSAKA