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Act

No. 7 of 2025

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

24th January, 2025

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An Act to maximize economy and efficiency in public procurement and disposal of public assets; to provide for the establishment of the Public Procurement and Disposal of Public Assets Authority; to provide for, and regulate, a decentralized institutional structure for the public procurement and disposal of public assets; to provide for inventory control, asset and stores management and distribution; and to provide for matters incidental thereto or connected with

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Procurement and Disposal of Public Assets Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Short title and
commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“Authority” means the Public Procurement and Disposal of Public Assets Authority established under section 4;

“award” means the granting of a contract by a procuring and disposing entity to a bidder for purposes of entering into a procurement contract;

“bid” means—

(a) in relation to procurement proceedings, an offer to provide goods, works and services submitted by a bidder in response to an invitation from a procuring and disposing entity; and

(b) in relation to disposal proceedings, an offer submitted by a bidder to acquire assets in response to an invitation from a procuring and disposing entity;

“bidder” means—

(a) in relation to procurement proceedings, any person or entity expressing interest in procurement proceedings by submitting a bid; and

(b) in relation to disposal proceedings, any person or entity expressing interest in disposal proceedings by submitting a bid;

“bidding document” means a document used by a procuring and disposing entity for solicitation of offers, proposals or quotations;

“bid security” means a security bond required for securing validity of a bid during the period stated in the bidding document;

“Chairperson” means the Chairperson of the Authority;

“close relative” in relation to a member of the Authority, or a public official, means a spouse, child, child of the spouse, sibling, parent or guardian of the member of the Authority, or of the public official;

“Controlling Officer” means the head or principal person in charge of a procuring and disposing entity;

“consultant” means a person under a procurement contract to provide consultancy services to a procuring and disposing entity;

“consultancy services” means services of an intellectual or advisory nature;

“contractor” means a person or entity registered with a relevant authority to perform construction works;

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“corrupt practice” has the meaning ascribed to the term by the Corrupt Practices Act;

“Director General” means the Director General appointed under section 15;

“disposal” means the divestiture of public assets, including intellectual and proprietary rights and goodwill, and any other rights of a procuring and disposing entity by any means of sale, auction or any combination of these;

“disposal contract” means a contract between a procuring and disposing entity and a bidder resulting from disposal proceedings;

“disposal process” means the successive stages in the disposal cycle;

“disposal proceedings” means the whole cycle of public assets disposal, from initiation up to acceptance of the bidder's offer;

“domestic bidder” means any bidder whose principal place of business is within Malawi;

“donor organization” means an organization which provides, or joins in providing, grants, credits or loans to the Government or its agencies;

“due diligence” means the assessment of a bidder's technical, financial and management capabilities and the bidder's governance record to effectively execute a procurement contract;

“emergency” means a situation which poses an imminent threat to the physical safety of a population or damage to property;

“e-procurement” means the process of procurement using information and communication technologies;

“framework agreement” means an agreement between a procuring and disposing entity and a supplier or a contractor through which the supplier or contractor undertakes to supply goods, works or services on indefinite quantity basis at an agreed unit price for an agreed period of time;

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement or disposal process or the execution of a contract;

“goods” means objects of every kind and description, including raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed the value of the goods themselves;

“highest evaluated bidder” in relation to disposal of public assets, means a bidder ranked as first, following the application of the specified evaluation methodology and criteria in the bidding document;

“information” includes written, visual, oral and electronic information;

“Internal Procurement and Disposal Committee” means a committee established under section 25;

“local authority” has the meaning assigned to it in the Local Government Act;

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“local enterprise” means supplier, contractor or consulting firm registered and principally operating in Malawi and whose shareholding is held in majority by Malawian nationals;

“lowest evaluated bidder” in relation to procurement, means a bidder ranked as first, following the application of the specified evaluation methodology and criteria in the bidding document;

“micro, small, and medium enterprises” means enterprises, including their affiliates, that are independently owned and operated, not dominant in the field of operation in which they are bidding on Government contracts and qualified as such under the Micro, Small and Medium Enterprises Act, 2024;

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2024

“national competitive bidding” means the open solicitation of bids from local enterprises;

“No Objection” means permission to proceed with procurement or disposal proceedings;

“officer” means a person who is assigned to, or employed by, the Authority;

“procurement contract” means a contract between a procuring and disposing entity and a contractor, supplier, or consultant resulting from the procurement proceedings, including a framework agreement;

“procurement professional” means a person having a procurement qualification recognized by, and registered as such with, a body responsible for regulating the procurement profession;

“procurement and disposal unit” means a department, a division or section in each procuring and disposing entity responsible for procurement and disposal of goods, services or works established under section 28;

“procuring and disposing entity” means a Government ministry, department, agency, any other public body or any sub division thereof engaging in procurement or disposal of public assets;

“procurement proceedings” means the whole cycle of public procurement, from initiation up to signing the contract;

“public asset” means any property, tangible or intangible, owned by the Government or by a procuring and disposing entity;

“public procurement” means acquisition by a procuring and disposing entity, of goods, works, services or any combination thereof, funded in whole or in part by public funds;

“public body” means any organ or agency of the Government, and includes—

- (a) a statutory body;
- (b) a local authority; and
- (c) such other body as may be prescribed;

“public official” means a person employed by Government or a public body;

“public funds” means—

- (a) monetary resources appropriated to a procuring and disposing entity through a national budget;
- (b) grants, donations, or credits, put at the disposal of a procuring and disposing entity; or
- (c) revenues of a procuring and disposing entity;

“record” means any recorded information, in any format, including an electronic format;

“regional bidder” means a bidder from countries in the region or regional block as prescribed in the regulations;

“responsive” means satisfying the minimum requirements of a bidding process as stipulated in the bidding document;

“statutory body” has the meaning assigned to it in the Public Audit Act;

Cap. 37:01

“supplier” means a natural, or legal person, who has entered into a procurement contract with a procuring and disposing entity;

“user department” means any department, division, branch or section of the procuring and disposing entity, including any project unit working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements, and is the user of the requirements; and

“works” means works associated with the construction, re-construction, demolition, repair or renovation of a building, road, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations, and related services provided pursuant to a procurement contract, if the value of those services does not exceed that of the works themselves.

3.—(1) Subject to subsection (2), this Act applies to all procurement involving public funds and disposal of public assets.

Application
of this Act

(2) This Act shall not apply to—

- (a) employment contracts;
- (b) disposal of assets pursuant to employment contracts;
- (c) leases or rentals, and purchase of real property;
- (d) procurement of financial services as prescribed in the Financial Services Act;
- (e) procurement of media services from media institutions;
- (f) procurement of hospitality services from a designated hospitality facility;
- (g) procurement contracts between the Government and a foreign State, province of a foreign State or their respective state-owned entities;
- (h) commodity exchange contracts;
- (i) procurement of investors and disposal of public assets under the Public-Private Partnership Act; and
- (j) procurement under donor-financed projects if—
 - (i) this Act is in conflict with the procurement rules of the donor or the financing agency; and

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(ii) the application of the donor or the financing agency rule is mandatory in the financing agreement entered into by the Government and the donor or the financing agency.

(3) The Authority may, where procurement or disposal proceedings involve or relate to national security, on application by the procuring and disposing entity and taking into account the nature of the procurement or disposal, modify the procurement and disposal procedure under this Act.

(4) The Authority shall conduct a classified audit on a procurement that is subject to the modified rules and procedures of procurement and disposal under subsection (3).

(5) The Authority may, for purposes of subsection (4), access any information, document, record or report, or, with prior notice to the procuring and disposing entity, enter any premises of the procuring and disposing entity.

PART II—THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

Establishment
of the Public
Procurement
and Disposal of
Public Assets
Authority

4. There is hereby established the Public Procurement and Disposal of Public Assets Authority (in this Act otherwise referred to as the "Authority"), which shall be a body corporate with perpetual succession and a common seal and shall be capable, by that name, of—

(a) doing or performing all such acts as may be necessary or expedient for the furtherance of the provisions of this Act; and

(b) subject to this Act, doing or performing all acts as a body corporate may, by law, do or perform or such acts as are incidental or appertain to a body corporate.

Functions of
the Authority

5.—(1) The Authority shall be responsible for the regulation, monitoring and oversight of public procurement and disposal of public assets in Malawi.

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall be to—

(a) develop and enhance the efficiency and effectiveness of public procurement and disposal of public assets operations;

(b) develop standardized and unified procurement and disposal of public assets regulations, instructions, guidelines, and bidding documents which shall be binding on all procuring and disposing entities;

(c) collect and establish data and information base on public procurement and disposal of public assets and monitor the performance of procuring and disposing entities and suppliers, contractors, consultants and other service providers so as to ascertain efficiency and compliance with applicable legislation;

(d) maintain and circulate lists of debarred bidders, suppliers, contractors, consultants and other service providers;

(e) provide an annual report of procurement and disposal activities carried out by procuring and disposing entities within three months of the close of the financial year to the Minister, who shall lay the report before the National Assembly, not less than six months from the date of report;

(f) refer some violations of this Act and the regulations relating to public procurement and disposal of public assets to the relevant budgetary and law enforcement authorities for appropriate action;

(g) conduct administrative review of bid protests in accordance with Part XI;

(h) carry out economic studies on public procurement and disposal of public assets, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term and long-term policy it may formulate in matters of public procurement and disposal of public assets;

(i) approve strategic plans, annual budgets and work plans of the Authority; and

(j) facilitate the building of capacity of procuring and disposing entities to comply with this Act.

(3) The Authority shall perform its functions and exercise its powers provided in this Act in a manner that is impartial, and independent of the direction, influence or interference of any person, entity or authority.

6.—(1) The Authority may, in the discharge of its functions—

Powers of the
Authority

(a) through a notice published in the *Gazette*, set and enforce monetary thresholds for regulating procurement and disposal functions;

(b) issue a “No Objection” for procurements in accordance with the thresholds set under paragraph (a);

(c) subject to paragraph (a), set a limit—

(i) below which a “No Objection” shall be considered or issued by the Director General; and

(ii) above which a "No Objection" shall be subject to the approval of the Authority;

(d) issue a subpoena within a reasonable time requiring the production of procurement records, or other relevant financial records or objects necessary for the performance of its duties;

(e) access, at any reasonable time and with notice, the premises of any procuring and disposing entity whose procurement or disposal is being monitored and request for any relevant information from any person, including a Controlling Officer and the head of procurement and disposal unit;

(f) summon and examine witnesses regarding any procurement proceeding or disposal process;

(g) suspend or debar any bidder, supplier, contractor, consultant and any other service provider that breaches any provision of this Act from participating in procurement and disposal proceedings;

(h) carry out procurement or disposal audits annually for any procuring and disposing entity, as well as at any time before, during or after contract award;

(i) declare mis-procurement where applicable and impose appropriate disciplinary and punitive measures;

(j) investigate and impose sanctions on any procuring and disposing entity or individual involved or suspected to have been involved in mis-procurement and any other misconduct;

(k) set special conditions for targeted procurement for purposes of enhancing capacity and performance of micro, small and medium enterprises, in consultation with other regulatory bodies;

(l) develop policies and measures to enhance the use of information and communication technology in procurement, supply management and disposal activities;

(m) issue guidelines for targeted procurement aimed at the promotion and facilitation of participation by micro, small and medium-sized enterprises in public procurement;

(n) in consultation and co-operation with relevant Ministries, other organs of Government and representative bodies of micro, small and medium-sized enterprises, devise programs and measures to promote and to facilitate the participation of micro, small and medium-sized enterprises in public procurement;

(o) promulgate rules for the eligibility of enterprises for designation as micro, small and medium-sized enterprises eligible for set-asides;

(p) publish in the *Gazette*, thresholds for acceptable arithmetical error corrections for different procurement or disposal values; and

(q) do all such acts and things as it may consider incidental or conducive to the exercise of its functions under this Act.

(2) In exercising its powers and functions, the Authority may—

(a) cooperate with other bodies exercising oversight functions over procuring and disposing entities and may, for that purpose, establish mechanisms for sharing information and working jointly with those bodies; and

(b) establish and maintain institutional linkages with the institute responsible for regulating the profession of procurement and other professional bodies having interest in regulating standards of supply chain management.

(3) The Authority shall provide strategic direction to ensure the attainment of its functions under this Act.

(4) For the purposes of this section, “mis-procurement” means a procurement that has not followed the laid down procedures and guidelines.

7.—(1) The Authority shall consist of nine members comprising—

(a) six members appointed by the Minister as follows—

(i) one person registered under the Malawi Institute of Procurement and Supply Act;

(ii) one registered architect or quantity surveyor;

(iii) one legal practitioner, possessing a valid practicing licence in accordance with the Legal Education and Legal Practitioners Act;

(iv) one person who is a member of Malawi Confederation of Chambers of Commerce and Industry;

(v) one engineer registered under the Malawi Engineering Institution Act; and

(vi) one person who is a member of the Institute of Chartered Accountants in Malawi; and

(b) the following *ex-officio* members or their designated representatives—

(i) the Secretary to the President and Cabinet;

(ii) the Secretary to the Treasury; and

(iii) the Solicitor General.

Composition
of the
Authority

Cap. 30:15

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2018

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2019

Cap. 30:12

(2) A member of the Authority, other than an *ex-officio* member, shall possess a minimum qualification of a bachelor's degree in their respective fields, obtained from a reputable institution accredited or recognized under the National Council for Higher Education Act, and the appointment shall be subject to the approval of the Public Appointments Committee of the National Assembly.

(3) The Minister shall appoint the Chairperson and Vice-Chairperson of the Authority from amongst the members appointed under subsection (1) (a).

Cap. 25:06

(4) The Minister shall, in making appointments under subsection (1) (a), take into account the provisions of the Gender Equality Act; and

(5) A person, other than an *ex-officio* member, shall not qualify for appointment as a member of the Authority, if that person—

(a) holds a public office;

(b) is a member of Parliament;

(c) is an undischarged bankrupt;

(d) is declared mentally or physically incapacitated by a suitably qualified medical practitioner;

(e) is, within the period of seven years immediately preceding the date of his or her proposed appointment, convicted and sentenced to any term of imprisonment without the option of paying a fine; or

(f) would for any other reason, be disqualified by law from serving as a trustee or director of a company.

(6) A member of the Authority, other than an *ex-officio* member, shall not, by virtue only of his or her appointment to the Authority, be deemed to be an employee in the public service.

(7) The Minister shall publish, in the Gazette, the names of all members of the Authority as first constituted, and every subsequent change in the membership of the Authority.

Tenure and
vacancies

8.—(1) A member of the Authority, other than an *ex-officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Authority, other than an *ex-officio* member, shall become vacant—

(a) on the expiry of the term of office of the member;

(b) upon death of the member;

(c) if the member resigns from office in accordance with subsection (3);

(d) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment;

(e) if the member has been absent, without valid excuse, from three consecutive meetings of the Board of which he or she has had notice;

(f) upon the member becoming mentally or physically ill, where a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Board; or

(g) upon the member being removed from office in accordance with subsection (4).

(3) A member of the Authority, other than an *ex-officio* member, may at any time resign from office by giving written notice to the Minister.

(4) The Minister may remove a member of the Authority, other than an *ex-officio* member, on any of the following grounds—

(a) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question;

(b) incompetence in the execution of the functions of the office of member;

(c) failure to declare a conflict of interest relating to any matter under consideration by the Authority;

(d) disclosure or publication to any other person or entity, other than in the course of duty, any confidential information of the Authority obtained in the course of duty or otherwise; or

(e) misconduct that brings the Authority into disrepute.

(5) A vacancy in the membership of the Authority shall be filled, within sixty days of the occurrence of the vacancy, by the appointment of a new member by the Minister in accordance with section 7.

(6) A person appointed to fill a vacancy under subsection (5) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(7) The period served by a person appointed under subsection (5) shall not be regarded as a term for the purposes of subsection (1) unless the period is two years or more.

Meetings of
the Authority

9.—(1) The Authority shall meet to conduct its business at least once every three months at such place and time, as the Chairperson shall determine after consulting the Director General.

(2) The Chairperson shall convene ordinary meetings of the Authority by giving the members written notice of not less than fourteen days.

(3) The Chairperson may, in consultation with the Director General, convene an extraordinary meeting of the Authority upon giving the members written notice of not less than three days.

(4) The Chairperson shall convene an extraordinary meeting within seven days of receipt of a request in writing signed by not less than four members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the Authority shall be constituted by five members.

(6) The Chairperson, or in his or her absence, the Vice-Chairperson, shall preside over all meetings of the Authority, and in absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over such meeting, and the member so elected shall exercise all the powers and perform all the duties of the Chairperson.

(7) A decision of the Authority at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to a deliberate vote.

(8) The Authority may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend its meeting, or any of its committee meeting, and participate in the deliberations or make a presentation or be asked questions on any matter, but the person so invited shall not be entitled to vote.

(9) The Director General or, in his or her absence, such other employee of the Authority as the Director General may designate, shall be the secretary of the Authority, and may address the meetings, but shall not vote on any matter transacted at the meeting.

(10) Subject to the provisions of this section, the Authority shall regulate its meetings and proceedings in such a manner as it deems fit.

(11) Subject to subsection (12), any decision of the Authority shall be evidenced by the signature of the Chairperson and the Director General, and under the seal of the Authority.

(12) Where a decision was made in the absence of the Chairperson, the decision shall be signed by the member who chaired the meeting as chairperson.

(13) Where a decision was made in the absence of the Director General, the decision shall be signed by the member who was delegated by the Director General as the Secretariat of the meeting.

(14) Where, at any meeting, the deliberations of the Authority, or any of its committee, concerns the Director General, or any member of staff of the Authority designated to attend the meeting, the Authority or the committee, as the case may be, may exclude the Director General, or the member of staff, from the meeting.

10.—(1) The Authority may, for the better exercise of its functions and powers, establish committees of the Authority to perform any of its functions and carry out such other responsibilities as the Authority may specify.

Committees
of the
Authority

(2) The Authority shall appoint a chairperson for each committee of the Authority from amongst the members appointed under section 7 (1) (a).

(3) Notwithstanding subsection (1), the Authority may itself exercise the functions of a committee of the Authority, and may amend or rescind any decision of the committee.

(4) The Chairperson of a committee of the Authority may at any reasonable time and place convene a meeting of that committee.

(5) The Director General shall serve as secretary at meetings of each committee of the Authority, or may, with the approval of the Chairperson, delegate a senior member of staff to serve as secretary at meetings of a committee.

(6) A committee of the Authority shall act in accordance with any directions given to it in writing by the Authority.

11. A member of the Authority or a committee of the Authority, other than an *ex-officio* member, shall attend meetings of the Authority or a committee of the Authority in person, and where a member is unable to attend any meeting, the member may request that his or her apology for failure to attend the meeting be recorded.

Personal
attendance of
meetings

12.—(1) A member of the Authority and a member of a committee of the Authority shall be paid such allowances as the Minister shall determine, after consulting the Government department responsible for human resource development and management.

Allowances
and expenses

(2) The Authority may reimburse any reasonable expenses incurred in connection with the business of the Authority by a member of the Authority, a member of a committee of the Authority or a person invited to attend a meeting of the Authority under section 9(8), or a committee of the Authority.

Delegation of powers and functions of the Authority

13. The Authority may, subject to this Act and any terms and conditions it considers appropriate, delegate to the Director General any of its powers and functions under this Act.

PART III—ADMINISTRATION

Secretariat of the Authority

14. There shall be a secretariat of the Authority which shall consist of the Director General and other members of staff of the Authority appointed in accordance with this Act.

Director General of the Authority

15.—(1) The Authority shall appoint the Director General through an open and competitive selection process on such terms and conditions as the Authority may determine, after consulting the Government department responsible for human resource management and development.

(2) The Director General shall be the head of the secretariat and his or her office shall be a public office.

(3) A person shall not be eligible for appointment as Director General, unless the person—

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(a) possesses a minimum qualification of a master's degree obtained from an education institution accredited or recognized under the National Council for Higher Education Act in the following areas—

- (i) supply chain management;
- (ii) finance;
- (iii) economics;
- (iv) engineering;
- (v) accountancy;
- (vi) commerce;
- (vii) law; or
- (viii) administration;

(b) has proven demonstrable expertise and work experience in procurement;

(c) has not less than ten years' experience in executive management; and

(d) does not hold a political office.

16.—(1) The Director General shall be the Chief Executive Officer of the Authority and shall, subject to the general supervision and control of the Authority, be in overall in charge of—

Functions of
the Director
General

(a) day to day operations of the Authority;

(b) management of the funds, property and business of the Authority; and

(c) effective administration and implementation of the provisions of this Act.

(2) Subject to the general and special direction of the Authority, the Director General shall—

(a) ensure the availability of this Act and any subsidiary legislation made thereunder to the general public and all other stakeholders;

(b) collect information and require reports from procuring and disposing entities concerning the conduct of procurement, supply management and disposal activities in prescribed format, and advise procuring and disposing entities on any improvements required;

(c) establish procedures and mechanisms to ensure the effective and timely solicitation of views of interested parties in the development of procurement and disposal policies, regulations, procedures and forms;

(d) publish periodic bulletins containing information about the procurement systems and proceedings including supply management and asset disposal procedures;

(e) conduct civic education on the legal, procedural and organizational framework for procurement and disposal of public assets;

(f) appoint *ad-hoc* technical committees comprising technical officers of the Authority, for purposes of implementing the provisions of this Act;

(g) in consultation with relevant stakeholders, devise and facilitate the implementation of strategies and programmes for the promotion of professional standards and development in public procurement and disposal of public assets; and

(h) promote the development of a professional supply chain work force, including organizing and conducting training programmes relating to public procurement and disposal of public assets.

(3) The Director General shall devote his or her full time to the duties of his or her office and shall provide the Authority with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Authority of its functions and responsibilities under this Act or any other written law.

(4) The Director General may, with the approval of the Authority, delegate any duty or responsibility assigned to him or to her under this Act to a member of staff of the Authority.

Tenure and
removal of the
Director
General

17.—(1) The Director General shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) The Authority may terminate the appointment of the Director General before expiry of his or her employment contract where the Director General—

(a) is incompetent in the execution of the functions of the office;

(b) is not able to perform the functions of his or her office by reason of physical or mental infirmity;

(c) is declared or adjudged bankrupt by a competent court of law;

(d) is convicted of an offence and sentenced to a term of imprisonment without the option of paying a fine;

(e) commits a misconduct that brings the office of Director General or the Authority into disrepute;

(f) fails to declare a conflict of interest relating to any matter under consideration by his or her office or the Authority; or

(g) is found guilty of a misconduct punishable by dismissal under his or her employment contract.

(3) The Authority, if it considers desirable in the public interest so to do, may suspend the Director General from exercising the duties of the office for up to sixty days, pending investigations to determine whether or not the Director General may be removed from the office under subsection (2).

(4) The Director General shall not be removed from office unless the Director General has been given an opportunity to be heard.

Acting
Director
General

18.—(1) Where the office of the Director General is vacant, or the Director General is temporarily absent from duty or unable for any other reason to perform the functions of that office, the Authority shall appoint another duly qualified person within the Authority to act as Director General during the vacancy or temporary absence.

(2) Where the period of the vacancy or temporary absence in subsection (1) has exceeded twenty-one days, the Authority shall, within fourteen days thereafter, furnish the Minister the reasons why the vacancy in the office cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, which shall not be longer than six months from the expiry of the twenty-one days.

19.—(1) The Authority shall employ other members of staff, subordinate to the Director General, for the performance of the functions of the Authority, on such terms and conditions determined by the Authority, and the appointment shall only be based on qualifications, experience and capacity in matters relating to the operational requirements of the Authority.

Other staff of
the Authority

(2) The Authority may, by directions in writing, delegate to the Director General the appointment, discipline and dismissal of members of staff in specified junior ranks and the Director General shall report to the Authority, at its next meeting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff appointed under this section shall be appointed on such terms and conditions as the Authority shall determine after consulting the Government department responsible for human resource management and development.

(4) Section 17 shall apply, with the necessary modifications, to termination of employment contracts of members of staff employed under this section.

PART IV— FUNDS AND PROPERTY OF THE AUTHORITY

20.—(1) The funds and property of the Authority shall consist of—

Funds of the
Authority

(a) such sums as shall be appropriated annually by Parliament for the purposes of the Authority from; fees, fines, levies, subscriptions and other moneys payable to the Authority;

(b) such moneys or other assets as may accrue to or vest in the Authority by way of grants, donations, gifts, subscriptions, rents, interest or royalties, from any other person; and

(c) proceeds from sale by the Authority, of any of its assets or property.

(2) All the moneys of the Authority which, at the end of each financial year, are in excess of the budgetary requirements of the Authority for that year shall be paid into the Consolidated Fund.

Cap. 37:01
4 of 2022
Cap. 37:03

Levies, fees;
etc.

(3) The Authority shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

21.—(1) The Authority may, from time to time, impose and collect levies on public procurement or disposal proceedings.

(2) The Authority may not impose and collect any levy on the procurement of utilities and groceries.

(3) The levy referred to in subsection (1) shall be equal to one per cent of the procurement or disposal contract emanating from such proceedings less Value Added Tax to the amount.

(4) A procuring and disposing entity shall remit the levy referred to in subsection (1) to the Authority within fourteen days from the date of effecting the payment to the supplier, contractor or consultant, as the case may be.

(5) Where a procuring and disposing entity fails to comply with subsection (4), the Controlling Officer of the entity shall personally be liable to a penalty as may be prescribed.

(6) In addition to the penalty provided in subsection (5), the Authority shall report the procuring and disposing entity to the Secretary to the Treasury who may instruct the Controlling Officer to pay, within thirty days, the amount that is due to the Authority plus ten percent.

(7) A procuring and disposing entity that fails to make a payment in accordance with subsection (6) shall be liable to such further penalty as may be prescribed.

(8) The Authority may charge fees to cover the costs of performing its functions, including—

- (a) registration of suppliers and other service providers;
 - (b) training or capacity development;
 - (c) publications and use of the website for commercial purposes;
 - (d) processing applications for review of procurement decisions;
- and
- (e) any other consultancy services offered by the Authority.

(9) The Authority shall determine the manner in which levies, fees and other monies payable to the Authority for its service under this Act may be paid before performance of the service.

(10) The Authority shall, by notice published in the *Gazette*, prescribe the levies, fees and other monies payable to the Authority under this Act.

22.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts in accordance with the Public Finance Management Act. Accounting and audit
4 of 2022

(2) The accounts of the Authority shall be audited at the end of each financial year in accordance with the Public Audit Act. Cap.37:01

23.—(1) Subject to subsection (2) the financial year of the Authority shall be same as the financial year of the Government. Financial year of the Authority

(2) The Authority may, for good reasons, determine a shorter or longer financial year than the Government financial year but being not less than six months and not more than eighteen months.

PART V—RESPONSIBILITIES OF CONTROLLING OFFICERS, INTERNAL PROCUREMENT AND DISPOSAL COMMITTEES, PROCUREMENT AND DISPOSAL UNITS AND AD-HOC EVALUATION TEAMS

24.—(1) A Controlling Officer shall ensure that the procuring and disposing entity complies with this Act. Responsibilities of a Controlling Officer

(2) Without prejudice to the generality of subsection (1), a Controlling Officer shall be responsible for—

(a) appointing members of the Internal Procurement and Disposal Committee;

(b) submitting annual procurement and disposal plans, quarterly reports and other statutory reports as may be prescribed from time to time;

(c) providing corrective measures to prevent misconducts throughout the procurement and disposal processes;

(d) managing bidders' protests and grievances;

(e) reporting misconducts by bidders, suppliers or public officials, to the Authority and other relevant bodies;

(f) implementing disciplinary measures against public officials;

(g) ensuring that procurement and disposal documentation is made available to the Authority and other oversight institutions whenever required; and

(h) providing leadership and oversight role of the procuring and disposing entity.

(3) Where a Controlling Officer fails to comply with his or her responsibilities as provided in subsection (2), the Authority shall recommend to the relevant authorities the imposition of any of the following sanctions—

- (a) the withholding of the annual budget for procurement of the procuring and disposing entity from Treasury;
- (b) a reprimand by the appointing authority; and
- (c) the bearing of any loss suffered by the procuring and disposing entity or part thereof by the Controlling Officer.

Establishment
of Internal
Procurement
and Disposal
Committees

25.—(1) There shall be established in all procuring and disposing entities, an Internal Procurement and Disposal Committee.

(2) The functions of the Internal Procurement and Disposal Committee shall include—

- (a) ascertaining the availability of funds to pay for each procurement;
- (b) approving the methods of procurement and disposal to be used in each case;
- (c) approving the procurement and disposal plans for the procuring and disposing entity;
- (d) appointing the chairperson of the bid opening committee from amongst its membership;
- (e) appointing *ad-hoc* evaluation teams for the examination, evaluation and comparison of bids;
- (f) reviewing and approving bid evaluation reports;
- (g) reviewing and approving any contract amendments;
- (h) approving advertisements and bidding documents before their issuance to prospective bidders;
- (i) approving recommendations for the award of contracts from *ad-hoc* evaluation teams, including terms and conditions of contract where appropriate;
- (j) assessing performance of suppliers in relation to terms and conditions of contracts;
- (k) approving recommendations for contract termination;
- (l) constituting negotiating teams;
- (m) appointing boards of survey for the assessment and valuation of the public assets to be disposed;
- (n) reviewing and approving reports of boards of survey;
- (o) approving recommendations for award of contract from boards of survey, including terms and conditions of contract where applicable; and
- (p) setting procurement thresholds for procurement proceedings that a Procurement and Disposal Unit may process.

26.—(1) An Internal Procurement and Disposal Committee shall comprise senior personnel appointed by the Controlling Officer who shall be well informed of public procurement and disposal of public assets matters, and shall meet the minimum qualifications as prescribed in Regulations.

Composition
of Internal
Procurement
and Disposal
Committees

(2) Without derogating from the generality of subsection (1), membership of the Internal Procurement and Disposal Committee shall at a minimum comprise—

(a) a senior officer designated by the Controlling Officer as the chairperson of the Internal Procurement and Disposal Committee;

(b) head of the procurement and disposal unit or his representative;

(c) an accountant or other budget professional; and

(d) other senior officers.

(3) Except as the Authority may otherwise approve, an Internal Procurement and Disposal Committee shall comprise a maximum of seven members, and a Controlling Officer shall provide justification in writing to the Authority for the appointment of any additional member of the Committee.

(4) The quorum at a meeting of an Internal Procurement and Disposal Committee shall be made of the chairperson of the Committee, the head of the procurement and disposal unit, and an accountant or budget professional.

(5) A member of an Internal Procurement and Disposal Committee shall serve for two years and shall be eligible to be re-appointed for another term of two years.

(6) The head of the procurement and disposal unit, or his or her representative, shall attend all meetings of the Internal Procurement and Disposal Committee, and shall provide technical guidance to the Committee, and the procurement and disposal unit shall act as the secretariat of the Committee.

(7) A Controlling Officer shall ensure that persons appointed as members of the Internal Procurement and Disposal Committee undergo appropriate training by the Authority, in public procurement and disposal of public assets, within three months of their appointment.

(8) A Controlling Officer shall rotate membership of the Internal Procurement and Disposal Committee as the Controlling Officer determines appropriate.

(9) A Controlling Officer may remove a member of Internal Procurement and Disposal Committee for the following reasons—

- (a) incapacity, or other inability, to perform functions of the Committee;
- (b) abuse of office;
- (c) corrupt or fraudulent practices;
- (d) failure to attend three consecutive scheduled meetings without justifiable reasons; or
- (e) incompetence.

Ad-hoc
evaluation
teams and
boards of
survey

27.—(1) Whenever there is a procurement or disposal proceeding, the Internal Procurement and Disposal Committee shall appoint an *ad-hoc* evaluation team or a board of survey, to evaluate bids and carry out due diligence, as the case may be.

(2) An *ad-hoc* evaluation team shall have a minimum of three and a maximum of nine members, including—

- (a) the head of the procurement and disposal unit or his or her representative, who shall be the secretary of the *ad-hoc* evaluation team;
- (b) member from the user or disposing department; and
- (c) three non-Internal Procurement and Disposal Committee members, who have technical knowledge of the procurement or disposal bids to be evaluated.

(3) A quorum for an *ad-hoc* evaluation team shall be made up of the head of the procurement and disposal unit or his or her representative representative of the user department, two members non-Internal Procurement and Disposal Committee members, who have technical knowledge of the evaluation of procurement bids.

(4) The head of procurement and disposal unit, or his or her representative, shall attend meetings of the *ad-hoc* evaluation team and shall provide technical guidance to the evaluation team, and take part in decision making and the procurement and disposal unit shall be the secretariat of the *ad-hoc* evaluation team.

(5) A board of survey shall have a minimum of three and a maximum of nine members, including—

- (a) member from the user or disposing department;
- (b) up to three non-Internal Procurement and Disposal Committee members who have technical knowledge of the disposal bids to be evaluated; and
- (c) the head of the procurement and disposal unit, or his or her representative.

(6) A quorum for a board of survey shall be comprised of the head of procurement and disposal unit, or his or her representative, a representative of the user department, and two non-Internal Procurement and Disposal Committee members, who have technical knowledge of the public assets to be disposed.

(7) The head of procurement and disposal unit, or his or her representative, shall provide technical advice to the board of survey, and take part in decision making, and the procurement and disposal unit shall be the secretariat of the board of survey.

(8) An *ad-hoc* evaluation team or a board of survey, as the case may be, shall commence an evaluation within seven days of its appointment.

(9) The use of expertise from outside the public sector as members of *ad-hoc* evaluation teams, boards of survey or consultants shall only be resorted to in exceptional circumstances and only upon the prior approval of the Authority.

28.-(1) Procuring and disposing entities shall establish procurement and disposal units which shall comprise qualified procurement and disposal professionals registered under the Malawi Institute of Procurement and Supply Act, and assign to such units authority to conduct procurement and disposal activities in accordance with this Act.

Establishment
of
procurement
and disposal
units

(2) Without derogating from the generality of subsection (1), the functions of the procurement and disposal units shall include—

(a) providing technical guidance on procurement and disposal matters to the procuring and disposing entity;

(b) receiving duly authorized procurement requisition for analysis in relation to the annual procurement plan;

(c) preparing procurement and disposal plans and reports for the procuring and disposing entity;

(d) preparing bidding documents;

(e) publishing invitations to bid notices and distribution of bidding documents;

(f) receiving and safeguarding bids;

(g) facilitating meetings of the Internal Procurement and Disposal Committee;

(h) keeping records of all procurement and disposal activities carried out by the procuring and disposing entity;

(i) acting as the secretariat to the meetings of the Internal Procurement and Disposal Committee, *ad-hoc* evaluation team and board of survey;

(j) facilitating the evaluation of simple low value procurements as prescribed by the Internal Procurement and Disposal Committee; and

(k) preparing contract documentation and managing the resultant contracts in conjunction with user departments.

(3) A procuring and disposing entity shall, if it does not have a procurement and disposal unit seek guidance from the Authority on how to execute its procurement and disposal activities.

(4) For the purposes of this section, "bid notice" means any advertisement by which eligible bidders are invited to submit written offers to provide or acquire works, services and goods or any combination of them in case of procurement and disposal respectively.

PART VI—PRINCIPLES OF PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

Principles of
public
procurement

29.—(1) A procuring and disposing entity shall—

(a) conduct public procurement proceedings in a manner that promotes transparency, accountability, non-discrimination, fairness, open competition, economy, procurement efficiency and responsiveness to modern information and communications technology; and

(b) ensure that public procurement proceedings maximize value for money.

(2) A bidder shall not be excluded from participating in procurement on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

(3) A procuring and disposing entity shall, in all procurement proceedings, choose appropriate procedures and cause the procurement to be carried out diligently and efficiently, so that the prices received by the procuring and disposing entity represent the best value or net outcome that can reasonably be obtained from the procurement.

(4) A procuring and disposing entity shall plan procurement activities with a view to achieving maximum value from any procurement and other objectives set forth in this Act.

Sustainable
procurement
and disposal

30. A procuring and disposing entity shall, when conducting procurement or disposal proceedings, consider—

- (a) all aspects of sustainable procurement and disposal including environmental protection and social and economic inclusion; and
- (b) procurement and disposal that stimulates innovation.

31.-(1) A procuring and disposing entity shall—

Principles of
disposal of
assets

(a) conduct disposal proceedings in a manner that promotes transparency, accountability, non-discrimination, fairness, open competition, efficiency and responsiveness to modern information and communications technology; and

(b) ensure that disposal proceedings maximize value for money.

(2) A bidder shall not be excluded from participating in disposal on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

(3) A procuring and disposing entity shall, in all disposal proceedings, choose appropriate procedures and cause the disposal of assets to be carried out diligently and efficiently, so that the prices received by the procuring and disposing entity represent the best value or net outcome that can reasonably be obtained for the assets disposed of.

(4) Procuring and disposing entity shall plan disposal activities with a view to achieving maximum value from any such disposals and other objectives set forth in this Act.

(5) A procuring and disposing entity shall, take due care of all assets earmarked for disposal until such time the actual disposal is concluded as prescribed in this Act.

32.-(1) A procuring and disposing entity shall maintain records of all procurement and disposal proceedings for a period of seven years from the date of—

Records of
procurement
and disposal
proceedings

(a) contract completion or termination;

(b) the decision to cancel the procurement or disposal proceedings;

(c) the settlement of any dispute under a procurement or disposal contract; or

(d) the resolution of any complaint, challenge or appeal made under this Act.

(2) Where the period referred to in subsection (1) has expired, but the documentation has not been subjected to an audit, the records of procurement and disposal proceedings shall still be maintained by the procuring and disposing entity until the records are audited.

Mode of
communica-
tion

33. All communication, including electronic communication, between a procuring and disposing entity and a bidder, supplier or contractor shall be in English and in writing.

Confidentiality

34.—(1) A public official shall keep confidential, the information that comes into his or her possession relating to the procurement and disposal proceedings and bids, including any bidder's proprietary information.

(2) The procuring and disposing entity may, upon request from an unsuccessful bidder, communicate to a bidder the grounds for the rejection of its bid.

(3) A person who contravenes subsection (1) commits an offence, and shall, upon conviction, be liable to—

(a) a fine of K1,000,000, and to imprisonment for twelve months; and

(b) disciplinary action.

Limitation on
contracts with
employees

35. A procuring and disposing entity shall not enter—

(a) into a procurement contract; or

(b) subject to section 36, into a disposal contract,

with a member of the procuring and disposing entity, or a close relative of a member of the procuring and disposing entity.

Disposal of
goods to

36. The Authority may, on application by a Controlling Officer, and stating the reasons therefor, authorize the disposal to employees of goods and items used by employees and no longer required by a procuring and disposing entity, on such terms and conditions as the Authority may deem fit.

Participation
by micro,
small and
medium

37.—(1) A procuring and disposing entity may, in the prescribed manner—

(a) grant a margin of preference for the benefit of a bid by a micro small and medium enterprise offering goods, works, consultancy services or other services manufactured, grown or performed by a local enterprise; and

(b) reserve or set aside certain procurement requirements for micro, small and medium enterprises by restricting bidding to those enterprises as prescribed in the Act.

(2) Notwithstanding the provisions of subsection (1), the Authority, in consultation with the Minister responsible for micro, small and medium enterprises, may, by notice published in the *Gazette*, prescribe any preference or reservation for micro, small and medium enterprises.

PART VII—PROCUREMENT AND DISPOSAL METHODS

38.—(1) A procuring and disposing entity shall undertake public procurement and disposal proceedings by means of open methods of tender proceedings, subject to the exceptions provided in this Act.

Methods of
procurement
and disposal

(2) A procuring and disposing entity shall submit an application to the Authority for the use of a method of procurement, other than open tender or, in the case of procurement of consultancy services, a method other than request for proposals.

(3) The procuring and disposing entity shall note in the record of the procurement proceedings, the grounds for the choice of the procurement method.

(4) When seeking approval from the Authority to use the method other than open tender or in the case of procurement of consultancy services, a method other than request of proposal, the procuring and disposing entity shall provide written reasons with sufficient clarity to the Authority for the choice of the procurement method

(5) A procuring and disposing entity shall undertake procurement and disposal proceedings through electronic government procurement system as prescribed in section 71.

39. A procuring and disposing entity may hold a tender in two stages in the following cases if—

Two stage
tendering

(a) it is not feasible at the outset of the procurement proceedings to define fully the technical or contractual aspects of the procurement; or

(b) due to the complex nature of the goods, works and services to be procured, the procuring and disposing entity wishes to consider various technical or contractual solutions, and to negotiate with bidders about the relative merits of those variants, before deciding on the final technical or contractual specifications.

40. A procuring and disposing entity shall use national competitive bidding where—

National
competitive
bidding

(a) the procurement targets local enterprises;

(b) the estimated value of the procurement does not exceed an amount prescribed by the Authority;

(c) the goods, works or services are available under competitive price and other conditions, and there are more than two suppliers in Malawi; or

(d) a supplier was not identified by a request for quotation proceeding.

Restricted
tendering

41. A procuring and disposing entity may use restricted tendering where—

(a) the goods, works or services are available from a limited number of suppliers, all of whom are known to the procuring and disposing entity; and

(b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement.

International
competitive
bidding

42. A procuring and disposing entity shall use international competitive bidding where—

(a) the estimated value of the stated procurement exceeds the amount prescribed by the Authority;

(b) the goods, works or services are not available under competitive price and other conditions from more than two suppliers in Malawi; or

(c) a supplier was not identified by a national competitive bidding proceeding.

Request for
proposals

43. A procuring and disposing entity shall use the method of request for proposals for the procurement of consultancy services.

Request for
quotations

44. A procuring and disposing entity may use the method of request for quotations for the procurement of goods, works and routine services when the estimated value of the procurement does not exceed the amount prescribed by the Authority.

Single
sourcing

45.—(1) A procuring and disposing entity may use single sourcing procurement method where—

(a) the estimated value of the procurement does not exceed the amount prescribed by the Authority;

(b) only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured;

(c) there is an emergency need for the goods, works and services; or

(d) the procuring and disposing entity, having procured goods, works and services from a supplier; determines that additional goods, works or services need to be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, or services, taking into account the effectiveness of the original

procurement in meeting the needs of the procuring and disposing entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question.

(2) A procuring and disposing entity shall obtain clearance issued by the Anti-Corruption Bureau pursuant to the powers conferred on the Bureau under section 10 of the Corrupt Practices Act, before a single sourcing procurement contract is signed. Cap.7:04

(3) A procuring and disposing entity may submit a request for clearance of single sourcing procurement method under subsection (2) to Anti-Corruption Bureau concurrently with its submission to the Authority.

(4) The Authority shall, through a notice in the *Gazette*, prescribe a threshold for single sourcing procurement requiring clearance under subsection (2).

46.-(1) Subject to subsection 2, a public body may, where the public body or another public body, has capacity, use the method of force account in undertaking construction works. Force account

(2) The Authority shall, by notice pushed in the gazette, prescribe a threshold value of construction works requiring its approval before the force account method is used by a public body.

(3) A public body shall, where the value of the construction works to be undertaken through the force account method exceed a threshold prescribed by the Authority under subsection 2, seek approval of the Authority before undertaking the construction works.

(4) The Authority shall, when considering the submission under subsection 3, consider if—

(a) the public body proposed to undertake the force account method, has capacity to undertake the construction works;

(b) the force account method is the only practical method of undertaking the construction works;

(c) the construction works required to be carried out shall not disrupt on-going operations of the public body;

(d) the quantities of the construction works may not be defined in advance for purposes of procuring proceedings under this Act;

(e) the construction works are scattered or in remote locations for which qualified contractor may not bid at a reasonable price;

(f) the public body is in a better position to manage the construction risks than an independent contractor; and

(g) there is an emergency that requires immediate construction works

(5) The public body shall, when procuring or disposing materials for construction works implemented through the force account method procure or dispose of such materials in accordance with procuring and disposal procedures under this Act.

(6) For purposes of this section, "force account" means construction method in which a public body uses its resources, equipment and personnel or resources, equipment and personnel of another public body, to undertake construction works.

Community
participation

47.—(1) A procuring and disposing entity may use the method of public procurement by means of community participation where the—

(a) participation of the beneficiary community of a project may result in enhancing the economy, or the quality or sustainability of the service to be procured; or

(b) objective of the project is to create employment in the community.

(2) Where a procuring and disposing entity uses community participation, the beneficiary community, shall participate in the procurement in accordance with guidelines prescribed by the Authority.

Reverse
auction

48.—(1) A procuring and disposing entity may use a reverse auction procurement method for purposes of seeking competitive pricing

(2) A procuring and disposing entity may use reverse auction, if—

(a) it is feasible for the procuring and disposing entity to formulate a detailed description of the subject matter of the procurement;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, to ensure effective competition; and

(c) the criteria to be used by the procuring and disposing entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(3) A procuring and disposing entity shall use the reverse auction method if it is using the electronic government procurement and disposal system.

(4) The procedure for reverse auction shall include—

(a) solicitation of bids through an invitation to the reverse auction published or communicated in accordance with this Act; and

(b) details relating to—

(i) access to, and registration for, the reverse auction;

(ii) the opening and closing of the reverse auction;

(iii) norms for conduct of the reverse auction; and

(iv) any other information that may be relevant to the reverse auction.

(5) Notwithstanding subsection (3), the Authority may prescribe other procedures relating to a reverse auction.

(6) For the purposes of this section, “reverse auction” means an online real-time procurement method used to select a successful bid, which involves presentation by pre-qualified bidders.

49.—(1) A procuring and disposing entity, may, in emergency procurement, use any of the following approaches—

Emergency
procurement

(a) request for quotations;

(b) restricted tender;

(c) open tender; or

(d) single source.

(2) The Authority shall conduct a post procurement audit on an emergency procurement.

50. A procuring and disposing entity may procure from another public body if the procurement is competitive and brings value for money compared to procurement from another entity without application of any method of procurement under this Act, except that the public body must be able to meet the requirements of the procuring and disposing entity as specified in the statement of requirements.

Procurement
from other
procuring and
disposing
entities

51.—(1) A procuring and disposing entity shall dispose public assets by open means such as public auction and tendering with sealed bids.

Disposal of
assets

(2) Notwithstanding subsection (1), a procuring and disposing entity may, with the prior approval of the Authority, use alternative means of disposing public assets, including—

(a) transfer the asset to another procuring and disposing entity;

(b) destruction of the asset;

(c) trade-in;

(d) conversion or classification of asset into another form;

(e) subject to section 36, sale to employees of the procuring and disposal entity; or

(f) forward auction.

Forward
auction

52.—(1) A procuring and disposing entity may use forward auction disposal method.

(2) A procuring and disposing entity may use forward auction disposal method, if—

(a) it is feasible for the procuring and disposing entity to formulate a detailed description of the subject matter of the disposal;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the forward auction; and

(c) the criteria to be used by the procuring and disposing entity in determining the successful bid is quantifiable and capable of being expressed in monetary terms.

(3) A procuring and disposing entity shall only use the forward auction method if it is using the electronic government procurement and disposal system.

(4) The procedure for forward auction shall include—

(a) solicitation of bids through an invitation to the forward auction published or communicated in accordance with this Act; and

(b) details relating to—

(i) access to, and registration for, the auction;

(ii) the opening and closing of the auction;

(iii) norms for conduct of the auction; and

(iv) any other information that may be relevant to this method of disposal.

(5) Notwithstanding subsection (4), the Authority may prescribe other procedures relating to a forward auction disposal method.

(6) For the purposes of this section, “forward auction” means an on-line real-time disposal method utilized by a procuring and disposing entity to select a successful bidder.

Deviations

53. The Authority may, in a prescribed manner and form, authorize a procuring and disposing entity to deviate from the use of a public procurement or disposal method, rules, process, or document where—

(a) exceptional requirements make it impossible, impractical, or uneconomical to comply with the provisions of this Act;

(b) market conditions or behaviour do not allow the effective application of the procurement or disposal methods, rules, processes, or documents; or

(c) specialized or particular requirements are regulated or governed by international standards or practices.

54. A procuring and disposing entity may undertake procurement proceedings through a framework agreement as prescribed under regulations.

Framework agreements

PART VIII—PROCUREMENT AND DISPOSAL PLANNING AND PROCEEDINGS

55.—(1) A procuring and disposing entity shall plan procurement and disposal activities with a view to achieving maximum value from both public expenditures and disposal proceedings, including other objectives set forth in this Act.

Planning of procurement and disposal activities

(2) A procuring and disposing entity shall not split procurement requirements with a view to circumventing the use of competitive methods of procurement as prescribed in this Act.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall, upon conviction, be liable to a fine of K5,000,000, and to imprisonment for two years.

(4) A procuring and disposing entity shall submit the procurement and disposal plans to the Authority by the last date of the first month of each financial year.

(5) A Controlling Officer who fails to comply with subsection (4) shall be liable to an administrative penalty of K500,000.

(6) The Authority shall report the Controlling Officer to relevant authorities for disciplinary sanctions in case of non-compliance with the penalty imposed pursuant to subsection (5).

56.—(1) A procuring and disposing entity shall publish an invitation to tender, or an invitation to prequalify, in—

Publication of invitation to bid

(a) the *Gazette*;

(b) at least one national widely circulated newspaper;

(c) in the electronic media;

(d) on the websites of the procurement and disposing entity and the Authority; and

(e) in the case of international tendering, shall also be published in internationally recognized business portals and other media of wide international circulation.

(2) Without derogating from the generality of subsection (1), the procuring and disposing entity shall publish in the *Gazette* all procurements of values and nature as may be prescribed from time to time by the Authority.

(3) In addition to the publication referred to in subsection (1), the procuring and disposing entity shall display the invitation to tender, or an invitation to prequalify, in the head office of the procuring and disposing entity in a publicly accessible place.

Issuance of
bidding
documents

57.-(1) A procuring and disposing entity shall ensure that a bidding document—

(a) is provided to all bidders responding to the invitation to tender or, in the event of pre-qualification proceedings, to all bidders that have been pre-qualified;

(b) provides bidders with the information that they require in order to submit bids that are responsive to the needs of the procuring and disposing entity;

(c) includes the terms and conditions of the resultant contract; and

(d) includes technical specifications that promote the broadest possible competition, while ensuring performance or other requirements for the procurement are based on relevant technical characteristics and performance requirements.

(2) Where a fee is charged for the bidding documents, the fee shall only reflect the cost of printing and distributing the documents.

(3) All bidders shall be provided with the same information.

(4) A bidder may request a clarification of the bidding documents from the procuring and disposing entity, and the procuring and disposing entity shall respond to the request before the deadline for submission of bids, but a procuring and disposing entity may not respond to the request if the request is submitted seven days before the deadline.

(5) The procuring and disposing entity shall respond to a request under subsection (4) so as to enable the bidder to make a timely submission of its bid and shall, without identifying the source of the request, communicate the clarification to all bidders to which the procuring and disposing entity has provided the bidding documents.

(6) The procuring and disposing entity may, at any time prior to the deadline for submission of bids, for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the bidding documents by issuing an addendum, and the

addendum shall be communicated promptly to all bidders to which the procuring and disposing entity has provided the bidding documents and the addendum shall be binding on those bidders.

58.—(1) A bid shall be submitted in written form as instructed in the bidding document.

Submission
of bids

(2) A bidding document may provide for submission of bids electronically where a procuring and disposing entity puts in place measures to protect the confidentiality of bidders' bids, and to ensure their authenticity and integrity.

(3) A procuring and disposing entity shall, upon request, provide to a bidder a receipt showing the date and time when its tender was received.

(4) The deadline for submission of bids shall be set taking into account the nature of the procurement or disposal process and the time required for the preparation of bids.

(5) The minimum bidding periods for the various procurements shall be as follows—

(a) for international competitive bidding, thirty days;

(b) for national competitive bidding, twenty days;

(c) for restricted tender, fifteen days;

(d) for request for proposals, fifteen days;

(e) for request for quotations method, five days;

(f) for single sourcing, five days; and

(g) emergency procurement, twenty-four hours.

(6) A procuring and disposing entity shall seek prior approval from the Authority to carry out specific procurement for a shorter bidding period than provided in subsection (5).

59.—(1) A procuring and disposing entity shall set a validity period for a bid that is of sufficient length to enable the procuring and disposing entity to complete the procurement processes up to signing of the procurement contract.

Bid validity
periods

(2) If, prior to the expiry of the validity period of a bid, the procuring and disposing entity requests a bidder to extend the validity period of a bid, it shall address such a request to all the bidders.

(3) A refusal to extend the bid validity period shall not result in forfeiture of the bid security, if a bid security was required in the first place.

(4) The extension of a bid validity period shall be subject to extension of the bid security, if security was required in the first place and without such an extension of the bid security, a bid shall be deemed not extended.

Extension of
deadline for
submission

60.—(1) A procuring and disposing entity may extend the deadline for submission of bids through a written notice which shall be issued promptly to all those that obtained the bidding document.

(2) Subject to subsection (1), where a bid was invited through an open tender, the procuring and disposing entity shall also publish the notice of extension in the media in which the invitation to bid was published.

(3) The extension of the deadline for submission of bids mentioned in subsection (1), may be allowed on the following grounds—

(a) clarification or modification of the bidding documents;

(b) late issuance of minutes of a pre-bid conference or a site visit; or

(c) *force majeure*.

Opening of
bids

61.—(1) A procuring and disposing entity shall open bids at the time and place indicated in the bidding document, and the time of opening of the bids shall coincide with the deadline for submission of bids.

(2) Bidders or their respective representatives may attend the opening of bids at which the names and addresses of the bidders submitting bids, and their prices, shall be read out and recorded.

(3) The attendance of the opening of bids under subsection (2) by a bidder or a respective representative of the bidder may be virtual.

Evaluation of
bids

62.—(1) The procurement and disposing entity shall determine the evaluation method of the procurement and disposal proceedings after considering—

(a) the type and value of the goods, services, or work to be procured or the assets to be disposed of; and

(b) the complexity of the procurement proceedings or disposal requirements, in accordance with this Act and as may be prescribed in regulations.

(2) The procuring and disposing entity shall carry out a bid evaluation, in accordance with the criteria set in the bidding document, and shall commence the evaluation within seven days from the bid opening date.

(3) A procuring and disposing entity may evaluate bids containing non-material deviations, with the deviations being quantified in the manner indicated in the bidding document.

(4) Subject to section 69, a procuring and disposing entity shall not negotiate with bidders as to the substance or prices of their bids.

(5) A procuring and disposing entity may only seek clarifications of bids, and may not solicit or accept changes in the substance or prices of bids.

(6) In the evaluation of bids, a procuring and disposing entity may apply a margin of price preference in favour of domestic or regional bidders in accordance with the regulations, provided that such application has been disclosed in the bidding documents.

(7) A successful bid shall—

(a) in the case of a procurement, be the lowest evaluated bid, subject to any margin of preference provided in this Act; and

(b) in the case of disposal of assets, be the highest evaluated bid.

(8) A procurement and disposing entity shall, for purposes of determining the lowest evaluated bid under subsection (7) (a) have regard to the relevant feasibility study and indicative market price, as the case maybe.

(9) A procurement and disposing entity shall ensure that non-price criteria is, to the extent practicable, objective and quantifiable, and given a relative weight in the evaluation procedure or be expressed in monetary terms, wherever practicable.

(10) A successful bidder shall, prior to the entry into force of the procurement or disposal contract and, if so required, provide security for the performance of the contract.

(11) A procuring and disposing entity shall ensure that sixty per cent of the value of procurements carried out in a financial year under national competitive bidding is reserved for Malawian micro, small and medium sized enterprises and forty per cent is reserved for other bidders.

63.—(1) If upon evaluation, a procuring and disposing entity considers a bid to be unrealistically low, the procuring and disposing entity shall, before rejecting the bid, request in writing, details of the constituent elements of the bid which it considers relevant and shall verify, after due hearing of the party, those constituent elements taking account of the explanations received

Unrealistically low bids

(2) The procuring and disposing entity shall take into consideration explanations relating to—

(a) the economics of the manufacturing process, of the services provided or of the construction methods;

(b) the technical solutions chosen and the exceptionally favourable conditions available to the bidder for the supply of the goods or services, or the execution of the work; and

(c) the originality of the goods, services or works proposed by the bidder.

Processing of
unrealistically
high bids

64.—(1) A person undertaking procurement proceedings shall not process, or abet the processing of, an unrealistically high bid.

(2) A person undertaking disposal proceedings of public assets shall not, process, or abet the processing of an unrealistically high bid.

(3) A person who contravenes this section, commits an offence, and shall, on conviction, be liable to a fine of K5,000,000, and to imprisonment for two years.

Use of
standard
bidding
documents

65.—(1) The Authority shall issue standard bidding documents which shall be used by procuring and disposing entities for use in procurement and disposal proceedings.

(2) The following sections of the standard bidding documents shall form part of the subsequent procurement contract—

(a) *Price Schedule*;

(b) *Priced Bill Quantities or Schedule of Works*;

(c) *General and Special Conditions of Contract*; and

(d) *Technical Specifications, Terms of Reference and Contract Forms*.

Rejection of
bids and
cancellation
of
procurement
and disposal
proceedings
entity

66.—(1) A procuring and disposing entity may reject all bids at any time prior to the acceptance of the bids, without incurring any liability to the bidders.

(2) A procuring and disposing entity may cancel the procurement or disposal proceedings without incurring any liability to the bidders, at any time before completion of the procurement and disposal proceedings, if the—

(a) need for procurement or disposal has ceased to exist;

(b) bidding documents require substantial modification; and

(c) procuring and disposing entity establishes that proceeding with the procurement and disposal may not realize the initial objective.

(3) The cancellation of procurement or disposal proceedings after opening of bids shall be subject to approval by the Internal Procurement and Disposal Committee, and may be authorized if—

(a) the object of the procurement or disposal is no longer required;

(b) there is need to substantially modify the bidding documents;

(c) there is evidence of collusion among bidders in setting bid prices;

(d) there is no substantially responsive bid;

(e) all the substantial responsive bids exceed the budget; and

(f) it is deemed by the procuring and disposing entity that proceeding with the process would compromise achievement of the intended objectives.

67.—(1) A procuring and disposing entity shall not open a bid received after the deadline for the submission of bids, and the bid shall be collected by the bidder that submitted it within five days at its own cost.

Bids received
after deadline
for
submission

(2) A procuring and disposing entity shall note in the record of the procurement and disposal proceedings, the date and time of arrival of a late bid.

68.—(1) A procuring and disposing entity shall not accept a bid—

Unqualified
bids

(a) if the bidder—

(i) is not qualified;

(ii) is debarred or suspended;

(iii) submits an alternative bid contrary to the provisions of the bidding document; or

(iv) does not accept a correction of an arithmetical error made in accordance with regulations;

(b) if the bid is not substantially responsive to the requirements of the bidding documents;

(c) for which a bid security or bid securing declaration was not provided, if such form of security was required by the bidding documents; or

(d) in the circumstances referred to in section 78.

(2) For the purposes of this section, “bid securing declaration” means an undertaking by a bidder, committing to be suspended for a period of time from being qualified to participate in any public procurement activity in the event the bidder violates any of the conditions stated therein.

Negotiations

69.—(1) A procuring and disposing entity may—

(a) in the case of a procurement proceeding, invite the lowest evaluated bidder; and

(b) in the case of a disposal proceeding, invite the highest evaluated bidder,

for negotiations aimed at finalizing the award of the contract.

(2) The Internal Procurement and Disposal Committee shall appoint a negotiation team, and shall include the user department and procurement and disposal unit as members.

(3) A procuring and disposing entity shall not negotiate with a bidder as to the substance or price of the bid; except in the case of single sourcing or where the price of the bid has not been taken into account in the evaluation methodology.

(4) If—

(a) in the case of a procurement proceeding, the negotiations with the lowest evaluated bidder; or

(b) in the case of a disposal proceeding, the negotiations with the highest evaluated bidder,

fail to result in an acceptable contract, the procuring and disposing entity may, by letter addressed to that bidder, terminate the negotiations and invite the next ranked bidder for negotiations, or cancel the procurement or disposal proceeding.

Intention to
award a
contract

70.—(1) The procuring and disposing entity shall publish the notice of intention to award contract in the *Gazette*, in at least one widely circulated national newspaper, on the website of the Authority and on the website of the procuring and disposing entity for a period of fourteen days for any procurement or disposal contract above a threshold set by the Authority, before signing the contract

(2) For purposes of subsection (1) the Authority shall, by notice published in the *Gazette*, set the threshold.

(3) Notwithstanding subsection (1), the Authority may, on an application by the procuring and disposing entity, and stating reasons therefor, authorize a shorter period of publication of the intention to award contract, as the Authority deems fit.

Use of
information
and
communica-
tion
technologies

71.—(1) A procuring and disposing entity shall use the electronic government procurement and disposal system or any other electronic procurement and disposal system that the Authority may prescribe.

(2) Subject to subsection (1), the electronic government procurement and disposal system or any other electronic procurement and disposal system that the Minister may prescribe shall provide for—

- (a) annual procurement and disposal plan preparation planning;
- (b) publication of bidding documents, notices and invitations to bid;
- (c) publication of amendment in bidding documents and explanations for those changes, if any;
- (d) submission and opening of bids;
- (e) bid evaluation;
- (f) requests for information on the bid process;
- (g) publication of procurement contracts subject to the confidentiality provisions under section 34;
- (h) publication of notices of amendments to procurement or disposal contracts subject to the confidentiality provisions under section 34;
- (i) reporting on the status of the procurement or disposal contracts; and
- (j) dissemination of laws, regulations and directives on public procurement and disposal of public assets.

(3) The Authority shall prescribe the manner of procurement or disposal proceedings relating to the matters under subsection (2).

(4) The Authority shall ensure that the electronic government procurement and disposal system or any other electronic procurement is safe and secure in compliance with the Electronic Transactions and Cyber Security Act.

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72.—(1) Subject to a No Objection issued by the Authority in accordance with this Act, a procuring and disposing entity shall prepare and sign the contract with the successful bidder.

Procurement contract

(2) All contracts shall be prepared in the manner prescribed in the appropriate standard bidding document issued by the Authority or any other document approved by the Authority.

73.—(1) Unless otherwise provided in the procurement contract, the contract price stated in a signed procurement contract is considered to be fixed, and shall not be modified in response to changes in economic or commercial conditions, unless inflation changes significantly.

Amendment of a signed procurement contract

(2) All amendments to a signed procurement contract shall—

- (a) include a maximum extension period of twelve months;
- (b) be approved by the Internal Procurement and Disposal Committee;
- (c) if the amendment relates to price adjustment which is above the price adjustment permitted by the procurement contract, be approved by the Authority; and
- (d) be effected, as prescribed in regulations.

(3) All amendments to a signed procurement contract which include an extension period of more than twelve months shall be submitted to the Authority for no objection.

Contract
management

74.—(1) A procuring and disposing entity shall be responsible for the administration of procurement contracts into which they enter, and to that end, they shall establish procedures for contract administration and provide the necessary material and human resources for their implementation.

(2) A procuring and disposing entity may appoint a contract manager, depending on the nature and complexity of the contract, whose main responsibility shall be to ensure that the supplier, contractor or consultant performs the contract in accordance with the terms and conditions specified therein.

(3) A procuring and disposing entity may terminate a procurement or disposal contract on the grounds and terms stipulated in the procurement or disposal contract.

(4) Notwithstanding subsection 3, a procuring and disposing entity may terminate a procurement contract for convenience if it is determined to be in the public interest and subject to payment for works satisfactorily completed or services satisfactorily performed prior to the effective date of termination and for reimbursable expenses actually incurred or for any goods specially manufactured under the procurement contract and reasonable termination costs, but excluding lost profit.

PART IX—SUPPLIERS AND BIDDERS

Eligibility
criteria for
bidders

75.—(1) A bidder shall, in order to be eligible to be awarded a procurement contract—

- (a) be registered with the Registrar of Companies or the Registrar of Business Names, and if applicable, with any professional regulatory, or other entity as may be prescribed;
- (b) be tax compliant;

(c) disclose beneficial ownership in accordance with the Companies Act; and

(d) not be debarred from participating in procurement proceedings under this Act.

(2) In addition to the eligibility criteria contained in subsection (1), a procuring and disposing entity shall not enter into a contract with a bidder if the—

(a) bidder is bankrupt or insolvent;

(b) bidder is in receivership;

(c) the bidder is being wound up;

(d) the affairs of the bidder are being administered by a court or a judicial officer;

(e) business activity of the bidder is suspended; or

(f) the bidder is the subject of legal proceedings.

(3) Subject to the right of bidders to protect their intellectual property or trade secrets, a procuring and disposing entity may require bidders participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may consider necessary to satisfy itself that bidders are qualified in accordance with the criteria referred to in subsection (1).

(4) In handling the information provided under subsection (1), the procuring and disposing entity shall take into consideration the legitimate interests of bidders as regards the protection of their technical or trade secrets.

(5) A procuring and disposing entity shall indicate in bidding documents, the type of documentation, if any, to be provided by bidders to attest to their conformity with the qualification requirements set forth in the bidding documents.

76.—(1) In order to enter into a procurement contract, a bidder shall qualify by meeting the criteria the procuring and disposing entity considers appropriate.

Qualifications
of bidders

(2) The criteria referred to in subsection (1) may concern—

(a) the legal capacity;

(b) professional and technical qualifications;

(c) financial resources and condition;

(d) equipment and other physical facilities;

(e) personnel and managerial capability; and

(f) past performance, including history of legal disputes, conviction of a bidder, or its directors or officers, of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement proceedings.

Suppliers data
bases or lists

77.—(1) The Authority shall organize and maintain a centralized system, in the form of a database or list, to provide centralized information on potential suppliers of goods, works or services.

(2) A procuring and disposing entity may organize and maintain its own system or database of potential suppliers, and shall submit such list to the Authority for approval prior to its use.

(3) The Authority shall open database or list of potential suppliers, shall register a qualified supplier into the database or list within Thirty days from receipt of request, at a prescribed fee.

(4) The Minister shall, in consultation with the Authority, prescribe fees and procedures for compilation and maintenance of the databases and the lists.

Conduct of
bidders and
suppliers

78.—(1) A bidder and a supplier shall not engage in or abet—

(a) corrupt practices, such as the offering of improper inducements;

(b) fraudulent practices, including misrepresentation of facts in order to influence a procurement process or the execution of a contract; and

(c) collusion among bidders, prior to or after bid submission, designed to establish bid prices at artificial, and non-competitive levels, to deprive the procuring and disposing entity of the benefits of free and open competition.

(2) Any information concerning the occurrence or attempt of malpractices in subsection (1) shall be reported immediately to the head of the procuring and disposing entity, to the Authority and to the relevant law-enforcement authorities.

Debarment of
suppliers and
contractors

79.—(1) The Authority may exclude a supplier, contractor, consultant or any bidder from participation in public procurement for any misconduct prescribed in this Act in accordance with procedures set out in regulations.

(2) A supplier or a bidder may be excluded from participation in public procurement and disposal proceedings on the following grounds—

(a) supplying false information in the process of submitting a bid or prequalification application;

(b) collusion between the bidders or a bidder and a public official concerning the formulation of any bidding documents or any part of bidding documents;

(c) interference by the supplier or bidder with the participation of competing bidders;

(d) misconduct relating to the submission of bids, including corruption, price fixing, a pattern of under-pricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;

(e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract;

(f) conviction for an offence related to dishonesty or fraud in a professional activity;

(g) submitting a bid which contains inaccurate or inadequate information with a view to misleading a procuring and disposing entity or the Authority regarding the eligibility or responsiveness of its bid;

(h) refusing, where no bid security is required, to accept an award made to it, within the bid validity period, and to enter into a contract with a procuring and disposing entity, except in a situation of *force majeure*;

(i) repeated failure, in the performance of one or more contracts, to comply with the terms and conditions, or the specifications, of the contract, as the case may be;

(j) committing a material breach of contract; or

(k) without the prior written approval of the procuring and disposing entity, unlawfully assigning or subcontracting any of its obligations under a contract.

(3) A bidder or supplier who has been found liable for the misconduct after the hearing shall be excluded from public procurement for a period commensurate with the gravity of the misconduct as prescribed in the regulations.

(4) The owners and the directors of a bidder or supplier that has been found liable for the misconduct under subsection (3) shall be excluded from public procurement and disposal of public assets for a period commensurate with the gravity of the misconduct as prescribed in the regulations.

(5) A bidder or supplier aggrieved by a decision of the Authority may make an application to High Court for judicial review.

PART X—PROCUREMENT INTEGRITY

Conduct
of public
officials

80.—(1) A public official involved in requisitioning, planning, preparing and conducting procurement proceedings, disposal processes, and implementation of procurement and disposal contracts, shall—

(a) discharge his or her duties impartially so as to ensure fair and competitive access to procurement opportunities by suppliers;

(b) always act in the public interest, and in accordance with the objectives and procedures set out in this Act;

(c) at all times, avoid conflicts of interest, and the appearance of impropriety in carrying out his or her duties and conducting themselves, and shall not interfere in the work of the Internal Procurement and Disposal Committee;

(d) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements;

(e) not interfere with or exert undue influence on any person to effect a procurement or disposal activity or decision;

(f) keep confidential any information that comes into his or her possession relating to procurement proceedings or disposal processes, including bidders' proprietary information; and

(g) not, for a period of two years after leaving the public service, get involved in the implementation of a procurement contract on behalf of a private organization with his or her previous employer.

(2) A procuring and disposing entity shall disclose to any party with an interest in the procurement or, disposal process, during and after the procurement or disposal proceedings, all the information which may materially affect the implementation of the procurement or disposal process as prescribed in the regulations.

(3) A procuring entity carrying out procurement for works or consultancy services in the construction industry shall disclose all material project information and shall comply with the principles of transparency and accountability at all stages of the project life cycle inclusive of pre-contract and post-contract process as prescribed in the regulations.

(4) For purposes of this section, "undue influence" means pressure or influence exerted on a public official to make a decision in favour of the person exerting such pressure or influence or anyone connected to him or her.

81. The Authority may promulgate codes of conduct to guide the behaviour of public officials and bidders and suppliers conduct for involved in public procurement or disposal processes.

Codes of conduct for public officials and suppliers

PART XI—ADMINISTRATIVE REVIEW AND APPEAL

82.—(1) A bidder that claims to have suffered, or that may suffer loss or injury due to breach of a duty imposed on the procuring and disposing entity, or the Authority may seek a review in accordance with this Part.

Right to review

(2) The following shall not constitute grounds for the review under subsection (1)—

(a) the choice of a selection procedure in request for proposals for services, in accordance with the regulations;

(b) a decision by the procuring and disposing entity under section 66 to reject all bids, proposals, offers or quotations; and

(c) a refusal by the procuring and disposing entity to respond to an expression of interest in requests for proposals for consultancy services under section 43.

83.—(1) A bidder shall submit an application for a review under to section 82—

Review procedures

(a) during the period of intention to award a contract; or

(b) within fourteen days of the bidder submitting the application and becoming aware of the circumstances giving rise to the application or when that bidder should have become aware of those circumstances, whichever is earlier.

(2) An application in subsection (1) shall be made, in writing, to the Controlling Officer.

(3) A bidder who is not satisfied with a response from the Controlling Officer may make an application in writing to the Authority.

(4) An application made to the Authority under subsection (3) shall be accompanied by the prescribed fees.

(5) The Authority or a Controlling Officer shall not entertain the application for review unless—

(a) it was submitted within the period of the publication of an intention to award a contract for procurement or disposal proceedings whose estimated values are above a set threshold; or

(b) for all procurement and disposal processes below the set threshold, it was submitted within fourteen days of the bidder

submitting the application becoming aware of the circumstances rise to the application, or when the bidder should have become aware of those circumstances, whichever is earlier.

(6) Where an application for review is made to the Authority in accordance with subsection (3), the Authority shall convene three-member technical committee from the technical officers which shall hear the application for review brought to the Authority, and make recommendations to the Authority.

(7) Upon receipt of the application for review under this section, the procurement or disposal proceedings shall be suspended for ten days.

(8) The suspension period in subsection (7) may be extended to thirty days in cases where the dispute has not been resolved.

(9) A Controlling Officer, as the case may be, shall render a decision on the application within fourteen days of the submission of such application.

(10) Unless the application is dismissed, the Authority may, in respect of an application under this section—

(a) prohibit the procuring and disposing entity from acting or deciding unlawfully or from following an unlawful procedure;

(b) annul, in whole or in part, an unlawful act or decision of the procuring and disposing entity, other than any decision bringing the procurement contract into force;

(c) revise an unlawful decision by the procuring and disposing entity or substituting its own decision for such decision, other than any decision bringing the procurement contract into force;

(d) compel the procuring and disposing entity to pay the successful applicant its costs of preparing and submitting a bid and application for the review;

(e) compel applicant to pay the costs of the review; and

(f) report the public official who committed the misconduct to relevant oversight bodies for disciplinary action and prosecution.

(11) Any decision of the Authority shall be subject to review by the High Court.

PART XII—INVENTORY CONTROL, ASSET AND STORES MANAGEMENT AND DISTRIBUTION

Stores
management

84.—(1) Subject to the Public Finance Management Act, a procuring and disposing entity shall use a stores management and control system to assist the procuring and disposing entity meet the objectives of sound supply chain management.

(2) A procuring and disposing entity shall establish a Stores or Supplies Unit, which shall be staffed by qualified supply chain professionals registered under the Malawi Institute of Procurement and Supply Act, and assign to such a Unit authority to conduct stores and supplies activities in accordance with this Act.

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(3) A person who manages stores shall not be involved in procurement within the procuring and disposing entity.

85.—(1) A procuring and disposing entity shall—

Management
of procured
goods

(a) ensure that goods procured are received;

(b) not use the goods until they are recorded in the inventory;
and

(c) use the goods for the intended purpose.

(2) The head of the stores unit shall, submit the following reports to the Controlling Officer—

(a) quarterly inventory management report;

(b) quarterly stores inspection report;

(c) quarterly stock taking reports;

(d) annual stock taking report; and

(e) any other reports as directed and requested

(3) A Controlling Officer shall—

(a) submit the reports referred to in subsection (2) to the Authority;

(b) ensure the inspection of the stores at least quarterly in each calendar year; and

(c) conduct quarterly and annual inventory analysis and stock taking.

(4) A procuring and disposing entity shall—

(a) put measures in place to ensure that stores do not deteriorate from any preventable cause; and

(b) avoid overstocking of any particular item.

(5) A procured item assigned for use by an office holder shall be requisitioned from stores and issued by a stores officer of a procuring and disposing entity.

PART VIII—COMPLIANCE, MONITORING AND ENFORCEMENT

86.—(1) The Authority may, by notice in writing, require a procuring and disposing entity, or any other person the Authority

Supply of
information
by procuring
and disposal
entity

considers has relevant information, to furnish it with information that it may require for the performance of its functions and exercise of its powers in terms of this Act.

(2) A procuring and disposing entity or person with information sought by the Authority shall furnish the Authority with the information within ten working days of receipt of the notice for a request of information under subsection (1).

(3) A procuring and disposing entity or person who fails to furnish the information required by the Authority under subsection (2), commits an offence.

Investigations
and
inspections

87.—(1) The Authority may, where the Authority has reasonable grounds to believe, either on its own motion or at the request, in writing, by any person, that there is a contravention of this Act, direct, in writing, an inspector to investigate the breach and report the findings of the investigation to the Authority.

(2) The Authority may, at any reasonable time, inspect the records and accounts of a procuring and disposing entity, supplier or bidder relating to the procurement and disposal proceedings or contract and the procuring and disposing entity and supplier or bidder shall co-operate with, and assist the inspector.

(3) Where the Authority is satisfied that an investigation should be conducted under subsection (1), the Authority may conduct audits—

(a) during the tender preparation;

(b) in the course of execution of an awarded contract; and

(c) of the performance of a contract in respect of any procurement as may be required.

(4) The Authority shall, on the commencement of an investigation under subsection (1)—

(a) suspend the procurement proceedings until the conclusion of the investigation; and

(b) issue a written decision, within ten working days of the commencement of the investigation.

Appointment
of inspectors

88.—(1) The Authority shall appoint suitably qualified persons as inspectors for the purpose of ensuring compliance with this Act.

(2) The Authority shall provide an inspector with a certificate of appointment, in the prescribed form, which shall be prima facie evidence of the inspector's appointment.

(3) An inspector shall, in performing a function under this Act—

- (a) be in possession of the certificate of appointment; and
- (b) show the certificate of appointment to a person who requests to see it or who is subject to an investigation under this Act.

89.—(1) An inspector may, with a warrant, enter premises where information, documents or articles which may be relevant to an investigation may be kept and—

Powers of
inspectors

- (a) search the premises;
- (b) search a person on the premises if there are reasonable grounds for believing that the person has personal possession of a document or article that has a bearing on the investigation, except that a person shall only be searched by a person of the same sex;
- (c) examine a document or article found on the premises that has a bearing on the investigation;
- (d) take extracts from or make copies of any book or document found on the premises that has bearing on the investigation;
- (e) use a computer system on the premises, or require the assistance of a person on the premises to use that computer system, to—
 - (i) search any data contained in, or available from, the computer system;
 - (ii) reproduce any record from the data; or
 - (iii) obtain information from the computer for examination and copying; or
- (f) attach and, if necessary, remove from the premises, for examination and safeguarding, any document or article that appears to have a bearing on the investigation.

(2) An inspector who removes a document or article from any premises in accordance with subsection (1) shall—

- (a) issue a receipt for the document or article to the owner, or person in charge or in control, of the premises; and
- (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.

90. An inspector shall, after completing an investigation or inspection under section 87, submit a written report relating to the investigation or inspection to the Authority within a period the Authority may specify.

Report of
investigation
and
inspection

91.—(1) The Authority may, after considering the report of an Inspector made under section 90 and on being satisfied that there is a breach of this Act—

Powers of the
Authority in
investigation
and
inspection

(a) direct the procuring and disposing entity to take actions that are necessary to rectify the contravention;

(b) terminate the procurement and disposal proceedings;

(c) prepare and submit a summary of the inspector's findings and recommendations to the relevant authorities for action; or

(d) require the procuring and disposing entity to transfer procuring or disposal responsibilities of the subject procurement or disposal to another procuring and disposing entity.

(2) The Authority shall, before making an order under subsection (1), give the procuring and disposing entity and any other person whose legal rights the Authority believes may be adversely affected by the order, an opportunity to be heard.

PART IV—MISCELLANEOUS

Oath of
secrecy

92. Every—

(a) member of the Authority;

(b) member of a committee of the Authority;

(c) member of staff of the Authority;

(d) members of the Internal Procurement and Disposal Committee, procurement and disposal unit, *ad-hoc* evaluation team, and board of survey; or

(e) person invited to attend a meeting of the Authority pursuant to section 9(8),

shall, upon assumption of his or her office or before attending the first meeting, take an oath of secrecy in the form set out in the *Schedule*.

Disclosure of
interest

93.—(1) A member of the Authority or a committee of the Authority and a person invited to attend a meeting of the Authority or any of its committees who has a direct or indirect interest in any matter before the Authority or any of its committees, shall disclose the interest as soon as is practicable before or soon after the commencement of the meeting and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

(2) A disclosure of interest made under this subsection (1) shall be recorded in the minutes of the meeting of the Authority, or a committee as the case may be.

(3) Where a person fails to disclose interest in accordance with subsection (1) and the Authority or committee of the Authority makes

a decision which benefits that person, a close relative, or a professional or business partner of that person, the decision shall, to the extent that it benefits that person, the close relative, professional or business partner, be null and void.

(4) A member of the Internal Procurement and Disposal Committee, *ad-hoc* evaluation team, board of survey, and procurement and disposal unit who has a direct or indirect interest in any matter before the procuring and disposal unit, shall disclose the interest as soon as is practicable before or soon after the commencement of the meeting and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

(5) A disclosure of interest made under subsection 4 shall be recorded in the minutes of the meeting of the Internal Procurement and Disposal Committee, *ad-hoc* evaluation team, board of survey, procurement and disposal unit as the case may be.

(6) Where a person fails to disclose interest in accordance with subsection (5) and the Internal Procurement and Disposal Committee, *ad-hoc* evaluation team, board of survey, and the procurement and disposal unit makes a decision which benefits that person, a close relative, or a professional or business partner of that person, the decision shall, to the extent that it benefits that person, the close relative, professional or business partner, be null and void

94.—(1) Every member of the Authority or committee of the Authority, shall maintain, during or twenty-four months after the member's relationship with the Authority, or the committee the confidentiality of any matter relating to this Act which comes to that person's knowledge in the course of duty.

Post-engagement restrictions

(2) Every member of the Internal Procurement and Disposal Committee, procurement and disposal unit, *ad-hoc* evaluation team, and board of survey, shall maintain, during or twenty-four months after the member's relationship with the procuring and disposing entity, the confidentiality of any matter relating to this Act which comes to that person's knowledge in the course of duty.

(3) A person who, without lawful excuse, contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000, and to imprisonment for twelve months.

95. A member, and every member of staff or employee, of the Authority shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of duties or functions under this Act.

Protection from liability

Offences

96.—(1) A person who contravenes the provisions of this Act commits an offence.

(2) A person who commits an offence under this Act for which no penalty has not been prescribed, shall, on conviction, be liable to—

(a) in the case of an individual, a fine of K1,000,000, to imprisonment for twelve months; and

(b) in the case of a body corporate, a fine of K5,000,000.

Regulations

97.—(1) The Minister may, on the recommendation of the Authority, make regulations for implementing the provisions of this Act and prescribing all matters which are necessary or contingent to be prescribed for better carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(a) registration of suppliers;

(b) procedures on framework agreement;

(c) preferences, reservations and set-asides;

(d) administrative reviews;

(e) debarment of suppliers and bidders;

(f) community participation;

(g) procedures for disposal of public assets;

(h) procurement of national security services;

(i) design context;

(j) guidelines for prequalification;

(k) procurement thresholds;

(l) electronic Government procurement;

(m) electronic Government market;

(n) sustainable procurement;

(o) procedures for procurement of works, consultancy services, medicines, medical supplies and information and communication technology equipment and services;

(p) micro, small and medium enterprises;

(q) levy, fees and charges payable under the Act;

(r) force account; and

(s) anything required to be prescribed under this Act

(3) Notwithstanding section 21 (e) of the General Interpretation Act, the regulations made under this Act may create offences in

respect of any contravention to the regulations, and may for any such contravention impose a fine of up to K2,000,000, and imprisonment for twelve months.

98.—(1) Subject to section 99, the Public Procurement and Disposal of Assets Act, is hereby repealed.

Repeal and
savings
Cap. 37:03

(2) All subsidiary legislation made under the Public Procurement and Disposal of Assets Act, repealed by subsection (1), and in force immediately before the commencement of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(3) Notwithstanding subsection (1), every prior review, investigation, inquiry, administrative review, debarment proceedings, procurement contract, post procurement review, order, direction or appointment issued, given or made pursuant to the Public Procurement and Disposal of Assets Act, repealed by subsection (1), shall be valid until otherwise cancelled, revoked or varied under the provisions of this Act.

99.—(1) The person holding the office of Director General of the Authority immediately before the commencement of this Act shall assume the office of the Director General in accordance with the provisions of this Act.

Transitional
provisions

(2) Every person holding office as an employee of the Public Procurement and Disposal of Assets Authority immediately before the commencement of this Act shall continue to hold such office in the Authority on no less favourable terms and conditions of employment than those under the employment with Public Procurement and Disposal of Assets Act, repealed by subsection (1).

(3) Every undertaking by the Public Procurement and Disposal of Assets Authority under the Public Procurement and Disposal of Assets Act, repealed by subsection (1), shall continue to have effect or be undertaken by the Authority in accordance with the provisions of this Act.

SCHEDULE

(s.92)

OATH OF SECRECY

I,....., being a member of the Board/member of a committee of the Board /member of staff of the Board / having been invited to attend a meeting of the Board or committee of the Board, do hereby swear/affirm that I will freely without fear or favour, affection, or ill-will, discharge the functions of a member/member of staff /invitee of the Board and

that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God/Allah.

SWORN atthis day of.....,20....

Deponent

Before me:

Commissioner for Oaths

Passed in Parliament this seventeenth day of December, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament