

**PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) ACT, 2008**

No. 12



of 2008

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Public Procurement and Asset Disposal Act.

Date of assent: 27th June, 2008

Date of Commencement: On notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2008, and shall come into operation on such date as the Minister may, by order, appoint.

Short title

2. The Public Procurement and Asset Disposal Act (hereinafter referred to as “the Act”) is amended in section 2 by substituting for the definition of the word ‘disposing entity’ the following definition —
“disposing entity” means any Ministry or department duly authorised to engage in public procurement.”

Amendment
of section 2 of
Cap. 42:08

3. Section 3 of the Act is amended by the insertion, immediately after paragraph (a), of the following new paragraphs —

Amendment
of section 3

(aa) all land boards;

(ab) all parastatals, statutory organisations and local authorities, in accordance with the provisions of section 8, except where exempted by the Minister by notice published in the Gazette.

4. Section 15 of the Act is amended by substituting for paragraph (g), the following new paragraph —

Amendment
of section 15

“(g) becomes a member of the National Assembly or a Councillor of a local authority.”

Amendment of section 44

5. The Act is amended by substituting for section 44 the following section —

“Retroactive approval

44. (1) Subject to subsection (2), there shall be no retroactive approval by the Board or its Committees of any bid issued or invitation to tender by a procuring or disposing entity;

(2) The Board may resolve to issue a retroactive approval of any bid issued or invitation to tender where it is satisfied that a procuring or disposing entity was required to proceed with the bid or invitation due to an urgent requirement or emergency arising from special circumstances; and

(3) The Minister may, by Order, prescribe the special circumstances that the Board shall consider as sufficient to justify the issuing of a retroactive approval of any bid issued or invitation to tender.”

Amendment of section 48

6. The Act is amended by substituting for section 48 the following section —

“Recommendation of systemic improvements

48. The Board shall, periodically, in consultation with Public Oversight Agencies, make recommendations to the Permanent Secretary on policy and negotiation positions the Government should consider adopting, that might best suit the country’s interests, at external fora where the agenda includes issues the resolution of which could impact upon domestic procurement or asset disposal as well as to propose amendments to the Act.”

Amendment of section 58

7. Section 58 of the Act is amended by the repeal of subsection (5) and the insertion, immediately after subsection (4), of the following new subsections —

“(5) The Board shall prepare, for each financial year —

(a) a financial report that consists of —

(i) balance sheets and the other financial statements for the year, as required by applicable accounting standards;

(ii) notes to the financial statements, as required by applicable accounting standards; and

(iii) an annual report.

(6) The financial report shall include all information necessary to give a true and fair view of the financial position and performance of the Board.

(7) The annual report for a financial year shall report on the Board operations and affairs during the year.

(8) The Board shall cause the financial report for a financial year to be audited by an auditor appointed by the Board and approved by the Minister, and shall obtain the auditor’s report.

(9) The auditor shall audit the financial report and report to the Board whether, in his or her opinion, the financial report gives a true and fair view of the state of affairs of the Board as at the end of the financial year to which it relates, and where the auditor is not of that opinion, the report shall state the reason.

(10) The Board shall, within six months after the end of a financial year or such longer period as the Minister may approve, give the Minister a copy of the financial report and the annual report for the financial year, and of the auditor's report on the financial report.

(11) As soon as practicable after the three reports referred to in subsection (10) have been given to the Minister, they shall be laid before the National Assembly.

(12) The Auditor General shall, if the Minister so directs, examine and report on the accounts of the Board on any aspects of its operations, and the Board shall give the Auditor General all necessary facilities for that purpose."

8. The Act is amended by substituting for section 72 the following section —

"Procurement preferences and reservations schemes

72. (1) The Minister may prescribe all and reservations schemes procurement preferences or reservations schemes applicable, and such procurement preferences or reservations shall be expressly provided for in the evaluation criteria section of the bidding packages to which they are applicable.

(2) The Board shall ensure that all procuring or disposing entities when preparing bidding packages, or evaluating bid proposals comply with the provisions of this Act in respect of reservation and preference schemes as may be prescribed by the Minister.

(3) The issuance of any bidding package to which the prescribed reservation or preference scheme is applicable without inclusion of the prescribed reservation or preference scheme, shall, in terms of section 35 (3), be invalid."

Amendment of section 72

9. The Act is amended by substituting for section 104 the following section —

"Requirements in respect of grievances

104. A party to a dispute who does not get a satisfactory response to his or her grievances may refer a written complaint to the —

(a) Independent Committee, after following the applicable review procedures of the Board;

(b) High Court, after following the applicable review procedures of the Independent Committee.'.

Amendment of section 104

10. The Act is amended by substituting for section 124 the following section —

"Suspension and de-listing from register

124. A contractor who does not comply either with the code of conduct or the contract concluded with a procuring entity may be suspended or delisted by the Board from the Register of Contractors."

Amendment of section 124

PASSED by the National Assembly this 10th day of April, 2008.

E.S. MPOFU,
Clerk of the National Assembly.