



PARLIAMENT OF UGANDA

**REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC
DEVELOPMENT ON PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS AUTHORITY (AMENDMENT) BILL, 2019**

OFFICE OF THE CLERK TO PARLIAMENT
KAMPALA,
UGANDA

1.0 Introduction

The Public Procurement and Disposal of Public Assets (Amendment) Bill, 2019 was read for the first time on the 30th July 2019 and referred to the Committee on Finance, Planning and Economic Development in accordance with Rule 128 of the Rules of Procedure of Parliament.

2.0 Object of the Bill

The object of the Bill is to amend the Public Procurement and Disposal of Public Assets Act with respect to the functions of the Authority and the functions of the Board of Directors of the Authority. The Bill further provides for electronic records and communication, the aggregation of procurement requirements and the inclusion of marginalized groups under reservation schemes. The Bill proposes to streamline the administrative review process and provides for appointment of a Registrar of a Tribunal, the powers of the High Court in procurement proceedings and amends the Kampala Capital City Authority Act and the Local Government Act with respect to amendments.

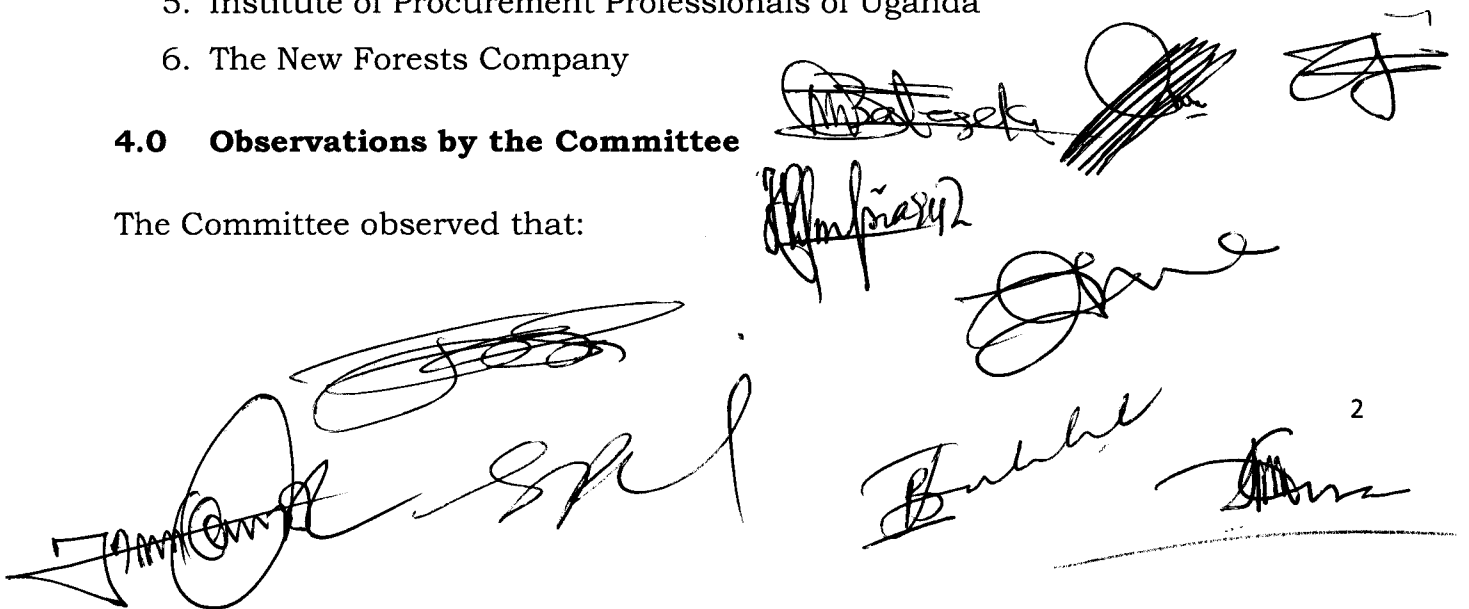
3.0 Methodology

The Committee held meetings and received memoranda from the following:

1. Minister of Finance, Planning and Economic Development
2. Public Procurement and Disposal of Public Assets Authority
3. Institute of Certified Public Accountants
4. Uganda Law Society
5. Institute of Procurement Professionals of Uganda
6. The New Forests Company

4.0 Observations by the Committee

The Committee observed that:



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- (i) The Bill proposes to alienate powers to conduct an investigation from the Authority. Generally as a principle, whenever law establishes an Authority and bestows to it powers to manage a particular activity, the same will always empower such Authority with the mandate to institute investigations in-case of any misconduct. The proposed amendment is negating that as it is seeking to repeal the investigative powers, ability to summon witnesses, examination of parties among others, which in actual fact may not be desirable for a supervisory entity. The Authority should retain the power to investigate and act on complaints that are not subject of administrative review. The power is necessary to enable the Authority to effectively execute its mandate to *'administer and enforce compliance with all the provisions of the Act as specified in section 7(c) of the Act'*
- (ii) The Bill seeks to give the Minister and the Attorney General the mandate to approve "other methods of procurement" particularly in respect to procurement of complex, specialized and strategic goods. This opens a window for discretion and hence likely abuse of the process. It will also draw the Minister responsible for Finance into the procurement and make him or her equally accountable with the Accounting Officer. The Act places overall responsibility of the procurement with the Accounting Officer and therefore the Minister should not be brought to the operational level of approving methods or procurement nor the Attorney General.
- (iii) The PPDA Act, 2003 has been major challenge to speedy implementation of government projects. This is supplemented by public officers/people engaged in execution of procurement processes and facilitated by the weak sanctions under the current law which need to be addressed. There is need to strengthen sanctions for breaching the legal framework for all respective stakeholders and

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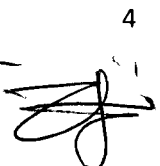
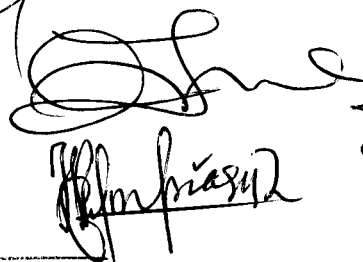

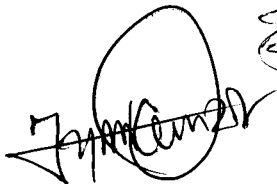
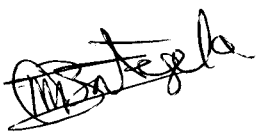
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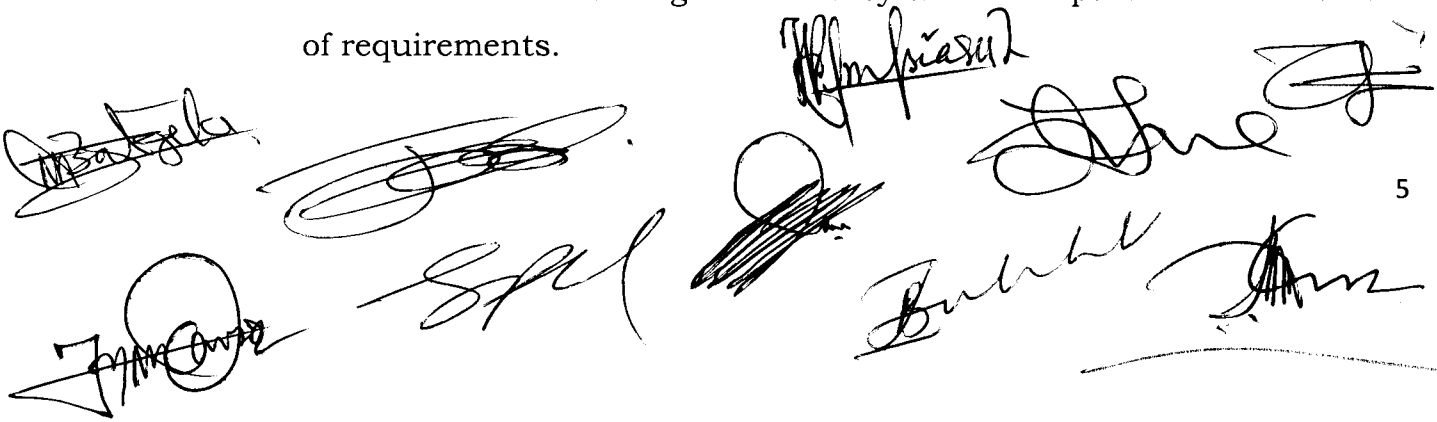
reduce the length of procurement timelines in order to improve efficiency.

- (iv) The bill proposes to remove PPDA from the Administrative Review process. This will reduce the levels of administrative review from 3 to 2. The introduction of the PPDA Appeals Tribunal in 2011 was due to the backlog in the commercial court which was delaying government projects. However, the existing administrative review levels of Accounting Officer and PPDA were never reviewed as had been proposed. This led to the lengthy review periods in the law as they were increased to three levels. PPDA should be removed since it's a regulator to reduce time spent during administrative review and speed up the procurement process. Removal of PPDA from the administrative review will increase the workload on the PPDA Appeals Tribunal. There is need to increase the number of members of the tribunal so that they can be able to have different panels sitting at the same time and avoid delays in handling administrative reviews.
- (v) Regulatory Authorities regulate through issuance of guidelines from time to time based on the changing operating environment. However, the bill seeks to amend section 97 of the Principal Act by substituting the "Authority" with "Minister" and thereby removing the regulatory function of issuing guidelines from the Authority to the Minister. The Minister should be in charge of policy, laws and regulations as is the government practice. The regulator should be responsible for issuing guidelines since it is working closely with the procuring entities and is better placed to issue guidelines depending on the changing environment.
- (vi) The bill seeks to provide for management of unsolicited bids which are submitted to the procuring and disposing entity to be subjected to the



requirements of Part V and Part VI of the PPDA Act. Part V of the PPDA Act provides for public procurement and disposal rules while part VI provides for methods of procurement and disposal. However, it is not possible to subject unsolicited bids to the provisions of Part V and Part VI as they envisage a requirement in the budget and the procurement plan. Unsolicited bids cannot be subject to competition. Putting them in the law will bring distortion of work plans, procurement plans and budgets. This will also bring a conflict with the provisions of the Public Finance Management Act under which the procurement budgets are approved.

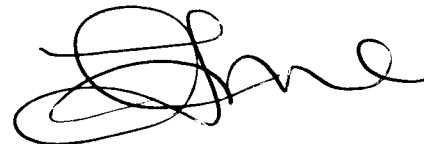
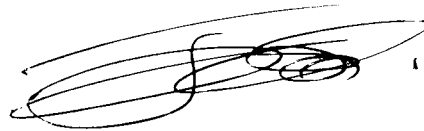
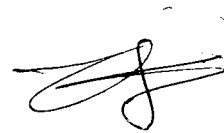
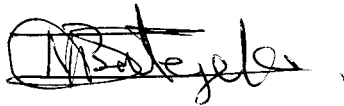
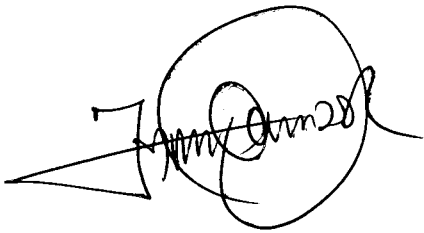
- (vii) The bill seeks to transfer the function of accreditation from the Authority to the Ministry of Finance, Planning and Economic Development. During the implementation of the PPDA Act, there were several situations where it is difficult to strictly apply the law. In such situations, the current law under S.40A was amended to give the Authority mandate to consider special circumstances and grant accreditation to allow use of alternative systems. The Authority has established a credible system of accreditation which it is using to manage special circumstances. The Authority has to date received thirty-five requests but has only accredited 13 as other requests couldn't meet the set criteria. This is a matter of operation that should be handled by the PPDA with the Procuring entities. The Ministry of Finance should handle policy matters for which this is not one.
- (viii) The bill seeks to provide for sustainable procurement. The concerns of environmental protection, social inclusion and stimulating innovation should be made part of the procurement principles since there maybe difficulties in evaluating them if they are made part of the statement of requirements.



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50. Recommendation

The Committee recommends that the Public Procurement and Disposal of Public Assets (Amendment) Bill, 2019 be passed into law subject to the proposed amendments.



AMENDMENTS TO THE PPDA (AMENDMENT) BILL, 2019

1. Insertion of new amendment

Section 2 of the Public Procurement and Disposal of Public Assets Act, 2003 in this Act referred to as the principal Act is amended by substituting for the definition of "Authority" the following-

"Authority" means the Public Procurement Regulatory Authority;"

Justification

To create difference between the title to the Act being 'the 'Public Procurement and Disposal of Public Assets Act, 2003' and the Regulator, being the Authority.

2. Clause 3: Amendment of section 3 of principal Act

Clause 3 is amended-

- (i) by deleting paragraph (f); and
- (ii) by deleting paragraph (g)

Justification

- (1) The Authority should be left with the mandate to issue guidelines on the implementation of the Act; and
- (2). The amendment makes it compulsory that all procurement specialists should be certified or registered by a procurement professional body and yet currently in Uganda, there is no regulatory body in Uganda to register procurement professionals.

3. Clause 4: Insertion of new section 4B in principal Act

Clause 4 is amended by deleting the words "principles and practices" in 4B(1)

Justification

The Ministry should be left to handle policy issues and the operational issues such as the practices should be left with the Authority.

4. Insertion of new amendment in the Bill

Section 5 of the principal Act is amended by substituting for sub section (1) the following;

“(1) There is established an autonomous body to be known as the “Public Procurement Regulatory Authority, in this Act referred to as the “Authority”.”

Justification

Consequential amendment of section 3 of the principal Act.

5. Clause 5: Amendment of section 7 of principal Act

Clause 5 is amended-

- (i) by deleting paragraph (b);
- (ii) by deleting paragraph (c);
- (iii) by deleting paragraph (d); and
- (iv) by deleting paragraph (e).

Justification

(1) Restricting the regulator to only monitoring and making a report without providing advice on desirable changes makes the regulator redundant; and

(2) To mandate the Authority to issue guidelines on objectives and functions of the Act..

6. Clause 6: Amendment of section 8 of principal Act

Clause 6 is amended by-

- (i) deleting paragraph (a) subparagraph (1) (b);
- (ii) deleting paragraph (c); and
- (iii) substituting for paragraph (b), the following;

“to investigate and act on complaints received on procurement and asset disposal proceedings from procuring and disposing

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entities, bidders, contractors or the general public that are not the subject of administrative review".

Justification

- (1) If the Authority is to retain the power to require information, documents and records as specified in clause (8)(1)(a), it should retain the power to summon witnesses.
- (2) The Authority should retain the power to investigate and act on those complaints.

7. Clause 7: Amendment of section 8 of principal Act

Clause 7 is amended by deleting paragraph (b)

Justification

Consequential amendment of the Authority retaining the power to investigate complaints that are not a result of administrative review

8. Clause 15: Amendment of section 26 of principal Act

Clause 15 is amended-

- (i) in sub paragraph (a) (fa) by substituting for the word "Minister", the word "Authority"; and
- (ii) in paragraph (c) by substituting for the word "Minister", the word "Authority"

Justification

1. The Authority should be left with the mandate to issue the guidelines in regard to prices;
2. The Accounting Officer should be left with the mandate to undertake an assessment of the market price of the supplies or services or the unit cost of the works prior to commencement of a procurement.



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9. Clause 17: Amendment of section 29 of principal Act

Clause 17 should be substituted with the following-

"Amendment of section 29 of principal Act

Section 29 of the principal Act is amended-

- (i) by renumbering the existing provision as (1);
- (ii) by substituting the words "awards of contracts" appearing at the beginning of paragraph (c) with the words "make award decisions"; and
- (iii) inserting immediately after subsection (1) the following-
"A decision under this section shall be made within ten working days upon receipt of a submission from the procuring and disposal unit." "

10. Clause 18: Amendment of section 40A of principal Act

Clause 18 should be deleted

Justification

The operational issues should be left with the Authority while the Minister should be left to handle the policy related issues.

11. Clause 22: Amendment of section 58 of principal Act

Clause 22 is amended by deleting paragraph (b)

Justification

The Authority should retain the power to issue guidelines in respect of the format of the procurement plans.

12. Clause 24: Insertion of new section 61A in principal Act

Clause 24 should be deleted

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Justification

The concerns of environment protection, social inclusion and stimulating innovation should be made part of the procurement principles since there may be difficulties in evaluating each and every procurement if they are made part of the statement of requirements.

13. Clause 25: Insertion of new section 66A in principal Act

Clause 25 should be deleted

Justification

Requiring procuring and disposing entities to entertain unsolicited bids defeats the principles of procurement namely transparency, efficiency, competition among others.

14. Clause 27: Insertion of section 73A in principal Act

Clause 27 should be deleted

Justification

Market dynamics should determine the best price and performance guarantees can be called into play, in the event the bidder fails to perform.

15. Clause 30: Amendment of section 79 of principal Act

Clause 30 is amended by deleting paragraph (c)

Justification

The Minister should be left to handle the policy issues and the operational matters should be left with the Authority.

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16. Clause 34: Insertion of new section 88AA in principal Act

Clause 34 should be deleted

Justification

- (1) Determination of the method of procurement should be the mandate of the Authority and not the Attorney General or the Minister;
- (2) The proposal will stifle the procurement process since the entity cannot plan for this method of procurement; and
- (3) Public and disposing entities should be able to hire technical expertise to assist develop technical specifications, in case of complex requirements

17. Clause 35: Repeal of section 88L of principal Act

Clause 35 should be deleted

Justification

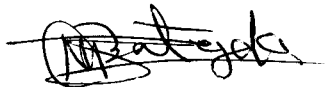
The international contracting agreements should be retained.

18. Clause 36: Replacement of section 89 of principal Act

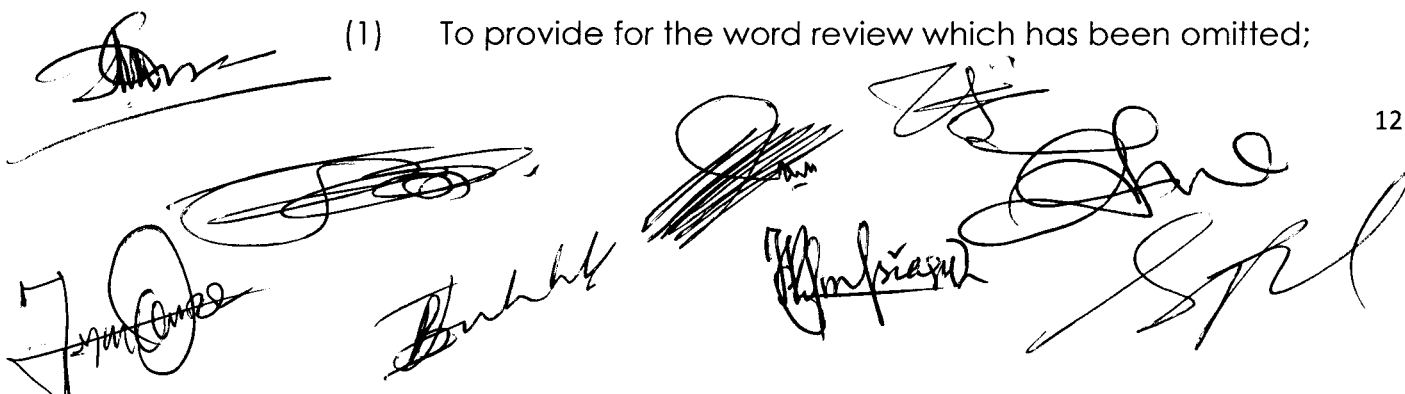
Clause 36 is amended-

- (i) in 89 (2) by inserting the word "review" immediately after the word "administrative"
- (ii) in 89 (7)-
 - (a) by inserting the words " and communicate" immediately after the word "make" and
 - (b) by inserting the word "working" immediately after the word "ten"
- (iii) in 89 (8)-
 - (a) by inserting the words "and communicate" immediately after the word "make" and
 - (b) by inserting the word "working" immediately after the word "ten"
- (iv) by deleting 89(12)

Justification



- (1) To provide for the word review which has been omitted;



- (2) Use working days as opposed to merely days
- (3) The decision of the accounting officer must not only be made but it must be communicated to the complainant.
- (4) The Authority should retain the power to investigate and act on complaints that are not a subject of administrative review

19. Clause 37: Repeal of sections 90 and 91 of principal Act

Clause 37 should be substituted with the following-

“(37) Repeal of section 91 of principal Act”

Section 91 of the principal Act is repealed”

Justification

Consequential amendment of removing administrative reviews from the Authority

20. Insertion of new clause in the Bill

Section 91A of the principal Act is amended by substituting for the definition of “Tribunal” the following;

“Tribunal” means the Procurement and Disposal Appeals Tribunal.”

Justification

The tribunal is not part of the structures of the Authority and as such, there is need to draw that distinction

21. Insertion of new clause in the Bill

The Bill is amended by inserting the following new clause:

“Amendment of section 91B of principal Act

Section 91B of the principal Act is amended-

- (i) by substituting for the head note the following-
“Procurement and Disposal Appeals Tribunal”

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- (ii) in subsection (1)-
- (a) by substituting for the words "Public Procurement and Disposal of Public Assets Appeals Tribunal" the words "Procurement and Disposal Appeals Tribunal"; and
 - (b) by substituting for the word "four", the word "eight."
- (iii) by substituting for subsection (3) the following-
- "(3) The eight members appointed under subsection (1) shall be constituted as follows-
- (a) two persons nominated by the Uganda Law Society;
 - (b) two persons nominated by a recognized Procurement Professional body;
 - (c) one person nominated by the Uganda Institute of Professional Engineers;
 - (d) one person nominated by the Uganda Society of Architects;
 - (e) one person nominated by the Institute of Certified Public Accountants of Uganda; and
 - (f) one person nominated by the Minister, who shall represent the business community.

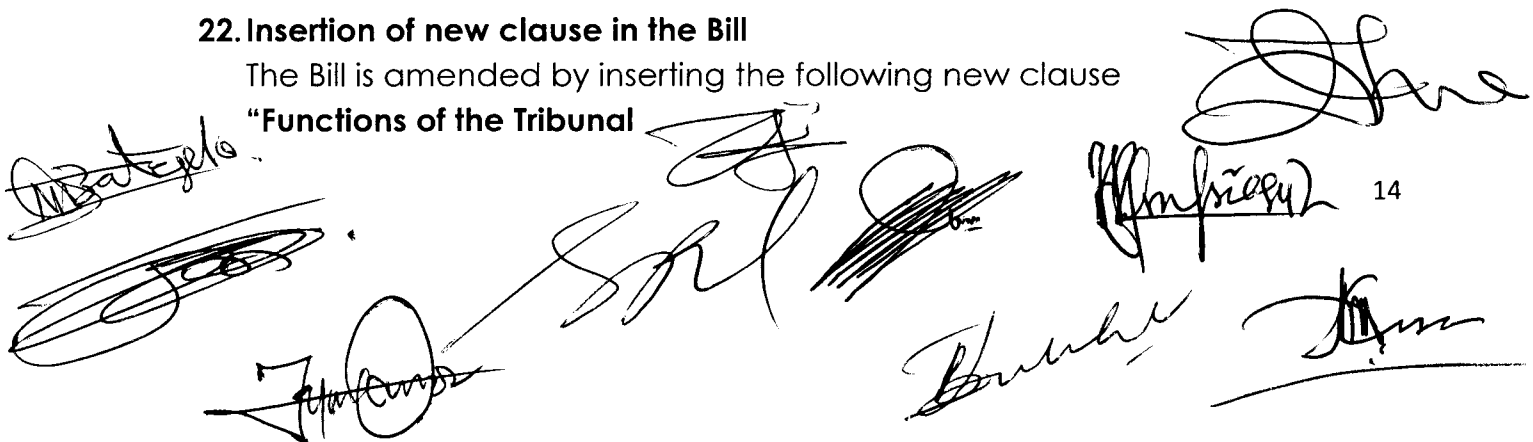
Justification

- (1) The tribunal is not part of the structures of the Authority and as such, there is need to draw that distinction;
- (2) The increased number of the members of the tribunal is to cater for the increased workload the tribunal is to handle as a result of the administrative reviews the tribunal has been mandated to handle; and
- (3) Provide for the criteria of the numbers of the members of the Tribunal

22. Insertion of new clause in the Bill

The Bill is amended by inserting the following new clause

"Functions of the Tribunal



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(1)The functions of the Tribunal are to-

- (a)hear applications for administrative review of decisions of Accounting Officers made by a bidder who is aggrieved under section 89(7);
- (b)hear and determine applications made under section 89(8) by a bidder who is aggrieved by failure of the Accounting Officer to make a decision within ten working days from date of receipt of a complaint;
- (c)hear applications for review of a decision of the Authority with regard to suspension of providers under section 94 of this Act; and
- (d)perform any other function conferred to the Tribunal by this Act, Regulations or any other written law.

Justification

To provide for the specific functions of the Tribunal

23. Insertion of new clause in the Bill

The Bill is amended by inserting the following new clause

“Amendment of section 91C of principal Act


Section 91C of the principal Act is amended by substituting for the word “three” the word “four”

Justification

To enhance the tenure of the members of the Tribunal

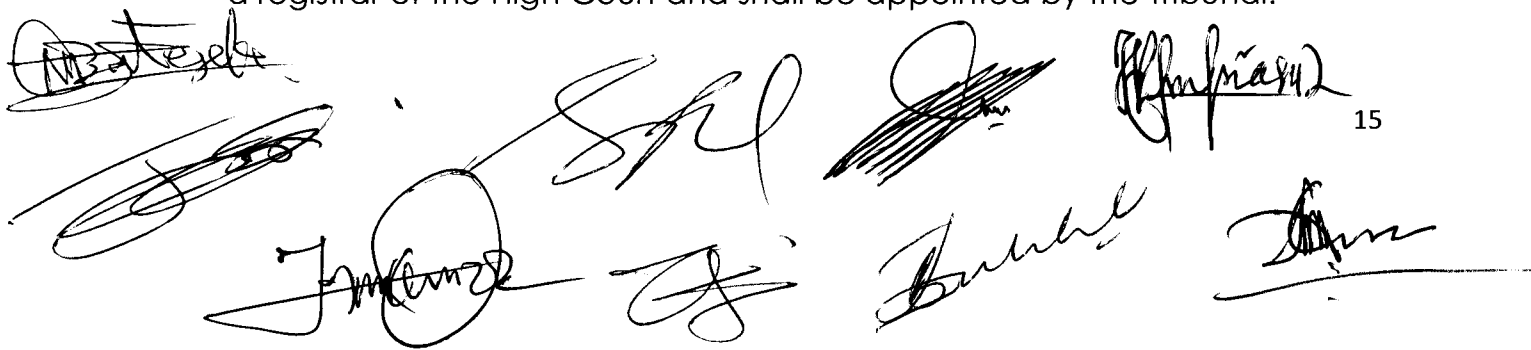
24. Clause 38: Amendment of section 91G of principal Act

Clause 38 of principal Act is substituted with the following;



“91G. Registrar of Tribunal

(1)The Tribunal shall have a registrar who shall be a person qualified to be a registrar of the High Court and shall be appointed by the Tribunal.



(2) The Registrar shall be appointed on contract for a period of four years renewable for only one further term, on terms and conditions of service to be specified in the instrument of appointment.

Justification

(1) To provide for the appointing authority of the registrar of the Appeals Tribunal; and

(2) To provide for the tenure of the registrar of the Tribunal

25. Insertion of new clause in the Bill

The Bill is amended by inserting the following new clause

“Amendment of section 91I of principal Act

Section 91I of the principal Act is substituted with the following-

“(91I). Administrative review by tribunal.

(1) A bidder who is aggrieved, as specified in sub sections 89(7) and (8), or who claims to have suffered or to risk suffering loss or damage due to an omission or breach by a procuring and disposing entity under section 89 (2), may make an application to the tribunal against the procuring and disposing entity.

(2) The application shall be made within ten working days-

(a) from the date of receipt of the decision of the Accounting Officer; or

(b) from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place; or

(c) from the date of expiry of the period given to the Accounting Officer under section 89(8), where the Accounting Officer fails to make a decision.

(3) The application shall be in writing and accompanied by a prescribed fee.

(4) Upon receipt of an application for administrative review, the Registrar shall notify the Accounting Officer of the pending application for review before the tribunal and shall ask the accounting officer to suspend the procurement and disposal proceedings till the application for review is completed.

(5) In reviewing a decision before it, the tribunal may-

(a) recommend suspension of any action by the concerned procuring and disposing entity, until the tribunal makes a decision on the matter;

(b) direct the concerned procuring and disposing entity, with respect to anything to be done or redone in the procurement or disposal process;

(c) order that the procurement or disposal process be terminated; and

(d) require the payment of compensation for any costs, reasonably incurred by the bidder who is a party to the proceedings, as a result of an unlawful act or decision of the concerned procuring and disposing entity or of the Authority; or

(e) recommend disciplinary action against an Accounting Officer, including suspension of that Officer."

(6) Upon completion of a hearing, the Tribunal shall make a decision in writing giving reasons for the decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based and may do any one or more of the following-

(a) affirm or vary the decision of the Accounting Officer;

(b) set aside the decision of the Accounting Officer;

(c) refer the matter to the Accounting Officer for reconsideration in accordance with any directions or recommendations of the tribunal;

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(d) annul anything the Accounting Officer has done in the procurement and disposal proceedings, including annulling the procurement or disposal proceedings in their entirety;

(e) give directions to the Accounting Officer with respect to anything to be done or redone in the procurement or disposal proceedings; or

(f) recommend a termination of the procurement or disposal process and commencement of a new procurement or disposal process;

(g) in the case of suspension of a provider, lift the suspension of a provider made by the Authority under section 94 or vary the period of the suspension.

(7) For the avoidance of doubt, the following matters shall not be subject to review by the tribunal-

(a) a decision by a procuring and disposing entity to reject or cancel any or all bids prior to award of a contract under Section 75;

(b) a decision of a procuring and disposing entity to discontinue a procurement or disposal process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and

(e) a decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.

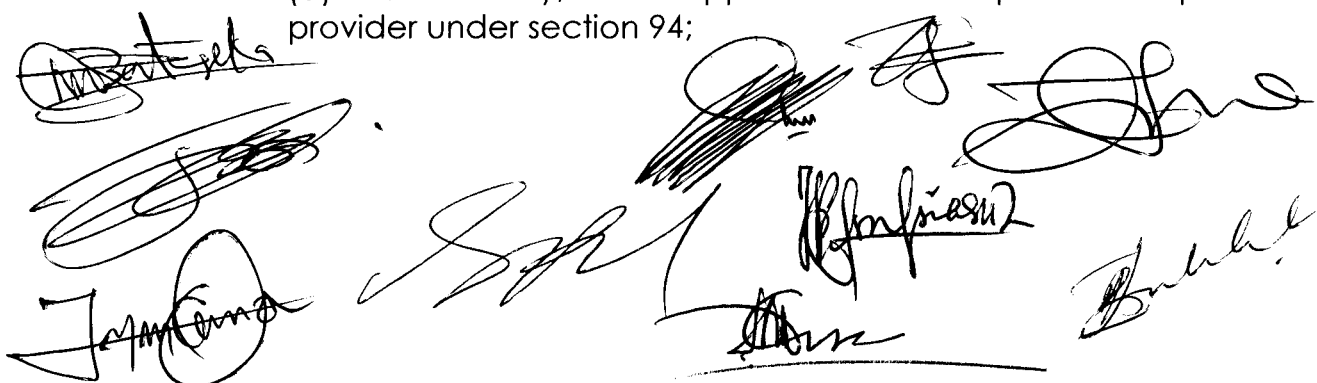
(8) The parties to an application for administrative review shall be—

(a) a bidder who applied for review of the decision of the Accounting Officer;

(b) a provider who applied for review of the decision of the Authority suspending the provider under section 94;

(c) the Accounting Officer of a procuring and disposing entity;

(d) the Authority, if the application is in respect to suspension of a provider under section 94;

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