

CHAPTER 42:11
LOCAL AUTHORITIES PROCUREMENT AND ASSET DISPOSAL
ARRANGEMENT OF SECTIONS

SECTION

PART I

Preliminary

1. Short title and commencement
2. Interpretation

PART II

Scope of the Act

3. Application
4. Responsibility for procurement and disposal of assets
5. External obligations
6. Procurement for external obligations
7. Fair treatment

PART III

Appointment of committees

8. Appointment of Evaluation Committee
9. Functions and powers of Evaluation Committee
10. Meetings of Evaluation Committee
11. Establishment of Adjudication Committee
12. Functions of Adjudication Committee
13. Meetings of Adjudication Committee
14. Removal and suspension of member
15. Remuneration of member
16. Secretariat
17. Functions of Secretariat
18. Co-option of advisory personnel
19. Disclosure of interest
20. Confidentiality
21. Accountability of committee
22. Establishment of Performance Monitoring Committee
23. Functions of Performance Monitoring Committee
24. Establishment of Appeals Board

PART IV

Establishment of Competent Authority

25. Designation of Competent Authority
26. Functions of Competent Authority

PART V

Procurement procedure and processes

27. Inclusion of relevant clauses in bidding packages
28. Revision of bidding packages
29. Consideration of factors outside bidding packages
30. Use of register of contractors

PART VI

Basic procurement and disposal principles

31. Joint ventures, consortia or associations
32. Changes in bidders circumstances
33. Non-discrimination
34. Transparency, accountability and fairness

- 35. Confidentiality by local authority
- 36. Compliance with schemes
- 37. Empowerment of citizen contractors
- 38. Procurement preferences and reservation schemes
- 39. Scale of preference
- 40. Preference for supplies
- 41. Subcontracting

PART VII
Miscellaneous

- 42. Records to be kept
- 43. Electronic procurement
- 44. Medium of communication
- 45. Immunities
- 46. Regulations
- 47. Transitional period

Act 17, 2008,
S.I. 102, 2008.

An Act to provide for the appointment of procuring and disposal committees in local authorities, the establishment of a Competent Authority to monitor procurement processes in local authorities and to provide for the procurement of works, supplies and services, for the disposal of public assets by local authorities and related matters.

[Date of Commencement: 1st January, 2009]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Local Authorities Procurement and Asset Disposal Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"Accounting Officer" means the Chief Executive Officer of a local authority;

"Adjudication Committee" means a committee established under section 11;

"assets" means property owned by a local authority whether tangible or intangible;

"bid" means tender and vice versa, inclusive of quotations;

"bidder" means a person participating as a bidder in a public procurement or asset disposal activity;

"bidding packages" includes invitation to tender, solicitation documents, statement of requirements or any other documents inviting bidders to participate in procurement or disposal proceedings, and includes documents inviting potential bidders to pre-qualify;

"citizen contractor" means a contractor who is a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Botswana;

"committee" means the Evaluation Committee or the Adjudication Committee or both;

"Competent Authority" means the unit under the Ministry of Local Government designated as the Competent Authority under section 25;

"contractor" means a person who enters into a contract with a procuring and disposing entity;

"disposal" means the divestiture of assets, including intellectual and proprietary rights and goodwill, and any other rights of a local authority including sale, rental, lease, franchise, auction, or any combination, however classified;

"Evaluation Committee" means a committee established under section 8;

"external beneficiary" means external bidder or foreign company bidding for an undertaking;

"local authority" means a city council, a town council, a township authority, a district council, a subdistrict council or an administrative authority;

"member" means a member of a committee, and includes the Chairperson thereof;

"pre-qualification" means a screening process to ensure that the invitations to bid are confined to capable firms;

"procurement" means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise, or any other contractual means, of any type of works, services or supplies, or any combination thereof;

"procuring and disposing entity" means a user department, division, branch or section of a local authority, including any project unit established by and operating under a local authority, which initiates procurement and is the user of the requirements;

"provider" means a natural person or a company incorporated under the Companies Act;

"Public Procurement and Asset Disposal Board" means the Board established under section 10 of the Public Procurement and Asset Disposal Act;

"Secretariat" means the office designated as a Secretariat of a committee under section 16;

"services" means all services, other than works and supplies, including banking services, insurance coverage, travel services, cleaning services, consultancy services;

"specifications" means the standard specifications developed under the Standards Act, and includes-

- (a) a generic or functional description of the qualities required of a procurement item;
- (b) the relevant industry standards of approaching and executing the assignment in question; or
- (c) the appropriate good practice tests that are to be used to verify the specified quality and performance of the procured item before delivery, on delivery, during installation and in the course of operation, as applicable, and the use of which shall be mandatory in all bidding documents;

"statement of requirements" means a document that contains a full and complete description of the requirement that is the subject of the procurement or disposal;

"supplies" includes goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights, as well as works or services incidental to the provision of such supplies; and

"works" means-

- (a) any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and under water;
- (b) the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing;
- (c) turnkey projects, build own and operate projects, build operate and transfer projects or any arrangement of this nature;
- (d) any other form of private-public partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning or training; or
- (e) services or supplies incidental to the foregoing works, where the value of such incidental services or supplies does not exceed the value of such works.

PART II

Scope of the Act (ss 3-7)

3. Application

The provisions of this Act shall apply to-

- (a) local authorities;
- (b) the procurement or disposal of all assets;
- (c) the procurement of all works, services or supplies, (or any combination thereof, however classified); and
- (d) the disposal of -
 - (i) physical properties and land;
 - (ii) items acquired through works, services or supplies contracts;
 - (iii) intellectual and proprietary rights;
 - (iv) financial instruments, including shares, stocks, bonds, etc.; and
 - (v) goodwill and any other rights of the local authority.

4. Responsibility for procurement and disposal of assets

A local authority shall be responsible for the management of all procurement and disposal activities within its jurisdiction in accordance with the provisions of this Act.

5. External obligations

(1) To the extent that this Act conflicts with any obligations of the Republic of Botswana under or arising from any treaty or other agreement to which Botswana is a party, the requirements of the treaty or agreement shall prevail over this Act.

(2) Where the treaty or agreement contains provisions favourable to citizen and contractors registered in Botswana, full advantage of the treaty or agreement shall be taken in the interest of promoting domestic capacity development.

(3) If the Republic of Botswana is required under the terms of any treaty or agreement to which she is a party to contribute from her own resources, in any form, to any procurement activities within Botswana in part or wholly, jointly or separately, the procurement through such contributions shall be-

- (a) in discrete activities where possible; and
- (b) subject to the applicable provisions of this Act.

(4) The disposal of any, or all of the products, or public assets accruing to a local authority as a result of procurement activities made under subsections (1) and (2) shall be subject to the provisions of this Act.

6. Procurement for external obligations

Where any obligation of the Republic of Botswana under or arising from any treaty or other agreement referred to in section 5 (1) favours an external beneficiary, then-

- (a) procurement through contributions made by a local authority shall be undertaken in Botswana, through contractors registered in Botswana;
- (b) insurances, if any, shall be placed with an insurance company registered in Botswana; and
- (c) supplies shall be transported in carriers registered in Botswana.

7. Fair treatment

Where, for reasons of limitations of capacity, contractors registered in Botswana are unable to satisfy wholly or in part, a specified procurement requirement, the contractor shall be offered an equal opportunity to participate in the bidding process of the beneficiary entity (in conjunction with firms in that country) and where applicable to offer the requirement from third sources.

PART III

Appointment of committees (ss 8-24)

8. Appointment of Evaluation Committee

(1) The Accounting Officer shall appoint an Evaluation Committee from amongst officers of the Local Authority.

(2) An Evaluation Committee shall be composed of not less than three, but not more than six members.

(3) Members of an Evaluation Committee shall appoint a Chairperson of the committee

from amongst their number.

(4) The Accounting Officer shall-

- (a) not be a member of the Evaluation Committee; and
- (b) not seek to influence the decisions of the Evaluation Committee.

(5) Members of an Evaluation Committee shall be appointed with due regard to their technical competencies and the skills required for the discharge of the evaluation function.

9. Functions and powers of Evaluation Committee

(1) An Evaluation Committee shall-

- (a) evaluate bids submitted to it by a procuring and disposing entity;
- (b) ensure that bidders comply with the provisions of this Act; and
- (c) prepare any reports required for submission to the Adjudication Committee.

(2) An Evaluation Committee shall conduct a preliminary examination of all bids to ensure that they are compliant with-

- (a) pre-qualification requirement where applicable; and
- (b) related specific instructions.

(3) In the conduct of an evaluation, an Evaluation Committee shall ensure that-

- (a) statements of requirements are complete and suitable;
- (b) the evaluation criteria, weights and methodology are appropriate and applicable;
- (c) particular conditions of contracts will achieve successful execution; and
- (d) specific instructions are congruent with and do not defeat the purpose of competition and equal access to a procurement opportunity.

(4) In conducting detail evaluation, an Evaluation Committee shall-

- (a) use a standard form on which all the key data in the various offers shall be transferred;
- (b) compare and analyse the data in strict compliance with the evaluation methodology prescribed by the bidding documents; and
- (c) rank the offers and recommend to the Adjudication Committee the best evaluated bid in terms of the highest points scored.

(5) The recommendation referred to under subsection 4 (c) shall be submitted in such form as may be prescribed, by the Secretariat, to the Adjudication Committee.

10. Meetings of Evaluation Committee

(1) An Evaluation Committee shall meet as often as it is necessary for the proper discharge of its functions.

(2) The Chairperson shall preside at all meetings of the Evaluation Committee and if the Chairperson is absent from a meeting, the members shall elect one of their number to act as Chairperson for that meeting.

(3) The quorum at any meeting of the Evaluation Committee shall be any three members.

(4) Subject to the provisions of this Act, an Evaluation Committee shall regulate its own procedure.

11. Establishment of Adjudication Committee

(1) There is hereby established for each local authority, an Adjudication Committee the members of which shall be appointed by the Accounting Officer and approved by the council.

(2) The membership of an Adjudication Committee shall be published by an Accounting Officer by notice in the *Gazette*.

(3) An Adjudication Committee shall be composed of the following 10 members-

- (a) a Chairperson;
- (b) four officers from the local authority;
- (c) two public officers stationed within the jurisdiction of the local authority;
- (d) two members from the private sector, resident within the jurisdiction of the local authority;
- (e) one member of the public resident within the jurisdiction of the local authority.

(4) The Accounting Officer, a member of an Evaluation Committee, or a member of a procuring entity shall-

- (a) not be a member of an Adjudication Committee; and
- (b) not seek to influence any decision of an Adjudication Committee.

(5) Members of an Adjudication Committee shall be appointed with due regard to their technical competencies and the skills required for the discharge of an adjudication function.

(6) A member shall hold office for a term of two years, as may be specified in the notice appointing him or her.

(7) Members shall be eligible to be reappointed only for another term of two years.

12. Functions of Adjudication Committee

(1) An Adjudication Committee shall be responsible for all adjudication and award decisions, in particular the Adjudication Committee shall-

- (a) ensure that bidders comply with provisions of this Act; and
- (b) prepare any reports required for submission to the Performance Monitoring Committee.

(2) In considering the recommendations of an Evaluation Committee an Adjudication Committee shall consider each submission and decide whether to-

- (a) approve, vary or reject the submission; or
- (b) defer its decision where additional information is needed.

(3) An Adjudication Committee may give a conditional approval to a submission where there are minor issues to be resolved.

(4) An Adjudication Committee shall, in writing, state its reasons for the approval, variation or rejection of a submission.

(5) Notwithstanding the recommendations of the Evaluation Committee, an Adjudication Committee shall take independent decisions based on this Act and best practices, and shall act in good faith.

(6) An Adjudication Committee shall publish its decisions on the notice board of the local authority and in any newspaper widely circulating in Botswana.

13. Meetings of Adjudication Committee

(1) An Adjudication Committee shall meet as often as it is necessary for a proper discharge of its functions.

(2) There shall preside at the meeting of the Adjudication Committee-

- (a) the Chairperson; or
- (b) in the absence of the Chairperson, such member as the members present may elect from amongst themselves for the purposes of a meeting.

(3) Four members of a committee shall form a quorum.

(4) Subject to the provisions of this Act, an Adjudication Committee shall regulate its own procedure.

(5) The decisions of an Adjudication Committee shall be by a majority of votes of the members present and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberate vote.

14. Removal and suspension of member

(1) The Accounting Officer may, in consultation with the council and by notice in writing, remove a member from office where a member-

- (a) is absent without reasonable cause from three consecutive meetings of a committee of which he or she has had notice;
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (d) has contravened the provisions of this Act or otherwise misconducted himself or herself to the detriment of the objectives of the committee;
- (e) has failed to comply with the provisions of sections 19 or 20; or

(f) becomes a member of the National Assembly or a councillor of a local authority.

(2) The Accounting Officer shall, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties of the committee.

15. Remuneration of member

A member of the Adjudication Committee shall be paid such remuneration, and such travelling expenses, incurred in connection with his or her service as a member of the Adjudication Committee, as the Minister may determine.

16. Secretariat

The Accounting Officer shall designate an office to be the Secretariat of the committees.

17. Functions of Secretariat

(1) The Secretariat shall-

- (a) be responsible for the accurate and complete recording of the proceedings of the committees and the keeping of such records;
- (b) be responsible for arranging the business of the committees and shall carry out such other functions as a committee may direct; and
- (c) be the liaison office between the committees and the Competent Authority or any other entity.

(2) Officers of the Secretariat shall have no right to vote in any decision of the Adjudication Committee.

18. Co-option of advisory personnel

A committee may co-opt any person to attend a meeting of the committee for the purpose of assisting or advising the committee, but such person shall have no right to vote.

19. Disclosure of interest

(1) Where a member is present at a meeting of a committee at which a matter, which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, is to be discussed, he or she shall immediately upon the commencement of the meeting or becoming aware of the interest, disclose such interest and shall not, unless the committee otherwise directs, take part in any consideration or discussion of or vote on, any question concerning that matter.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the committee is made which benefits such member directly, such decision shall be null and void.

(4) A member who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P6,000, or to imprisonment for a term not exceeding 12 months, or to both.

20. Confidentiality

(1) Every member and any person co-opted to a committee shall observe and preserve the confidentiality of all matters coming before a committee, and such confidentiality shall subsist even after the termination of his or her term of office or his or her co-option.

(2) A person to whom confidential information is revealed through working with a committee, shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A member or an expert engaged to render services that may include access to confidential information shall not use to their personal advantage information acquired by him or her by virtue of being associated with a committee for a period of two years after leaving office or rendering such expert service.

(4) Any person who contravenes the provisions of this section shall be guilty of an

offence and liable to a fine not exceeding P6,000, or to imprisonment for a term not exceeding 12 months, or to both, and for a second or subsequent offence to a fine not exceeding P10,000, or to imprisonment for a term not exceeding two years, or to both.

21. Accountability of committee

A committee shall be accountable to the Accounting Officer.

22. Establishment of Performance Monitoring Committee

(1) There is hereby established for each local authority, a Performance Monitoring Committee to monitor and review the management of all procurement and disposal activities by a local authority.

(2) A Performance Monitoring Committee shall be composed of Chairpersons of committees of a council of a local authority.

(3) Members of a Performance Monitoring Committee shall appoint a Chairperson of the committee from amongst their number.

(4) A Performance Monitoring Committee shall determine its own procedures consistent with the provisions of the Standing Orders of a council applicable for the operations of committees.

(5) A Performance Monitoring Committee shall meet once in every month on such date, and at such time and venue as it may determine.

(6) The Accounting Officer shall be the secretary to the Performance Monitoring Committee but may delegate an officer not lower than a Head of Division to be the secretary to the committee.

23. Functions of Performance Monitoring Committee

A Performance Monitoring Committee shall-

- (a) receive, review and approve -
 - (i) quarterly, a rolling procurement and disposal plan of the local authority, and
 - (ii) monthly, a progress report on the execution of the quarterly plans of the local authority;
- (b) consider the monthly update on award decisions and obtain clarifications and supporting documentation, where necessary;
- (c) obtain from the Accounting Officer, and review, the monthly progress report on the implementation of award decisions including extensions, variations, escalations and determinations;
- (d) cause audits or reviews to be conducted by the Accounting Officer on any procurement or disposal activity;
- (e) conduct random site visits to ensure that contracts are being executed by providers in accordance with the terms and conditions of award;
- (f) request the Ministry, giving concrete reasons, to review any aspect of the operations of the procurement and disposal system;
- (g) request and consider occasional and annual performance evaluation reports on procurement and disposal activities from the Accounting Officer;
- (h) give such general or specific directions to the Accounting Officer as it may consider necessary;
- (i) request a local authority to review systemic performance in order to improve efficiency or prevent breaches; and
- (j) cause the Accounting Officer to submit annual performance evaluation reports on procurement and disposal activities to the Competent Authority.

24. Establishment of Appeals Board

(1) There is hereby established for each local authority, an Appeals Board.

(2) The Minister shall, by notice published in the *Gazette*, appoint members of an Appeals Board.

(3) An Appeals Board established in accordance with subsection (1) shall consist of the

following persons-

- (a) an administrative officer who shall be the Chairperson;
- (b) two members from the public resident within the jurisdiction of the local authority;
- (c) an officer from the Central Government resident within the jurisdiction of the local authority;
- (d) a police officer of the rank of Assistant Superintendent or above stationed within the jurisdiction of the local authority; and
- (e) such person as the Minister may appoint.

(4) The provisions of sections 13, 14, 15, 18 to 20 shall apply with necessary modifications to the Appeals Board.

(5) A person aggrieved by a decision of an Adjudication Committee may appeal, in writing, to the Appeals Board within 30 days of notification of the decision.

(6) A person aggrieved by any decision under this section shall not appeal to court before the appeal procedures under this section are exhausted.

(7) The Accounting Officer shall designate an office to be the Secretariat of an Appeals Board.

(8) The provisions of sections 17, 19 and 20 shall apply with necessary modifications to the Secretariat of an Appeals Board.

PART IV

Establishment of Competent Authority (ss 25-26)

25. Designation of Competent Authority

The Minister shall designate a unit in the Ministry of Local Government to act as the Competent Authority.

26. Functions of Competent Authority

The Competent Authority shall-

- (a) advise the Minister on all procurement and disposal policies, principles and practices relating to local authorities;
- (b) monitor and report to the Minister on the overall functioning of the local authorities procurement and asset disposal system and advise the Minister on desirable changes to the system;
- (c) receive and review annual performance evaluation reports submitted to it under section 23 (j);
- (d) undertake procurement and disposal audits, inspections and investigations of local authorities;
- (e) investigate the conduct or performance of contractors with a view to advise the Public Procurement and Asset Disposal Board on the status of registration of such contractors under the Public Procurement and Asset Disposal Act;
- (f) with approval of the Minister, formulate and issue guidelines which shall -
 - (i) set standards and determine best practices in the procurement and disposal of assets by local authorities, or
 - (ii) address specific issues and processes applicable in procurement and disposal of assets by local authorities; and
- (g) develop the code of ethics for members.

PART V

Procurement Procedure and Processes (ss 27-30)

27. Inclusion of relevant clauses in bidding packages

A local authority shall-

- (a) include in all bidding documents, clauses in respect of assurances, warranties, bonds and insurances and all other relevant bidding information; and
- (b) ensure that the relevant penalty clauses are contained in all bidding documents and shall apply them in respect of non-performance by contactors.

28. Revision of bidding packages

A committee may, at any point between its evaluation or review of a bidding package and the award of a bid, return such bid to the procuring or disposing entity to make amendments to the bidding package should it establish that the bidding package-

- (a) is deficient in any specific respect which is likely to result in multiple variations, delays and cost escalation; or
- (b) patently fails to -
 - (i) vest in one contractor overall responsibilities for the full and timely delivery of scheduled bid outputs, or
 - (ii) to put in place alternative arrangements to achieve the scheduled outputs, and thereby is likely to cause serious implementation slippage on account of overlapping, ill-defined, or missing links in the chain of command for successful implementation on the ground.

29. Consideration of factors outside bidding packages

In the evaluation and adjudication of a bid, no factor outside those explicitly stated in the bidding package shall be taken into account by a committee in arriving at a recommendation or in making an award unless there are reasons to use additionally, an industry standard or best practice.

30. Use of register of contractors

(1) A committee shall use the Public Procurement and Asset Disposal Board register of contractors maintained under section 116 of the Public Procurement and Asset Disposal Act in the evaluation of bids to shortlist bids.

(2) Non-registered contractors shall be disqualified from tendering, except in projects where the instructions in the bidding package explicitly states that registration is not a requirement for eligibility to participate.

PART VI

Basic procurement and disposal principles (ss 31-41)

31. Joint ventures, consortia or associations

(1) Unless otherwise specified in the solicitation document, bidders shall not be permitted to submit bids as part of a joint venture, consortium or association.

(2) Where a solicitation document permits bidders to submit bids as part of a joint venture, consortium or association, the solicitation document shall state that-

- (a) parties to a joint venture, consortium or association shall be eligible to participate in the procurement and where one party is deemed to be ineligible, the whole joint venture or association shall be declared ineligible;
- (b) a copy of the joint venture, consortium or association agreement, or the proposed agreement shall be submitted as part of the bid or as a condition of contract effectiveness;
- (c) parties to a joint venture, consortium or association shall be jointly and severally liable for the performance of the contract;
- (d) parties to a joint venture, consortium or association shall nominate one party as the lead party, with authority to bind the joint venture, consortium or association and, at the time of contract award, the appointment as lead party shall be confirmed by submission of Powers of Attorney signed by legally authorised signatories representing all the parties;
- (e) any bid from a joint venture, consortium or association shall indicate which parts of the proposed contract are to be performed by each party;
- (f) each party shall be evaluated and pre or post-qualified with respect to their contribution under paragraph (e); and
- (g) the responsibility of each party under paragraph (e) shall not be altered without the prior written approval of the local authority.

(3) The requirement under subsection 2 (d) shall be included in the bid document and the bidder shall include the information relating to the lead member of the joint venture, consortium or association in the bid proposal.

32. Changes in bidders circumstances

Where there are any changes in the circumstances of a bidder, at any point after the submission of a bid for adjudication including execution, that is likely to materially affect the bidders capacity to successfully deliver the required scheduled outputs, the bidder or any party shall immediately draw to the attention of a committee or the procuring and disposing entity such changes in the circumstances of a bidder.

33. Non-discrimination

A bidder shall not be excluded from bidding 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.

34. Transparency, accountability and fairness

A local authority shall conduct its procurement and disposal activities in a manner which-

- (a) promotes transparency, accountability and fairness;
- (b) maximises competition; and
- (c) promotes economy, efficiency and value for money.

35. Confidentiality by local authority

A local authority shall not, except when required to do so by an order of court, disclose any information where the disclosure would-

- (a) amount to a breach of the law;
- (b) impede law enforcement;
- (c) prejudice legitimate commercial interests of the other party;
- (d) inhibit fair competition; or
- (e) in any way, not be in the public interest, until the successful bidder is notified of the award.

36. Compliance with schemes

A local authority shall comply with reserved and preferential procurement and asset disposal schemes introduced by the Government.

37. Empowerment of citizen contractors

In order to promote the empowerment of citizen contractors-

- (a) citizen contractors shall, in relation to their respective classification, be treated fairly and equitably in respect of all procurement and disposal activities;
- (b) there shall be an equitable balance in the distribution of activities within and across grades and codes of the contractors, where applicable;
- (c) the extent of reservation or preference extended to the contractors shall be proportional to their assessed capacities to fully comply with the applicable specifications, specific instructions and conditions in the relevant bidding packages; and
- (d) bids shall be awarded strictly on a competitive basis among firms of a given grade, code and classification in relation to the reservation and preference schemes.

38. Procurement preferences and reservation schemes

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

(2) An Adjudication Committee shall ensure that-

- (a) a procuring and disposing entity when preparing bidding packages; and
- (b) an Evaluation Committee when evaluating bid proposals, comply with the provisions of this Act in respect of reservation and preference schemes as may be prescribed by the

Minister.

39. Scale of preference

- (1) A local authority shall apply the following level of preference-
- (a) preference shall be given to citizen companies resident within the jurisdiction of a local authority for projects up to the threshold to be prescribed;
 - (b) joint ventures between citizen contractors;
 - (c) sole citizen contractors resident elsewhere in Botswana;
 - (d) joint ventures between citizen and non-citizen contractors; and
 - (e) association arrangements between citizen subcontractors and non-citizen contractors.
- (2) The preferences to be accorded by a local authority under paragraphs (c) and (d) of subsection (1) shall be proportional to the percentage of the contract to be executed by the citizen contractors or subcontractors.

40. Preference for supplies

Preference in respect of supplies may apply to any product produced within Botswana and may vary in accordance with the percentage of value added.

41. Subcontracting

(1) When a contractor appoints or elects to use or uses a subcontractor in respect of any bid submission or in the execution of a bid award, the contractor shall append to a bidding package a subcontracting agreement for each subcontractor detailing the key operational principles which shall govern the contract of the parties.

(2) A contractor shall seek approval from a local authority where the contractor elects to use a subcontractor after the award of a tender.

PART VII

Miscellaneous (ss 42-47)

42. Records to be kept

A local authority shall maintain records of procurement and disposal proceedings and contracts management for a period of five years from the date of a decision to terminate the contract or the date of the completion of the contract, except where there is a dispute relating to the contract in which case the records shall be kept for an additional year after the completion of the contract or the settlement of the dispute, whichever comes later.

43. Electronic procurement

Where a procurement or disposal is by electronic means, the transmitter shall, in each instance, be responsible for the confidentiality, completeness, integrity and timeliness of the data and the document being transmitted.

44. Medium of communication

English shall be the official language of all communications, except when the Competent Authority otherwise determines, or the specific instructions in a bidding package so require.

45. Immunities

No matter or thing done or words said by any member, any officer or employee of a local authority shall, if the matter or thing is done or words are said in good faith for the purpose of executing any provision of this Act, render the member, officer or employee of the local authority personally liable to any action, claim or demand.

46. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, the Minister may make regulations-

- (a) prescribing -
 - (i) the rules and processes of public procurement and disposal of assets,
 - (ii) the methods and conditions of procurement and disposal of assets,
 - (iii) the form and content of documents,
 - (iv) the forms, fees and charges,
 - (v) the methods and processes of bidding,

- (vi) the evaluation method to be used by committees,
 - (vii) the types of contracts,
 - (viii) the conditions of contracting out;
 - (ix) the criteria for pre-qualification, post-qualification and negotiation of contracts,
 - (x) the procedure for contract awards,
 - (xi) procedures of operation of committees, and
 - (xii) the procedure for electronic procurement;
- (b) providing -
- (i) for contract pricing, payments and other contracting arrangements,
 - (ii) for contract management,
 - (iii) for the safekeeping of records,
 - (iv) for the procurement of supplies, works and services,
 - (v) for the conditions for deviation from applicable procurement and disposal methods, rules and documentation; and
- (c) generally prescribing all matters which are required or permitted to be prescribed.

47. Transitional period

- (1) Notwithstanding the provisions of this Act, any-
- (a) application, claim or process commenced; and
 - (b) determination, order or ruling made,
- under any law relating to the procurement and disposal of assets of local authorities shall be completed under such law.
- (2) Local authorities shall bring their procurement and disposal practices into conformity with this Act within six months from the date of entry into force of this Act.