

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

Short title

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2020.

Interpretation

2. In this Act, “principal Act” means the Public Procurement and Asset Disposal Act, Cap. 15.10.

Amendment of long title

3. The principal Act is amended in the long title by deleting —
- (a) immediately after the words “those matters”, the comma;
 - (b) the words “for asset disposal”;
 - (c) immediately after the words “for asset disposal”, the comma.

Amendment of section 1

4. Section 1(1) of the principal Act is amended by deleting the words “Public Procurement and Asset Disposal Act” and by substituting the words “Public Procurement Act”.

Amendment of section 2

5. Section 2 of the principal Act is amended —
- (a) by inserting immediately after the designation “2.”, the designation “(1)”;
 - (b) in subsection (1), by inserting in the correct alphabetical sequence the following new definitions —
 - “Appropriation Act” has the same meaning assigned to it under the Public Finance Management Act, No. ___ of 2020;
 - “complaint” means a matter submitted under section 83A;
 - “complainant” means a person who submits a complaint;
 - “consultancy services” means advisory, intellectual or professional services provided by a consultant;

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

“international competitive tendering” means a procurement method that is available to bidders in and outside Saint Lucia;

“list of suppliers” means the list prepared and maintained by a procuring entity under section 57A;

“national competitive tendering” means a procurement method that is only available to bidders in Saint Lucia;

- (c) by inserting immediately after subsection (1) the following new subsection (2) —

“(2) A reference in this Act to “publish” includes publishing by electronic means.”.

Amendment of Part 1

- 6.** Part 1 of the principal Act is amended —

- (a) by deleting the heading for Division 1 and by substituting the following —

*“Division 1
Functions of the Minister, Director, procuring entity,
Procurement Unit and accounting officer”;*

- (b) by inserting immediately after the heading for Division 1 the following new sections 4A, 4B and 4C —

“Functions of the Minister

- 4A.** The Minister is responsible for —

- (a) formulating and issuing directives and policies relating to public procurement in Saint Lucia;
- (b) presenting an annual report to Parliament regarding the overall functioning of public procurement;
- (c) appoint the members of the Board under section 14(2);
- (d) appoint the members of the Steering Committee under section 29.

Powers of the Minister

4B. The Minister may —

- (a) issue directives, procedures and guidelines for the implementation of this Act;
- (b) exercise a power that the Minister is authorized to perform under this Act to ensure the effective execution of the public procurement policy of the Government.

Delegation of powers

4C.—(1) The Minister may, subject to any terms and conditions that the Minister specifies, delegate, in writing, to the Permanent Secretary in the Ministry of finance any power that the Minister is authorized to perform under this Act.

(2) The Minister is not authorized to delegate a power to make regulations or a power to delegate under subsection (1).”;

(c) under section 5 —

- (i) by inserting immediately after the designation “5.”, the designation “(1)”,
- (ii) by deleting subsection (1)(a) and by substituting the following —
 - “(a) subject to any directives given by the Minister, to issue instructions under which goods, services or works may be procured;”,
- (iii) in subsection (1)(m), by deleting immediately after the semicolon, the word “and”,
- (iv) in subsection (1)(n), by deleting the full stop and by substituting a semicolon and the word “and”,
- (v) by inserting immediately after subsection (1)(n), the following new paragraph (o) —
 - “(o) to publish a notice containing the public procurement plan in respect of each procuring entity in accordance with section 39(6) for each financial year.”;

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

(1B) The Board —

(a) shall examine the grounds for the dissenting views;

(b) may require the Tender Evaluation Committee to review its evaluation on specific grounds,

where the Board is in receipt of the recommendations of the Tender Evaluation Committee with dissenting views that has a significant effect on the result arrived at by the Board.

(1C) The Board may, if dissenting views persist —

(a) decide on the issue and approve the award of the public procurement contract;

(b) cancel the tendering process; or

(c) appoint another Tender Evaluation Committee to make a new evaluation.”;

(g) under section 14(1) —

(i) by deleting paragraph (a) and by substituting the following —

“(a) a Chairperson who is the Permanent Secretary in the Ministry of Finance or a person nominated by the Permanent Secretary;”,

(ii) by deleting paragraph (c) and by substituting the following —

“(c) three public officers.”;

(h) by deleting section 24(1) and by substituting the following —

“(1) Subject to subsections (2) and (3), the Public Procurement Committee comprises —

(a) a chairperson;

(b) a representative appointed by the Permanent Secretary in the Department of Finance”;

(c) three other persons.”;

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

- (5) A supplier that is included on the list of suppliers under section 57A is presumed to be eligible to participate in a restricted tendering procedure.”;
- (l) under section 59(1), by deleting the word “shall” and by substituting the word “may”;
- (m) under section 60 —
- (i) in subsection (1)(a), by deleting —
- (A) immediately after the words “in order to identify qualified persons”, the comma;
- (B) the words “or may use the results of a pre-qualification procedure used by another procuring entity to identify qualified persons”,
- (ii) by deleting subsection (2) and by substituting the following —
- “(2) A procuring entity shall invite pre-qualification applications by causing an invitation to prequalify to be published in the manner specified for open competitive tendering under section 57(3) to (5).”,
- (iii) in subsection (7), by deleting the words “of at most” and by substituting the words “not exceeding”;
- (n) under section 61, by inserting immediately after subsection (4), the following new subsection (5) —
- “(5) A procuring entity shall submit to the Board a copy of an invitation to tender published under subsection (1).”;
- (o) by deleting section 62(1)(d);
- (p) under section 64(2)(i), by deleting the words “and will be returned unopened to the tenderer”;
- (q) under section 66 —
- (i) by inserting immediately after the designation “66.”, the designation “(1)”,
- (ii) by inserting immediately after subsection (1), the following new subsection (2) —

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

“(2) Without limiting the generality of subsection (1), a tendering deadline shall not be —

(a) in the case of national competitive tendering and restricted tendering, less than twenty days;

(b) in the case of regional or international competitive tendering, less than forty days, between the date of publication of the invitation to tender and the date for submission of the tender.”;

(r) under section 71(1) —

(i) by inserting immediately after the words “procuring entity”, a comma and the words “the Public Procurement Committee and the Board”,

(ii) in paragraph (c), by deleting the comma and the words “and no late tender is accepted”;

(s) under section 73(9) by inserting immediately after the word “evaluated”, the word “substantially responsive”;

(t) under section 76 —

(i) in subsection (1), by deleting the words “which meets the qualification criteria specified in the pre-qualification or tendering document”,

(ii) by deleting subsection (4) and by substituting the following —

“(4) The public procurement contract must be awarded to the successful tenderer seven days after the date of the notice under subsection (3).”,

(iii) in subsection (6), by inserting immediately after the words “valid tenders”, the words “in accordance with subsection (1)”;

(u) by deleting section 77 and by substituting the following —

“Debriefing of unsuccessful tenderer

77.—(1) Subject to subsection (2), a procuring entity shall immediately, on request of an unsuccessful tenderer, inform that tenderer of the reasons for which the tender, or

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

application for pre-qualification, was unsuccessful where the request for such debriefing was submitted within thirty days of the publication of the notice under section 76(3).

(2) The procuring entity shall not provide to a tenderer, information with respect to other bids which is not publicly available.”;

- (v) by inserting immediately after section 83 the following new sections 83A and 83B —

“Complaint

83A. A person may submit to the procuring entity a complaint in writing against a public procurement procedure not later than seven days after the date of the notice under section 76(3) where —

- (a) the public procurement procedure is not carried out in accordance with this Act;
- (b) the person has incurred loss or is likely to incur loss due to paragraph (a).

Assessment of complaint by procuring entity

83B.—(1) Subject to subsection (2), the procuring entity shall assess a complaint within seven days of receipt of the complaint and may allow or disallow the complaint.

(2) Before assessing a complaint under subsection (1), the procuring entity shall —

- (a) give the complainant an opportunity to make oral representations; and
- (b) take the oral representations made under paragraph (a) into consideration.

(3) The procuring entity shall notify the complainant of its decision by notice in writing.

(4) If the complaint is allowed, the procuring entity may exercise the powers necessary to rectify the ground of the complaint including cancelling the tendering procedure and republishing a new invitation to tender.

No. 13] *Public Procurement and Asset Disposal* [2020
(Amendment) Act

“Schedule 1

(Section 2)

Value	Amount
Minor	Up to \$100,000
Intermediate	Between \$100,000 and \$500,000
Major	\$500,000 and above

Amendment of principal Act

10. The principal Act is amended by deleting the words “regional or international competitive tendering” and by substituting the words “international competitive tendering”.

Passed in the House of Assembly this 24th day of November, 2020.

ANDY G. DANIEL,
Speaker of the House of Assembly.

Passed in the Senate this 26th day of November, 2020.

JEANNINE GIRAUDY-MCINTYRE,
President of the Senate.