

SAINT LUCIA

No. 13 of 2020

ARRANGEMENT OF SECTIONS

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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;

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“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.”;

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(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.”;

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- (i) by deleting section 25(2)(b);
- (j) under section 27(2)(c), by deleting the word “analysis” and by substituting the words “financial analysis”;
- (k) by inserting immediately after section 27, the following new section 27A —

“Evaluation of works contract by consultant

27A.—(1) A procuring entity may engage a consultant with respect to an aspect of a works contract including its design, evaluation or supervision.

(2) Where a consultant is engaged under subsection (1) to evaluate a works contract, the accounting officer, Public Procurement Committee or Board may require the consultant to present the required evaluation in the form of recommendations to the —

- (a) Tenders Evaluation Committee;
- (b) accounting officer;
- (c) Public Procurement Committee; or
- (d) Board.”.

Amendment of Part 2

7. Part 2 of the principal Act is amended —

- (a) under section 39, by deleting subsections (6), (7) and (8) and by substituting the following —

“(6) Within three months of the passage of the Appropriation Act, the Director shall publish a notice on the Government’s official website, the *Gazette* and any regional platform that contains information with respect to the public procurement plan of each procuring entity for that financial year.

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- (7) A notice under subsection (6) must include —
- (a) the subject matter of planned public procurements and the desired volumes of the subject matter;
 - (b) the proposed date or range of dates for the publication of an invitation to tender.
- (8) Each procuring entity shall employ best endeavours to conduct public procurement procedures in accordance with the public procurement plan published under section 5(1)(o).”;

(b) by deleting the heading —

*“Division 2
 Public procurement procedures”;*

(c) by inserting immediately after section 42 the following heading —

*“Division 2
 Public procurement procedures for consultancy
 services”;*

(d) under section 43 —

- (i) in subsection (1), by inserting immediately after the word “proposal”, the words “for consultancy services”,
- (ii) in subsection (2)(b), by deleting the words “in a” and by substituting the words “in the *Gazette* and one”;

(e) by inserting immediately after section 50, the following new heading —

*“Division 2A
 Public procurement procedures for goods,
 works and services”;*

(f) under section 51 —

- (i) in subsection (1) —
 - (A) by inserting immediately after the word “goods”, a comma and the word “works”;

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- (B) in paragraph (a), by deleting the word “technical”,
- (ii) in subsection (2), by inserting immediately after the word “goods”, a comma and the words “works or services”,
- (iii) in subsection (6), by deleting the words “highest ranking” and by substituting the words “lowest priced”;
- (g) under section 52(1), by —
- (i) deleting the words “use direct public procurement” and by substituting the words “issue directions for the procurement of goods, services and works by direct public procurement on the following grounds”,
- (ii) deleting paragraphs (d), (e), (f) and (h);
- (h) under section 53(1) —
- (i) by deleting the words “use an emergency procurement where” and by substituting the words “issue directions for the procurement of goods, services and works for an emergency procurement where”,
- (ii) in paragraphs (a) and (b), by deleting the words “Act of God” and by substituting the words “*force majeure*”;
- (i) under section 54 —
- (i) by deleting subsection (1) and by substituting the following —
- “(1) Where the public procurement of goods, works or services is of a minor value or other prescribed amount, a procuring entity may procure such goods, works or services by open competitive tendering under section 57(3)(a).”;
- (ii) in subsection (2), by inserting immediately after the words “open competitive tendering” the words “if open competitive tendering is unlikely to attract sufficient competition”,
- (iii) by deleting subsection (3);

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- (j) by inserting immediately after section 57 the following new section 57A —

“List of suppliers

57A.—(1) A procuring entity shall prepare and maintain a list of suppliers which is unrelated to a particular public procurement contract.

(2) A procuring entity shall publish a notice of invitation for suppliers to register to be included on the list under subsection (1), at the beginning of each financial year.

(3) A supplier may register with the procuring entity to be included on the list under subsection (1) by submitting a request for registration accompanied by the documentation specified under section 64(2)(b)(i), (ii), (iii), (iv), (vi) and (c).

(4) The procuring entity shall, within fifteen business days of receipt, accept or refuse a request for registration under subsection (3).

(5) The procuring entity shall inform a supplier, in writing, of the reasons for refusing a request for registration under subsection (3).”;

- (k) under section 58 —

- (i) in subsection (1) —

(A) in paragraph (c), by inserting immediately before the words “there is”, the words “subject to section 83, where”;

(B) in paragraph (d), by deleting the words “pre-qualification list” and by substituting the words “list of suppliers”,

- (ii) by inserting immediately after subsection (3) the following new subsections (4) and (5) —

“(4) A procuring entity may consider only the technical capacity of a supplier on the list of suppliers to fulfil the technical requirements of a specific contract.

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- (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) —

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“(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

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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.

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(5) If the complaint is disallowed, the procuring entity shall notify the complainant of the reasons for its decision in writing and the right to review under section 84.”;

(w) under section 84 —

(i) by deleting subsection (1) and by substituting the following —

“(1) A tenderer may make an application to the Director to review the public procurement procedure if —

(a) an assessment is not made within the time specified under section 83B; or

(b) the tenderer is dissatisfied with the assessment of the procuring entity under section 83B; and

(c) the public procurement procedure is not carried out in accordance with this Act; or

(d) the tenderer has incurred loss or is likely to incur loss under paragraph (b).”,

(ii) in subsection (2)(d), by inserting immediately after the words “of the”, the words “knowledge of the”,

(iii) in subsection (9), by inserting immediately after the words “The Director”, a comma and the words “after consultation with an independent expert”.

Repeal of Part 5

8. Part 5 of the principal Act is repealed.

Substitution of Schedule 1

9. The principal Act is amended by deleting Schedule 1 and by substituting the following —

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“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.