

**CIRCULAR NO: 2 of 2022**

**REF: PPRA 1/1/1 I (2) Exch**

1<sup>st</sup> June 2022

The Permanent Secretary to the President  
All Permanent Secretaries  
The Director, Public Service Management  
The Commander, Botswana Defence Force  
The Commissioner, Botswana Police Service  
The Commissioner, Botswana Prisons and Rehabilitation  
The Attorney General  
The Auditor General  
The Governor, Bank of Botswana  
Chief Registrar of the High Court of Botswana  
The Registrar, Industrial Court  
The Director General, Directorate on Intelligence and Security Services  
The Director General, Directorate on Corruption and Economic Crime  
The Director General, National Strategy Office  
The Director General, Ethics and Integrity  
The Director General, Counter-Terrorism and Fusion Agency  
Director, Public Service Management  
The Ombudsman  
The Clerk of National Assembly  
The Secretary, Independent Electoral Commission  
Coordinator, National AIDS and Health Promotion Agency  
All District Commissioners  
All Chief Executive Officers, Parastatals  
All Land Board Secretaries

Dear Sir/ Madam

**RE: GUIDANCE ON THE PPAD REGULATIONS OF 2016 THAT ARE CONSISTENT WITH THE PP ACT**

1. Kindly refer to the subject at caption.
2. The Public Procurement Act (PPA/ PP Act) of 2021, commenced on the 14<sup>th</sup> April 2022 resulting in the repeal of the Public Procurement & Asset Disposal Act (PPAD Act) and the Local Authorities Procurement & Asset Disposal Act (LAPAD Act).
3. Though the PPA has commenced, the subsidiary legislation (i.e. Public Procurement Regulations) that should accompany the new Act are not yet in place. Drafting of same



is ongoing. It should therefore be noted that in the meantime provisions of the current PPAD Regulations are to be used, in line with Section 152 (1) of the PP Act, which provides thus;

“notwithstanding the effect of the repeal under section 151, any subsidiary legislation made under the repealed Act, and in force immediately before the coming into operation of this Act, shall, in so far as the subsidiary legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.”

4. The import of the above cited provision is that the old (PPAD) Regulations may be used, where they are consistent with the law.
5. In an effort to guide PEs, a review of the PPAD Regulations in order to assess the extent to which the Regulations are consistent with the PPA was undertaken. The conclusion of the review was that the PPAD Regulations are, to a large extent, consistent with the Act, save for the following provisions which have either been removed from the procurement law or for which structures are no longer applicable under the new law:
  - (a) Regulations 8, 9 and 10 on Composition of Ministerial Committee, Functions of Ministerial Committee and Meetings of Ministerial Committee.
  - (b) Regulation 14 on Procedure in Case of Disagreement
  - (c) Regulation 19, Procedure for Defence Force, Police Service etc.,
  - (d) Part XI (Regulations 98 – 137) on Disposal of Assets; the provisions of Part XI of the PPAD Regulations are no longer consistent with the PPA as disposal of assets is now covered under the Public Finance Management Act, however, in line with the Public Finance Management (Amendment) Act, 2021, Part XI on Disposal of Assets shall apply with respect to disposal of public supplies.
6. It was further noted that the procedures and processes for procurement, provided in the PPAD Regulations are consistent with *Section 150* of the PPA which provides for the Minister to make regulations for any matter under the Act for the better carrying out of the objects and purposes of the Act. The saved PPAD Regulations therefore further find protection of the law under this provision.
7. Further worthy to note is that the following provisions of the Act may only be implemented following the issue of new Regulations as same are not supported by any of the PPAD Regulations;
  - (a) The following new methods of procurement provided under Sections 52 and 53;
    - (i) competitive dialogue;
    - (ii) reverse auction;
    - (iii) unsolicited bid;
    - (iv) negotiated procedure;
    - (v) request for proposals with competitive negotiation
    - (vi) best and final offer



- (b) Section 55 – National eProcurement System (NePS): this is a new provision of the law which requires Regulations for implementation in line with section 55(4).
  - (c) Section 80 – Preference for supplies: this is a new provision which requires new Regulations for implementation in line with section 80(2) which provides that the preference may vary in accordance with the percentage of value addition or local content as may be prescribed.
  - (d) Though Section 109 which speaks to decision of Accounting Officer is implementable, it is worthy to highlight the following;
    - (i) This is a new provision that can be implemented without Regulations, however, Section 109(2) requires period for decisions by AO to be prescribed; the current standard (TAT) of 14 days may be used in the absence of the Regulations that prescribe the time.
    - (ii) Further, section 109(2) allows complainant to refer a complaint to the Tribunal where the AO fails to make a decision within the prescribed time. This is a deviation from the old Regulations 78(6) and 79(7) as no timeline for concluding complaints was expressly stated.
8. PEs are therefore requested to refer to the attached guiding document titled “Guideline on the provisions of the PPAD Regulations that are consistent with the Public Procurement Act of 2021” for further details on the above.
9. When undertaking procurement, PEs are to note that primary reference is to be made to the provisions of the Act and subsequently a referral to the supporting Regulations. Further to this, PEs are advised that circulars previously issued by the former PPADB on procurement matters and the PPADB Operations Manual (Standard Operating Policies and Procedures for Public Procurement) remain applicable in so far as they are consistent with the provisions of the new Act.
10. The Public Procurement Regulatory Authority (PPRA) remains available to provide clarification and advice on the matter under reference.

Thank you.  
Yours faithfully,



**TUMELE MOTSUMI**  
**ACTING CHIEF EXECUTIVE OFFICER**

**CC: The President, Public Procurement Tribunal**