

ARE PARASTATALS SUBJECT TO THE OVERSIGHT OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BOARD - (Simon Bathusi, Associate)

The Government of Botswana has created a number of parastatals to carry out specialised services and functions. These parastatals are funded and owned by the Government of Botswana. Under the legislation bringing them into being, the parastatals are given wide powers necessary to carry out their functions, including powers to acquire and dispose assets. One wonders at this point, whether these parastatals should comply with the public procurement and asset disposal laws of Botswana or whether they should only use their own internal procurement rules.

On the 2nd of July 2002, the Public Procurement and Assets Disposal Act came into force in order to govern and control, inter alia, the procurement of any public works, supplies, services and the disposal of public assets through an open and transparent bidding system. For that purpose, the Act established under Section 10, a Public Procurement and Asset Disposal Board ("PPADB") and vested it with functions specified mainly in Part V and interspersed elsewhere in the Act.

It was aptly noted by the High Court in a case against the Public Procurement and Asset Disposal Board, that the purpose of the Act is to ensure honesty and probity in the area of public procurement and asset disposal and it is also designed to safeguard public resources by putting together a system of requirements and obligations that will, inter alia, ensure that public assets, works and services are procured with utmost propriety and to the best of public advantage.

Section 26 establishes principles by which the PPADB must ensure that every procurement entity takes into account in their procurement activities. Case law demonstrates that the main purpose of these principles is to set up a public bidding system that is open, free, transparent and competitive so as to obtain best value for the state and the public; to remove corruption in the system and to ensure that public tenders are conducted in an equitable and fair manner. The PPADB is therefore a formidable body intended to guard the national interest in the proper allocation of projects for procuring public services and supplies and for the sale of government assets.

In terms of Section 3, the PPADB Act applies to, among others, all Land Boards, all parastatals, statutory organisations and local authorities in accordance with the provisions of Section 8, except where exempted by the Minister by notice published in the Government Gazette.

Section 8 provides that contributions of any form by the Government of Botswana to entities such as parastatals, which entail procurement activity, shall be kept discrete and identifiable as far as possible and subject to the applicable procurement or disposal provisions of the PPADB Act.

It therefore follows that, unless exempted by Notice issued by the Minister in terms of Section 8 of the PPADB Act, parastatals are obliged to comply with the Public Procurement and Asset Disposal Act when procuring or disposing assets which the Government of Botswana has made contributions. Deviation from compliance with the PPADB Act by parastatals will be susceptible to judicial review at the instance of an aggrieved party.