



REPUBLIC OF VANUATU

GOVERNMENT CONTRACTS AND TENDERS (AMENDMENT) ACT NO. 44 OF 2019

Arrangement of Sections

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REPUBLIC OF VANUATU

Assent: 10/01/2020
Commencement: 15/01/2020

GOVERNMENT CONTRACTS AND TENDERS (AMENDMENT) ACT NO. 44 OF 2019

An Act to amend the Government Contracts and Tenders Act [CAP 245].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Government Contracts and Tenders Act [CAP 245] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF GOVERNMENT CONTRACTS AND TENDERS ACT [CAP 245]

1 Whole of the Act

Delete “Central Tenders Board” (wherever occurring), substitute “Board”

2 Subsection 2(1)

Delete “(1)”

3 Section 2

Insert in their correct alphabetical positions

““Board” means the Central Tenders Board established under section 9;

“evaluation committee” means the evaluation committee appointed by the Board under the Regulations;

“Regulations” means the Regulations made under this Act;

“responsible director general” means the director general responsible for the Government Contract or tender or who is responsible for the ministry or agency arranging or undertaking the Government Contract or tender;”

4 Section 2 (Definition of “Minister”)

Repeal the definition, substitute

““Minister” means the Minister responsible for finance;”

5 Section 2 (Definition of “Responsible minister”)

Repeal the definition, substitute,

““responsible minister” means the minister responsible for the Government Contract or tender or who is responsible for the ministry or agency arranging or undertaking the Government Contract or tender;”

6 Section 2 (Definition of “The Minister”)

Repeal the definition.

7 Subsection 2(2)

Repeal the subsection.

8 Subsection 2A(3)

Repeal the subsection, substitute

“(3) A Government Contract does not include the following:

- (a) the engagement of employees under the Public Service Commission Act [CAP 246] or any other Act; or
- (b) a grant made by or to the Government; or
- (c) a loan made by or to the Government; or
- (d) a statutory appointment.”

9 After section 2A in Part 1

Insert

“2B Duration of a Government Contract

The duration of a Government Contract may exceed 1 year subject to any restrictions and procedures set out in the regulations.”

10 Subsection 3(1)

Repeal the subsection, substitute

“(1) A Government Contract must be in writing unless it is of a value less than the amount prescribed by the regulations.”

11 Subsection 3(2)

Delete “exceeds VT 5,000,000”, substitute “is VT 10,000,000 or above”

12 Paragraphs 3(3)(a),(b),(c),(d),(e) and (f)

After “;”, insert “and”

13 After paragraphs 3(3)(a) and (5)(a)

Insert

“(aa) ensure that the Government Contract relates to the Ministry’s policy responsibilities; and”

14 Paragraph 3(3)(f)

Delete “or any other Act or regulation”, substitute “Act or the regulations”

15 Subsection 3(4)

Delete “does not exceed VT 5,000,000”, substitute “is less than VT 10,000,000”

16 Subsection 3(5)

Delete “VT 5,000,000, substitute “VT 10,000,000”

17 Subsection 3(6)

Repeal the subsection, substitute

“(6) A Government Contract must not be awarded to:

- (a) a public servant; or
- (b) a minister; or
- (c) a Member of Parliament; or
- (d) a leader as defined under the Leadership Code Act [CAP 240]; or
- (e) in the case of a Government Contract with a value of VT 10,000,000 or above – a person that does not have a tax clearance certificate issued under section 51 of the Tax Administration Act No. 37 of 2018.”

18 Section 3A

Repeal the section, substitute

“3A Renewal of Government Contracts

A Government Contract must not be renewed unless it complies with the procurement methods as set out in this Act and the Regulations.

3B Variation and extension of Government Contracts

(1) A Government Contract with a value of VT10,000,000 or above must not be varied, including any extension of the term of the Government Contract unless the Board in writing approves the variation or extension. (2) In deciding whether to approve a variation to a Government Contract, the Board must have regard to whether:

- (a) a variation has been made previously; and
- (b) the variation is for 1 year or less; and
- (c) the variation represents an increase of not more than 20% in the price of the original terms; and

- (d) in the case of an extension of the term of the Government Contract – the extension does not have a value exceeding 100% of the original Government Contract; and
 - (e) such other matters as the Board considers relevant.
- (3) A Government Contract with a value below VT10,000,000 must not be varied or extended unless it meets the prescribed requirements.

19 Section 4

Repeal the section, substitute

“4 Execution of Government Contracts

- (1) A Government Contract entered into under section 3 must be in the name of the Government of the Republic of Vanuatu represented by the responsible minister or responsible director general.
- (2) A document required to be signed evidencing the terms of a Government Contract must be executed by the responsible minister or responsible director general on behalf of the Government.
- (3) A Government Contract may be renewed or varied in the same manner as described in subsections (1) and (2).”

20 Subsection 8(1)

Repeal the subsection, substitute

- “(1) This section applies when:
- (a) entering into a Government Contract; or
 - (b) entering into a contract for the contracting out of a Government service; or
 - (c) the purchasing of goods or services.
- (2) The following persons must comply with the quotation, proposal or tendering process set out in this Act and the Regulations:
- (a) responsible minister; and
 - (b) the responsible director general of a ministry; and

- (c) any other person authorized by the responsible minister or the responsible director general.”

21 Subsection 8(2)

- (a) Delete “Minister, the Director General of the Ministry”, substitute “responsible minister, the responsible director general of the ministry”
- (b) Delete “Minister or the Director General”, substitute “responsible minister or the director general”

22 Section 9 (heading)

Repeal the heading, substitute

“9 Establishment of the Board”

23 Section 9

Delete “comprising those persons specified in section 10 which will report and be responsible to the Minister responsible for the Central Tenders Board for receiving, assessing, approving and recommending (where applicable) acceptance of government tenders with a value of more than VT 5,000,000”

24 Section 10 (heading)

Repeal the heading, substitute

“10 Composition of the Board”

25 Subsections 10(1) and (2)

Repeal the subsections, substitute

“(1) The members of the Board are:

- (a) a Chairperson appointed under section 11; and
- (b) the Director-General of the Ministry responsible for finance or his or her representative; and
- (c) a representative of the State Law Office.

(2) A quorum for a meeting of the Board is 3 members.”

26 Subsection 10(6)

Delete “Central Board”, substitute “Board”

27 Paragraphs 11(2)(a),(b),(c) and (d)

After “;”, insert “and”

28 Paragraph 11A(1)(a)

Repeal the paragraph, substitute

- “(a) to manage procurement procedures for tenders with a value of VT 10,000,000 or above; and
- (aa) to make recommendation to the Council to approve Government Contracts with a value of VT10,000,000 or above; and
- (ab) to make recommendation to the Minister under section 15C; and”

29 Paragraph 11A(2)(c)

Delete “tender”

30 Paragraphs 11A(2)(e),(f) and (g)

After “;”, insert “and”

31 Paragraph 11A(2)(h)

Delete “;”, insert “.”

32 Subsection 12(1)

Repeal the subsection, substitute

- “(1) The Board must recommence the tender process if:
- (a) the Board cannot approve the awarding of a Government Contract; or
 - (b) the Board cannot make a recommendation to the Council to approve the Government Contract; or
 - (c) the Council does not accept the Board’s recommendation.”

33 Subsection 12(2A)

Repeal the subsection.

34 Subsection 12(4)

- (a) Delete “table”, substitute “provide”
- (b) After “reasons”, insert “in writing”

35 Subsection 12(6)

Repeal the subsection, substitute

“(6) To avoid doubt, the Minister together with the responsible minister, are responsible for submitting all recommendations made by the Board to the Council.

(7) Nothing in this section gives the Minister or the responsible minister the power to change any recommendation of the Board.”

36 Subsection 13A(3)

Repeal the subsection.

37 Section 13B

Repeal the section.

38 Section 14

Repeal section, substitute

“14. Offences and penalties

A person who contravenes section 3A, 3B or 4 or subsection 3(3), 3(5), 8(1) or 13A(1) commits an offence and is liable on conviction:

(a) in the case of a natural person - to a fine not exceeding VT 2,000,000 or imprisonment for a term not exceeding 2 years, or both; or

(b) in the case of a body corporate- to a fine not exceeding VT 10,000,000.”

39 Subsection 15(2)

Repeal the subsection, substitute

“(2) If a person contravenes subsection (1), the person commits an offence and is liable on conviction:

(a) in the case of a natural person - to a fine not exceeding VT 5,000,000 or imprisonment for a term not exceeding 5 years, or both; or

(b) in the case of a body corporate- to a fine not exceeding VT 25,000,000.”

40 After section 15

Insert

“15A. False or misleading information or documents

If a person knowingly or recklessly provides to the Board information or documents that are false or misleading in relation to a Government Contract, the person commits an offence and is liable on conviction:

- (a) in the case of a natural person - to a fine not exceeding VT 5,000,000 or imprisonment for a term not exceeding 5 years, or both; or
- (b) in the case of a body corporate- to a fine not exceeding VT 25,000,000.

15B Disclosure of information

(1) A member of the Board or the evaluation committee must not directly or indirectly disclose to any person any information or document in relation to a Government Contract or a tender, unless the disclosure:

- (a) is for the purpose of discharging a duty, performing a function or exercising a power under this Act; or
- (b) is made to a recipient who is legally authorized to receive such information; or
- (c) is ordered by a court.

(2) A person who contravenes subsection (1), the person commits an offence and is liable on conviction to a fine not exceeding VT 5,000,000 or imprisonment for a term not exceeding 5 years, or both.

15C. Suspension against submitting a tender

- (1) Subject to subsection (2), the Minister may, by written notice to a person, suspend the person from submitting a tender under this Act if the Minister is satisfied that the person has failed to comply with this Act or the regulations.
- (2) The Minister must not give a written notice to a person unless the Board has recommended the suspension of the person to the Minister.
- (3) Before making a recommendation, the Board must give a person at least 14 days in which to make a written submission to the Board on the person’s proposed suspension, and the Board must have regard to any submission so made.

- (4) After considering any recommendation made by the Board, the Minister must give a notice of suspension to the person concerned or take no further action.
- (5) A notice of suspension must specify the reasons for, and the period of, the suspension. The period of a suspension is not to exceed 5 years.
- (6) If the Minister decides not to take any further action, the Minister must provide his or her reasons in writing to the Board.
- (7) A notice given by the Minister that does not comply with subsection (2) is null and void.”

41 Section 17

After “following”, insert “, regardless of the value of the Government Contract”

42 After paragraph 17(c)

Insert

“(ca) exemptions to this Act during a declared state of emergency;

(cb) annual procurement plans for government agencies;”

43 Paragraph 18(a)

Repeal the paragraph, substitute

“(a) audited annually by the Auditor-General; and”

44 Section 19

Repeal the section.