

Government Contracts and Tenders Act 1998

Commencement: 21 September 1998

REPUBLIC OF VANUATU

GOVERNMENT CONTRACTS AND TENDERS ACT NO. 10 OF 1998

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REPUBLIC OF VANUATU

Assent: 16/07/98
Commencement: 21/09/98

**GOVERNMENT CONTRACTS AND TENDERS ACT
NO. 10 OF 1998**

An Act to provide for Government Contracts and Tenders.

BE IT ENACTED by the President and Parliament as follows:

**PART ONE
PRELIMINARY**

PURPOSE

1. The purpose of this Act is to establish the rules and procedures that must be followed with Government contracts and tenders.

INTERPRETATION

2. (1) For the purposes of this Act, unless the context otherwise requires:

"Attorney General" means the Attorney General and includes a legal officer appointed by the Attorney General who executes the office of Attorney General during any vacancy in that office or during the absence or incapacity of the holder of that office, to perform the functions powers and duties of the Attorney General;

"Council" means the Council of Ministers;

"Director General" means the Director General of the Ministry of Finance and Economic Management and includes a person in the Public Service who executes the office of the Director General during any vacancy in that office or during the absence or incapacity of the holder of that office, performs the functions, powers and duties of the Director General;

"Government Contract" means a contract, arrangement, or obligation for the supply of goods or services or the execution of public works in consideration of payment out of public moneys (and includes any subcontract made in relation to any such contract or public work), where the consideration of the Government Contract as the case may be is over VT5,000,000, but does not include contracts for raising loans;

"Minister" means a minister of the Council of Ministers;

"Public work" means any work of a public nature executed on behalf of the State and includes rendering any services in connection therewith and any construction manufacture or industry of benefit to the national economy;

"Responsible minister" means the minister responsible for the contract or tender or who is responsible for the ministry or agency arranging or undertaking the contract or tender;

"The Minister" means the minister responsible for the Tenders Board.

(2) In this Act paragraphs will be read conjunctively as if the word "and" linked each paragraph unless the word "or" appears between paragraphs.

PART TWO

GOVERNMENT CONTRACTS

GOVERNMENT CONTRACTS

3. (1) Every Government Contract must be in writing.

(2) Subject to subsection (3), a minister, under this or any other Act authorizing him to do so, may enter into a Government Contract.

(3) Prior to entering into a Government Contract a minister must first:

- (a) ensure the contract is consistent with Government policy;
- (b) ensure the contract is fiscally responsible, prudent, cost effective, and is a necessary obligation for Government to assume;
- (c) consult with the Director General and satisfy himself on reasonable grounds that the Government has or is likely to have the financial ability and resources to meet all of the obligations under the contract including future obligations;
- (d) consult with and obtain the advice of the Attorney General or a legal practitioner approved by the Attorney General in writing, on the legal aspects, implications, and appropriateness of entering into the contract;
- (e) ensure that no conflict of interest exists between a minister or the Council and the other party;
- (f) use a competitive and transparent process when deciding who to award the contract to including where applicable, a tender process as may be prescribed by this or any other Act or regulation;
- (g) make a written submission to Council which must include a copy of the proposed contract, the process followed, and comments on the proposed contract by, and under the signatures of, the Director General and the Attorney General or the legal practitioner. The Attorney General must certify that the procedures in accordance with this or any other applicable Act have been followed;
- (h) obtain a Council minute approving the Contract.

EXECUTION OF GOVERNMENT CONTRACTS

4. (1) Every Government Contracts entered into under section 3 must be in the name of the Government of the Republic of Vanuatu represented by the responsible minister, and every document required to be signed evidencing the terms of the contract may be executed by the responsible minister on behalf of the Government.

(2) The terms of a Government Contract may be varied or discharged in the same way.

VALIDATION OF PRIOR CONTRACTS

5. All things lawfully done before the passing of this Act, will be deemed to have been validly and lawfully done under the authority of this Act and any contract entered into is ratified and confirmed.

APPLICATION OF ACT TO EXISTING ARRANGEMENTS

6. The provisions of this Act will apply to any arrangement to enter into a Government Contract which at the date of commencement of this Act has not been executed.

EFFECT OF GOVERNMENT CONTRACT ENTERED INTO IN BREACH OF THIS ACT

7. A Government Contract entered into after the commencement of this Act, which is in breach of the provisions of this Act, will be void, of no effect, and will not be binding on the State or the Government.

PART THREE **TENDERS AND QUOTATIONS**

REQUIREMENT TO OBTAIN TENDERS AND QUOTATIONS

8. When entering into a Government Contract or a contract for the contracting out of a Government service or the purchasing of goods or services, a minister, or director general of a ministry, or any other person authorized to do so, must comply with the quotation or tendering process in accordance with this Act or with any regulations made under this or any other Act.

PART FOUR **TENDERS BOARD**

TENDERS BOARD

9. There shall be established a Tenders Board comprising those persons specified in section 10 which will report and be responsible to the Council for receiving, assessing, approving (where applicable) and recommending acceptance of government tenders with a value of more than VT5,000,000.

BOARD

10. (1) The Tenders Board will consist of the following persons:

- (a) a Chairperson;
 - (b) the director-general of the ministry which is procuring the goods or services, or his representative;
 - (c) the Director-General, or his representative;
 - (d) a representative of the ministry responsible for procuring the goods or service who has detailed knowledge of the requirements of the ministry in relation to the contract to be performed;
 - (e) where the Government Contract is of a value of VT10,000,000 or more, the Attorney General or his representative.
- (2) There must be minimum of three persons to constitute a quorum and where applicable the Attorney General or his representative.
- (3) No tender may be recommended to the Council without the approval of the Board.
- (4) The Chairperson shall have a casting vote at Board meetings.
- (5) If a member of the Board stands to gain financially or has a conflict of interest in a contract he must not continue to be a member of the Board considering tenders for that contract.
- (6) A Secretary, provided by the Director-General, will attend all meetings and will keep detailed minutes.
- (7) The Board may co-opt any person for the purpose of providing technical advice and such person will not be entitled to a vote.
- (8) In all of its activities the Board must act independently, and is not to be subject to interference or influence from any person.
- (9) No member of the Board, other than the Chairperson, will be paid by reason of his membership of the Board.

CHAIRPERSON OF BOARD

11. (1) The Chairperson of the Board shall be appointed by the Prime Minister, after consultation with the leaders of every political party represented in Parliament and a recognized representative of the private business sector (such as the Chairperson of the Vanuatu Financial Centre Association Limited or President of the Chamber of Commerce).

(2) The Chairperson:

- (a) must be a person who has a wide detailed knowledge and experience in the practice of law or accounting or commerce;
- (b) must not be a member of Parliament or hold any other public office;
- (c) will not be deemed by virtue of the office to be employed in the Public Service;
- (d) must be a person of good reputation in the community and enjoy public confidence.

(3) The Chairperson will be appointed for a term of 3 years, but will hold the appointment on a part time basis.

(4) Subject to an enactment determining the Chairperson's remuneration, the Chairperson will be remunerated at a rate fixed by the Prime Minister on the advice of the Public Service Commission from money to be appropriated for that purpose.

- (5) Subject to subsection (6), the Chairperson may be removed or suspended from office only by the Prime Minister upon a resolution of Parliament for incompetence, disability, bankruptcy, neglect of duty or misconduct.
- (6) The Chairperson may resign from office by giving one month's notice in writing to the Prime Minister.
- (7) On the occurrence of a vacancy in the office of chairperson a new Chairperson must be appointed as soon as practicable in accordance with subsection (1).
- (8) The appointment of a Chairperson in breach of the provisions of this section will be void and of no effect and a suitably qualified person must be appointed to the vacancy.
- (9) The Chairperson appointed in breach of this section will be deemed to have resigned his office from the date that he is advised of that fact by the Minister, or when the Supreme Court makes a finding to that effect, whichever shall occur earlier.

PART FIVE

TENDER PROCESS

PROCEDURE

12. (1) The Board must recommence the tender process when it cannot make a recommendation or its recommendation is declined by the Council.
- (2) The Board must not consider a tender or make a recommendation to Council in respect of a tender from a person, body corporate, company or entity who has not submitted the tender in accordance with, and followed the prescribed procedure under this or any other Act or regulations made under this or any other Act.
- (3) The Board must not consider a tender or make a recommendation to Council where the tender is submitted after the time and date specified for the submission of the tender has expired.
- (4) The Council must not decline a recommendation for acceptance of a tender from the Board unless there are compelling reasons to do so, and where the Council does decline a recommendation it must table its reasons to the Board within 14 days of making that decision.
- (5) The Council must not accept a tender unless the tender has been through the tender process in accordance with this Act.

BREACH OF TENDER PROCESS

13. Unless the breach is of a minor, trivial of technical nature, a contract entered into in breach of the tenders provisions of this Act, or regulations made under this Act, will not be binding on the State or the Government.

PART SIX

OFFENCES AND PENALTIES

OFFENCES AND PENALTIES

14. (1) A person who acts in breach of sections 3, 4, 8, 10(2), (3), (4), (7) or 12, or regulations under this Act commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or imprisonment for a term not exceeding 1 year or in the case of a person or organization other than an individual, to a fine not exceeding VT5,000,000.

(2) It will be a defence in any proceedings under subsection (1) where a person can satisfy the court that the offence was not intentional and that the breach was minor, trivial, or technical.

NO INTERFERENCE WITH BOARD

15. (1) No person shall influence or attempt to influence the Board in any manner.

(2) A person who acts in contravention of this section is liable on conviction to a fine not exceeding VT2,000,000 or imprisonment for a term not exceeding 2 years, and in the case of a person or organization other than an individual, to a fine not exceeding VT7,000,000.

BREACH OF LEADERSHIP CODE

16. Where a person convicted of an offence under this Act is a leader, as that term is defined in the Leadership Code, and that offence amounts to a breach of the Leadership Code then that person is also liable to be dealt with under the Leadership Code in addition to any penalty imposed under this Act.

PART SEVEN MISCELLANEOUS

REGULATIONS

17. The Minister may make such regulations as are necessary for giving full effect to this Act and for its proper administration, including regulations for all or any of the following:

- (a) prescribing the procedure and method that must be followed when arranging a Government Contract;
- (b) prescribing the procedure and method that must be followed when entering into a Government Contract;
- (c) prescribing the rules, procedure and method to be followed in arranging or calling for, and approving or recommending quotations and tenders for Government Contracts and the contracting out of Government services or purchasing goods, services, or supplies on behalf of the State or Government;
- (d) prescribing offences against the regulations made under this Act and penalties therefore.

EXPENDITURE REVIEW COMMITTEE

18. The records, minutes, and decisions of the Board may be reviewed at any time by the Expenditure Review Committee and that Committee will have the same powers and functions in a review under this Act as it has under any other enactment.

COMMENCEMENT

19. This Act shall come into force on the date that it is published in the Gazette.
